

ESRI
RESEARCH
SERIES
NUMBER 139
April 2022

DETECTION, IDENTIFICATION, AND PROTECTION OF THIRD-COUNTRY NATIONAL VICTIMS OF HUMAN TRAFFICKING IN IRELAND

EMILY CUNNIFFE AND OLUWATOYOSI AYODELE



EMN Ireland is funded by the European Union's Asylum, Migration and Integration Fund and co-funded by the Department of Justice



An Roinn Dlí agus Cirt
Department of Justice





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RESEARCH SERIES NUMBER 139

Available to download from www.esri.ie

The Economic and Social Research Institute
Whitaker Square, Sir John Rogerson's Quay, Dublin 2

<https://doi.org/10.26504/rs139>



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ACKNOWLEDGEMENTS

In compiling this study, valuable contributions and insights were received from a wide range of stakeholders. This includes representatives of the Garda National Protective Services Bureau in An Garda Síochána, the Community Safety Policy Unit in the Department of Justice, Tusla Child and Family Agency, the International Protection Office, the HSE Anti-Human Trafficking Team, the International Protection Accommodation Services and the Repatriation Unit, as well as the Migrant Rights Centre Ireland (MRCI), Immigrant Council of Ireland, the International Organization for Migration (IOM) Ireland, and the Irish Human Rights and Equality Commission (IHREC).

The authors would also like to thank colleagues in the EMN Ireland team, and in particular Emma Quinn, Head of EMN Ireland. The study benefited from the detailed comments of an ESRI and an external reviewer. Thank you to Anna de Courcy for copy editing. Finally, thank you to Sarah Burns, Jeanne Sutton and Julianne Flynn for assistance managing its publication.

ABOUT THIS REPORT

This European Migration Network study examines the procedures and practice in place in Ireland for the detection, identification and protection of victims of human trafficking in Ireland. It examines relevant legislation, policies and practice in each phase of the procedure. It presents information collated by way of a common template for an EU-level report published by the EMN, *Third-country national victims of trafficking in human beings: Detection, identification and protection*, available at: www.emn.ie.

This report has been accepted for publication by the Institute, which does not itself take institutional policy positions. All ESRI Research Series reports are peer reviewed prior to publication. The authors are solely responsible for the content and the views expressed.

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ABBREVIATIONS AND IRISH TERMS

AHTU	Anti-Human Trafficking Unit
AHTT	Anti-Human Trafficking Team in the Health Service Executive
AkiDwA	Akina Dada wa Africa, a national network of migrant women living in Ireland
An Garda Síochána	Irish national police force
AVRR	Assisted Voluntary Return and Reintegration Programme
BMU	Border Management Unit
CAB	Criminal Assets Bureau
CERD	United Nations Committee for the Elimination of Racial Discrimination
CPFR	Child Protection Family Reunification
CPO	Crime Prevention Officer
CSP	Community Safety Policy Unit
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EMN	European Migration Network
EMPACT	European Multi-Disciplinary Platform Against Criminal Threats
ESRI	Economic and Social Research Institute
EU	European Union
GNECB	Garda National Economic Crime Bureau
GNIB	Garda National Immigration Bureau
GNPSB	Garda National Protective Services Bureau
GRETA	Group of Experts on Action against Trafficking in Human Beings in the Council of Europe
HAP	Housing Assistance Payment
HRC	Habitual Residence Condition
HSE	Health Service Executive
HTEPII	Human Trafficking and Exploitation Project on the Island of Ireland
HTICU	Human Trafficking Investigation and Coordination Unit (HTICU) in An Garda Síochána
ICTU	Irish Congress of Trade Unions
IHREC	Irish Human Rights and Equality Commission

ILO	International Labour Organization
IOM	International Organization for Migration
IPAS	International Protection Accommodation Services
IPAT	International Protection Appeals Tribunal
IPO	International Protection Office
ISD	Immigration Service Delivery
ITFHT	Interpol Task Force on Human Trafficking
ITWF	International Transport Workers Federation
LAB	Legal Aid Board
MECPATHS	Mercy Efforts for Child Protection Against Trafficking with the Hospitality Sector
MRCI	Migrant Rights Centre Ireland
NCP	National Contact Point
NGO	Non-governmental organisation
NRM	National Referral Mechanism
OCTF	Organised Crime Task Force
ODPP	Office of the Director of Public Prosecutions
OPIU	Organised Prostitution Investigation Unit
PPSN	Personal Public Service Number
PSNI	Police Service of Northern Ireland
SCSIP	Separated Children Seeking International Protection team in Tusla Child and Family Agency
SERP	Sexual Exploitation Research Programme
SWAI	Sex Workers Alliance Ireland
TENI	Transgender Equality Network Ireland
TRP	Temporary Residence Permission
UN	United Nations
UN-GIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
US	United States
V-SAC	Victim Support at Court
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

In Ireland, between 2015 and 2020, 356 people were identified as suspected victims of human trafficking by An Garda Síochána. Of them, approximately 59 per cent were third-country nationals.

This study examines the policy and practice in Ireland for the detection of a situation of human trafficking, the identification of a victim of human trafficking, and the subsequent protection provided to victims of human trafficking, with a particular focus on third-country nationals. It is based on the Irish contribution to a European Migration Network (EMN) report comparing the situation in EMN Member and Observer States.

STATISTICS ON TRAFFICKING

The total number of victims of human trafficking identified in Ireland has gradually declined since 2017. In 2015, 62 suspected victims of trafficking were identified, this increased to 75 in 2017, but then decreased, and 38 suspected victims of trafficking were identified in 2020. During this time period, the majority of identified victims of human trafficking were female (62 per cent), and the most commonly identified purpose of human trafficking was for sexual exploitation, followed by trafficking for labour exploitation.

The trends observed in Ireland are also seen across the EU. As detailed in a recent EU Commission report on data on human trafficking, most victims of trafficking who are identified in the EU are female and trafficked for the purpose of sexual exploitation. As a share of population, Ireland was 11th of 26 reporting Member States in terms of the number of victims of human trafficking registered in 2017 and 2018. Nonetheless, it is likely that these statistics do not accurately reflect the total number of persons who may be victims due, in part, to the clandestine nature of human trafficking.

There are, however, limitations in the data available in Ireland on human trafficking, and specifically on third-country national victims of human trafficking. Data are not available on detected victims of human trafficking who may not complete the identification procedure or are not found to be victims of human trafficking, as well as the breakdown of types of exploitation for third-country nationals. Additionally, further clarity is needed as to how data are recorded for different sources and reports.

DETECTION OF POTENTIAL VICTIMS OF TRAFFICKING

The first phase examined in this study is detection. This phase is defined as the process of identifying a possible situation of human trafficking. This study examines how detection takes place in Ireland, looking at the collection of indicators of human trafficking, the training of relevant staff, including within An Garda Síochána and specific industries, and awareness raising campaigns run by the government and by civil society. Other detection mechanisms, such as Garda operations and raids, workplace inspections and screening in migration and asylum procedures, are also presented. Victims of human trafficking may also be referred from NGOs to authorities or self-report. While training occurs in a broad range of sectors, no data are available on the total number of people who have received training.

State and non-state stakeholders interviewed for this study highlighted that more efforts need to be made in the detection of victims of human trafficking, particularly in terms of training a broader number of frontline workers and introducing screening for victims of human trafficking in migration procedures. Concerns have also been raised by NGOs as regards the effectiveness of detection methods such as Garda operations and raids as well as Workplace Relations Commission inspections.

IDENTIFICATION PROCEDURE

The identification procedure in Ireland is conducted by An Garda Síochána and is the sole pathway into the National Referral Mechanism (NRM). The NRM provides various supports and protections for victims of human trafficking once identified. An Garda Síochána has a specialised unit for investigating human trafficking called the Human Trafficking Investigation and Coordination Unit (HTICU) within the Garda National Protective Services Bureau (GNPSB). The first member of An Garda Síochána to encounter a victim of trafficking will conduct a 'reasonable grounds' assessment. This assessment seeks to determine if there are grounds for believing that the person is a victim of an offence under the relevant sections of the *Criminal Law (Human Trafficking) Act 2008* or the *Child Trafficking and Pornography Act 1998*. Once complete, the result of the assessment is forwarded to a member of An Garda Síochána not below the rank of Superintendent in the Garda National Immigration Bureau (GNIB), who is the competent authority and thus final arbiter of the identification process. Upon identification, a 'potential' victim of trafficking becomes a 'suspected' victim of trafficking. The same identification procedure is followed for victims of human trafficking regardless of nationality or immigration status.

The HTICU indicated that there is a 'low threshold' for potential or suspected victims of trafficking to enter the NRM. In essence, if a person presents as a victim

of trafficking, they are treated as such unless there is compelling evidence to refute that claim. To this end, a person can be entered into the NRM prior to the conclusion of the identification procedure.

Stakeholders highlighted a number of challenges in the identification procedure. These included the role of An Garda Síochána as the competent authority for identification. While the human trafficking investigation unit was moved within An Garda Síochána from GNIB to GNPSB in order to separate human trafficking investigation from immigration functions, some non-governmental stakeholders described how the fact that it is still in An Garda Síochána may deter victims of trafficking from seeking to be identified and can exclude other relevant entities from identifying victims of human trafficking. Other challenges include that there is no formal identification decision issued to suspected victims of trafficking. This was reported to present difficulties for the victim in accessing services. Additionally, there are limitations in the early identification of victims of trafficking, such as in criminal cases where a person may be charged with a crime. NGOs raised concerns about the implementation of the principle of non-punishment in this regard. The last identification-related challenge highlighted is that the procedure is not on statutory footing, which can make it difficult for victims of trafficking to vindicate their rights, such as appealing a negative decision. These challenges may result in fewer victims of human trafficking being officially identified.

PROTECTION OF SUSPECTED VICTIMS OF HUMAN TRAFFICKING

Protections are provided to third-country nationals who are suspected victims of human trafficking following identification and entry to the NRM. Initially, a person may be granted a recovery and reflection period of 60 days. The purpose of this period is to give the individual time to recover and to decide if they wish to cooperate in a criminal investigation. Under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, third-country nationals who do not hold a valid immigration permission are issued with a permission to remain in the State for the initial recovery and reflection period. After the recovery and reflection period, where the investigation or prosecution of the crime is ongoing, they can be issued with a six-month Temporary Residence Permission (TRP), which is renewable. Third-country nationals who already hold a permission to reside in the State, including international protection applicants, can access the 60-day recovery and reflection period but they are not eligible for immigration permissions under the Administrative Immigration Arrangements, as they already have permission to be in the State.

Other protections and supports that may be provided as part of the NRM include those from the HSE's Anti-Human Trafficking Team (AHTT). The AHTT develops an individual care plan for each victim of human trafficking, and as part of this, links

the individual with medical and psychological supports. The AHTT can also provide assistance in accessing socio-economic supports. Suspected victims of trafficking are eligible for civil legal aid after identification for the Administrative Immigration Arrangements procedure, information on criminal trials, compensation and voluntary return. For employment tribunal related issues, only legal advice is provided. Suspected victims of human trafficking are offered accommodation in International Protection Accommodation Services' (IPAS) accommodation centres. With regard to social welfare, according to the Department of Social Protection's Operational Guidelines, identified suspected victims of human trafficking are seen as meeting the Habitual Residence Condition (HRC) that is required to access a number of social welfare supports.

However, the study also highlights challenges and limitations raised by stakeholders in the protections provided; the first is the differences in legal status that arise out of the limited applicability of the Administrative Immigration Arrangements, with international protection applicants unable to access a TRP. This can result in suspected victims of trafficking holding different immigration permissions in the State and as a result, discrepancies in the supports that can be accessed. Such discrepancies were noted in particular for access to the labour market and to social welfare supports, which for international protection applicants are subject to different conditions than holders of TRPs. Additionally, the temporary nature of the TRP issued to victims of human trafficking and the potential for lapses in permissions was identified as a source of uncertainty and precarity for victims. It was also identified as impacting on future immigration permissions and access to social welfare. While the HRC is waived for suspected victims of human trafficking accessing social welfare, the HSE AHTT stated that it still poses difficulties in access to the Housing Assistance Payment (HAP).

Another key challenge raised by stakeholders concerned the accommodation provided to victims of human trafficking. IPAS accommodation centres were not seen as appropriate for victims of human trafficking by non-governmental stakeholders and a specialised, gender-sensitive centre where appropriate support services for victims can be provided was recommended. Lastly, NGOs interviewed for this study detailed the limitations in the legal aid provided, particularly in that it is not provided for compensation sought in the Workplace Relations Commission or the Criminal Injuries Compensation Tribunal. This was a concern for victims of trafficking for labour exploitation. Civil legal aid is also not provided prior to a person being identified as a suspected victim of human trafficking. Non-governmental stakeholders highlighted how early legal intervention is key to ensuring adequate victim protection.

Several good practices were identified by stakeholders. These included the firewall (block on information sharing) between the Department of Social Protection and

the Department of Justice that was introduced during the COVID-19 pandemic for social welfare supports. Undocumented third-country nationals were able to access financial supports without fear of repercussions for their immigration status. This was during a time in which they could have otherwise been exposed to financial uncertainty and consequently vulnerable to exploitation and human trafficking. It was seen as a good preventive measure. The HTICU highlighted recent legislative developments to protect and provide rights for victims of crime as a good practice. For example, this was seen in the introduction of the *Criminal Justice (Victims of Crime) Act 2017* and the protections for victims of crime contained therein.

NEW DEVELOPMENTS

In May 2021, the Irish Government published a proposal for a revised NRM. The proposal seeks to expand the number of bodies competent to identify victims of trafficking, to place the identification procedure on statutory footing, and to involve NGOs as ‘trusted partners’. The State bodies who are proposed to be competent to identify victims of human trafficking would include the Department of Justice Immigration Services, Department of Social Protection, the HSE, Tusla, and IPAS in the Department of Children, Equality, Disability, Integration and Youth. This change seeks to allow for different pathways into the NRM.

The Government’s *White Paper to End Direct Provision and to Establish a New International Protection Support Service*, published in February 2021, also proposes specialised accommodation facilities for victims of trafficking. At the time of writing, this accommodation had not yet been secured.

CHAPTER 1

Introduction

In Ireland in 2020, 38 people were identified as suspected victims of trafficking. Of them, 26 people were identified as having been trafficked for the purpose of sexual exploitation. Ten people were identified as victims of trafficking for the purpose of labour exploitation and two as victims of trafficking for the purpose of forced criminality (Department of Justice, 2021).

The purpose of this study is to provide an overview of the procedures in place in Ireland to initially detect potential victims of human trafficking, to then identify them as suspected victims, and lastly, to protect and support victims of trafficking through provisions such as healthcare, accommodation and social welfare. This study is based on material from the Irish contribution to the European Migration Network (EMN) report, *Third-country national victims of trafficking in human beings: Detection, identification and protection* (EMN, 2022). Research for the report was carried out by EMN Member and Observer States in 2021. The EMN report presents similarities and differences across 27 countries, including 25 European Union (EU) Member States, Georgia and Norway.

Academic scholarship on human trafficking in Ireland has critiqued the identification procedure, finding that the identification of potential victims was not timely nor efficient (Stapleton, 2011). Beyond identification, other scholarship has detailed the limitations of, and in some cases, lack of, state assistance for victims of trafficking throughout the procedure (Doyle et al., 2019). A similar conclusion underpinned the report from the Human Trafficking and Exploitation Project on the Island of Ireland (HTEPII), which found that there are victims of trafficking who are not identified and therefore not receiving the necessary supports and protections (Breen et al., 2021).¹ NGOs in Ireland have also published a wide body of reports and submissions to national and international bodies on human trafficking in Ireland (IHREC, 2021a). These reports have focussed on forced labour in cannabis production in Ireland (MRCI, 2014), labour exploitation and trafficking in the fishing industry (MRCI, 2017), as well as detection, identification, protection and prevention mechanisms for international protection applicants who are victims of trafficking (Immigrant Council of Ireland, 2018; 2021). Challenges regarding accommodation and early legal intervention for victims have also been examined (Immigrant Council of Ireland 2015; 2020c).

¹ The HTEPII was a project led by researchers from Mary Immaculate College in Limerick. Using a mixed-methods research approach (both quantitative and qualitative), the report sought to review the scale of human trafficking on the island of Ireland.

In 2014, EMN Ireland/ESRI published a report on trafficking in human beings (Joyce and Quinn, 2014). The report found that while the Irish legal and institutional framework had seen significant progress, two broad issues remained. The first was the lack of a formal identification system for all victims of trafficking, regardless of nationality and immigration status, and the second was that international protection applicants did not have access to the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, with implications for access to supports and the accrual of legal residency (Joyce and Quinn, 2014).

This study takes stock of key developments since the publication of the 2014 report, looking specifically at the years between 2015 and 2021, and presents an up-to-date overview of the procedures in place in Ireland to detect, identify, and protect victims of trafficking. It relies on interviews with and reports by key governmental and non-governmental stakeholders. The study also integrates findings from the EMN report (EMN, 2022) and European Commission reports on human trafficking to locate Ireland in the broader EU context (European Commission, 2020a; 2020b; 2020c).

1.1 OVERVIEW OF DEVELOPMENTS BETWEEN 2015 AND 2021

Between 2015 and 2021, the national context on human trafficking in Ireland has been shaped by a number of key developments. In 2015, in the case of *P. v. the Chief Superintendent of the Garda National Immigration Bureau & ors*, the Irish High Court found that the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* were in breach of the EU's Anti-Trafficking Directive 2011/36/EU.² The case concerned a Vietnamese woman who was found by An Garda Síochána in a cannabis grow house. She was charged under the *Misuse of Drugs Act 1977/84* and held in custody for over two years. In the ruling, the High Court found flaws in the State's mechanism to ensure the early identification of victims of trafficking.³ At the end of 2015, *The Guardian* newspaper published an investigative article on exploitation and potential human trafficking in the Irish fishing industry. The article prompted the establishment of an inter-departmental government task force, whose subsequent report recommended an expanded scope for the Atypical Working Scheme as a means of addressing the employment rights of non-EEA workers in the fishing industry (Department of Agriculture, Food and the Marine, 2015).

2016 saw the publication of the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*, which contained 65 action points grouped under thematic headings such as prevention, responses to child trafficking, and

² *P. v. The Chief Superintendent of The Garda National Immigration Bureau & ors*, [2015] IEHC 222.

³ *Ibid.*

monitoring and evaluation (Department of Justice, Equality and Law Reform, 2016a). In 2017, the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) published its second report on Ireland following a country visit. The report recognised legislative efforts to combat trafficking, such as the inclusion in legislation of forced criminality and forced begging as types of exploitation, and the publication of the Second National Action Plan (GRETA, 2017). However, GRETA identified areas for improvement, including, *inter alia*, the identification mechanism – to ensure it is proactive and implemented without delays – the need to provide safe and adequate accommodation, and the lack of criminal convictions in Ireland for human trafficking. With regard to child victims of trafficking, GRETA recommended that the Irish authorities continue to strengthen efforts to prevent child trafficking, train relevant social workers, and implement effective measures to identify and protect child victims of trafficking (GRETA, 2017).

In 2018, Ireland was downgraded in the US Department of State’s Trafficking in Persons (TIP) report from Tier 1 to Tier 2. Ireland was further downgraded to the Tier 2 Watch List in 2020, where it remained in 2021 (US Department of State, 2018; 2019; 2020; 2021). The most recent TIP report recognised efforts made by the Irish government to address human trafficking but described how Ireland does not fully meet the minimum standards for the elimination of human trafficking. In particular, the report stated that:

[t]he government continued to have systemic deficiencies in victim identification, referral, and assistance, and lacked specialized accommodation and adequate services for victims (US Department of State, 2021, p. 302).

In 2019, a Settlement Agreement was announced on the scheme for the employment of non-EEA fishers in parts of the Irish fishing fleet.⁴ The agreement followed legal proceedings brought by the International Transport Workers Federation (ITWF) against a number of government departments and the Workplace Relations Commission (WRC).⁵ At the end of 2019, the Joint Oireachtas Committee on Justice and Equality highlighted concerns with the vulnerability assessments of migrant victims of trafficking and/or sexual exploitation who are resident in reception centres. It noted how the identification process for victims of trafficking can take up to two years and the supports provided in Direct Provision

⁴ Department of Justice and Equality, the Department of Transport, Tourism and Sport, the Department of Business, Enterprise and Innovation, the Department of Agriculture, Food and the Marine, and the Workplace Relations Commission (April 2018). ‘Settlement Agreement Record No: 2018/5398p *The International Transport Workers’ Federation v. The Minister For Justice And Equality and Others*’. Department of Justice, available at: www.justice.ie/en/JELR/Pages/PR19000123.

⁵ *Ibid.*

accommodation centres were inconsistent and offered in an *ad hoc* manner (Joint Oireachtas Committee on Justice and Equality, 2019).

The UN Committee on the Elimination of Racial Discrimination (CERD) published its concluding observations on Ireland in 2019. With regard to human trafficking, it recommended, *inter alia*, the full enforcement of the *Criminal Law (Human Trafficking) Act 2008* to facilitate reporting on human trafficking and ensure prosecutions, an improvement of the identification and referral mechanisms, and the enactment of legislation to provide victims of human trafficking with specialised assistance and legal protections irrespective of nationality and immigration status (UNCERD, 2019).

In 2020, similar concerns were raised in the *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*. The report recommended that:

appropriate accommodation, with additional supports and services, should be provided for those identified as victims of trafficking and sexual or gender-based violence. In the interim, priority should be given to designating private, non-shared rooms to trafficked people who have been abused (Department of Justice, 2020b, p. 13).

On 22 October 2020, the Department of Justice announced that IHREC would be Ireland's National Rapporteur on Human Trafficking pursuant to Article 19 of the Anti-Trafficking Directive 2011/36/EU, a role that was previously fulfilled by the Anti-Human Trafficking Unit in the Department of Justice.⁶ In December 2020, IPAS introduced a pilot vulnerability screening programme within the international protection system. Among the vulnerabilities screened for are indications of human trafficking.⁷

In May 2021, the Irish Government approved a proposal from the Department of Justice for a revised NRM, which is proposed to be placed on statutory footing. The NRM will involve an increased number of State bodies, including the Department of Justice Immigration Services, the Department of Social Protection, the HSE, Tusla, and International Protection Accommodation Services (IPAS) in the Department of Children, Equality, Disability, Integration and Youth. An NRM 'Operational Committee', comprising representatives from the abovementioned State bodies, is planned as a 'a multi-disciplinary team would make decisions based

⁶ Irish Human Rights and Equality Commission (22 October 2020). 'Commission Takes on New Role as Ireland's National Rapporteur on the Trafficking of Human Beings'. Available at: www.ihrec.ie/commission-takes-on-new-role-as-irelands-national-rapporteur-on-the-trafficking-of-human-beings/.

⁷ Correspondence with IPAS, October 2021.

on the recommendations of the individual partner organisations.’ Select NGOs and local authorities will be designated as ‘trusted partners’.⁸ A new National Action Plan is also being developed.⁹

In October 2021, IHREC published its submission to the Council of Europe’s GRETA in advance of GRETA’s planned visit to Ireland at the end of 2021. In the submission, IHREC highlights some positive developments as regards efforts to address human trafficking in Ireland, including two convictions for human trafficking offences, but also states that the promised NRM must be implemented urgently to ensure effective identification and protection of victims of trafficking (IHREC, 2021a).

1.2 LEGISLATION AND POLICY

In Ireland, an intersection of international, EU and national legislation governs responses to human trafficking. Ireland has signed and ratified the key international treaties on human trafficking, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children to the UN Convention against Organised Crime and the Council of Europe Convention on Action against Trafficking in Human Beings* (one of the ‘Palermo Protocols’). More recently, in 2019, Ireland ratified the International Labour Organization’s (ILO) *Protocol to the Forced Labour Convention* (No. 29).

On a regional level, the European Convention on Human Rights (ECHR), to which Ireland is a contracting state, prohibits slavery and forced labour under Article 4, including human trafficking.¹⁰ The case law of the European Court of Human Rights (ECtHR) has made clear the obligations of states in the detection, identification and protection of victims of trafficking. These obligations include, *inter alia*, ensuring an appropriate legal and administrative framework is in place to combat human trafficking and to investigate when there are indicators of human trafficking;¹¹ that investigations into trafficking and the provision of protection do not face undue delays;¹² and that victims of trafficking are provided with an effective remedy.¹³ The recent ECtHR case of *V.C.L. and A.N. v. the United Kingdom* concerned two children who were found working in a cannabis grow house by British authorities. The ECtHR ruling recognised positive obligations for states under Article 4. Combined with an acknowledgement of the specific protections for children, the ECtHR detailed, *inter alia*, the requirement for safeguards in the identification and

⁸ Department of Justice (May 2021). ‘Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports’. Available at: www.justice.ie.

⁹ Department of Justice (22 February 2022). Response to Parliamentary Question 9139/22. Available at: www.justice.ie.

¹⁰ European Court of Human Rights (2010). *Rantsev v. Cyprus and Russia* (Application no. 25965/04).

¹¹ *Ibid.*

¹² European Court of Human Rights (2016). *L.E. v. Greece* (Application no. 71545/12).

¹³ *Ibid.*

protection of victims of trafficking who are suspected of committing crime and that a state's failure to investigate human trafficking can impact on the right to a fair trial.¹⁴

The Council of Europe's *Convention on Action against Trafficking in Human Beings*, adopted in 2005, has been ratified by Ireland. The Convention establishes requirements for contracting states to implement prevention mechanisms, border procedures, and identification and assistance measures, among other measures. It also establishes the Group of Experts on Action against Trafficking in Human Beings (GRETA), which monitors the implementation of the Convention on a national level and conducts periodic visits to countries. GRETA has completed two reports on Ireland, in 2013 and 2017, and is currently in the process of completing its third report, following a visit in December 2021.¹⁵

Under EU law, the main legislative instrument is the Anti-Trafficking Directive 2011/36/EU. This Directive sets out the rights of victims of trafficking, rules on preventing human trafficking, criminal offences, as well as provisions for victim protection and compensation. It also requires Member States to establish a national rapporteur or an equivalent body to monitor the situation of human trafficking in Member States. Ireland has transposed this Directive in *Criminal Law (Human Trafficking) (Amendment) Act 2013*, which amends, *inter alia*, the *Criminal Law (Human Trafficking) Act 2008* and the *Child Trafficking and Pornography Act 1998*.¹⁶ Ireland is not bound by Council Directive 2004/81/EC on residence permits issued to third-country national victims of trafficking.¹⁷ In 2018, Ireland opted-in to the recast Reception Conditions Directive 2013/33/EU. This Directive contains specific provisions on the special reception needs of vulnerable international protection applicants, including victims of human trafficking.¹⁸

On a national level, trafficking is defined in the *Criminal Law (Human Trafficking) Act 2008*, which was amended by the *Criminal Law (Human Trafficking) Act 2013*. The definition relies on that of the Palermo Protocol, which is described in greater detail below (Section 1.3). The 2008 Act sets out provisions around criminal proceedings and media reporting, such as anonymity, but does not set out the rights of victims of human trafficking or measures for identification and protection.

¹⁴ European Court of Human Rights, *V.C.L. and A.N. v. the United Kingdom* (Applications nos. 77587/12 and 74603/12).

¹⁵ GRETA. 'Ireland'. Council of Europe. Available at: www.coe.int/en/web/anti-human-trafficking/ireland.

¹⁶ A proposed amendment to the Child Trafficking and Pornography Act 1998 was put forward in a Bill by Senator Eileen Flynn to remove reference to 'child pornography' in early 2022. Child Trafficking and Child Sexual Exploitation Material (Amendment) Bill 2022.

¹⁷ 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, OJ L 261, 6.8.2004, pp. 19-23.

¹⁸ Article 21, 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), OJ L 180, 29.6.2013, pp. 96-116.

The *Child Trafficking and Pornography Act 1998* contains additional provisions relevant to child victims of human trafficking.

The *Criminal Law (Sexual Offences) Act 2017* criminalises child grooming and the purchase of sexual services, including from victims of trafficking. Part 4 of the Act amends the *Criminal Law (Sexual Offences) Act 1993* and the *Criminal Law (Human Trafficking) Act 2008* to decriminalise persons who offer their services as a prostitute to another person, and criminalises the purchase of sexual activity with a prostitute. It makes it an offence to pay, offer or promise to pay or give a person (including a trafficked person) money or ‘any other form of remuneration or consideration for the purposes of the prostitution of a trafficked person’.¹⁹ In 2021, the Minister for Justice announced that offences for the sale of sexual services under the 1993 Act would be expunged.²⁰

Responses to the adoption of the 2017 Act differed. Prior to the adoption of the legislation, the Irish Human Rights and Equality Commission (IHREC) observed that there was lack of evidence that any one legislative approach ‘has the definitive effect of reducing trafficking in human beings for sexual exploitation’.²¹ IHREC has recommended:

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

and to carry out the planned evaluation of the legislation (IHREC, 2021b, p. 24). The Sex Workers Alliance Ireland (SWAI) expressed reservations about the legislation, arguing that Part 4 of the Act did not fully decriminalise sex work. It stated that criminalising the purchase of sex would marginalise sex workers and would not have the effect of reducing human trafficking.²² Similarly, Amnesty International Ireland, HIV Ireland, the Migrant Rights Centre of Ireland (MRCI) and Transgender Equality Network Ireland (TENI) also expressed reservations about Part 4 of the Act. While they welcomed the ‘limited decriminalisation of street sex workers’, they stated, *inter alia*, that the new legislation would not protect vulnerable sex workers and would force sex work underground, leading to greater

¹⁹ Section 26, *Criminal Law (Sexual Offences) Act 2017*.

²⁰ Department of Justice (2021). Minister McEntee announces initiative to expunge previous convictions for ‘sale of sex’. Available at: www.gov.ie/en/press-release/dbc0f-minister-mcentee-announces-initiative-to-expunge-previous-convictions-for-sale-of-sex.

²¹ Irish Human Rights and Equality Commission, ‘IHREC Submission to GRETA in Advance of Its Second Evaluation Round of Ireland’. Available at: www.ihrec.ie.

²² Sex Workers Alliance Ireland (January 2017). Updated shadow report information for CEDAW. UN Committee on the Elimination of All Forms of Discrimination Against Women. Available at: www.tbinternet.ohchr.org.

levels of violence.²³ Ruhama, a Dublin-based NGO, welcomed the decriminalisation aspects of the Act and acknowledged the Act as a landmark measure ‘to address the demand of sex buyers as the group directly responsible for perpetuating the commercial sex trade.’²⁴ The Immigrant Council of Ireland also welcomed the legislation as an improvement to the protections for persons trafficked for sexual exploitation.²⁵

The undertaking of the Minister for Justice to retrospectively expunge offences under the 1993 Act for the sale of sexual services was highlighted by IHREC in its first contribution to the EU Commission as national rapporteur on human trafficking in Ireland.²⁶ There is an ongoing independent review of Part 4 of the *Criminal Law (Sexual Offences) Act 2017* commissioned by the Department of Justice. In the interim report by the High Level Working Group, it stated that:

there is a concern that women who are not themselves organising prostitution or profiting from the exploitation of the prostitution of others may have, on occasion, been targeted under this law (Shannon, 2020, p. 10).

The *Criminal Justice (Victims of Crime) Act 2017* transposes the EU Directive on Victims’ Rights 2012/29/EU into national law and provides protections for victims of crime, including victims of human trafficking.²⁷ The Act provides, *inter alia*, a right for victims to information on victim support services, a right to information on the investigation and any court proceedings, and a right to an individual assessment of protection needs and to special measures to safeguard victims from repeat victimisation, intimidation and retaliation.

The procedures for the identification and protection of victims of human trafficking are set out in various non-statutory policy documents. Principal among them is the policy document on *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (Department of Justice and Law Reform, 2011). The Arrangements apply to third-country nationals who do not hold an immigration permission in the State and were initially published in 2008 alongside the *Criminal Law (Human Trafficking) Act 2008*. The arrangements detail how undocumented third-country national victims of trafficking are identified as suspected victims of

²³ MacNamee, G. (February 2017). ‘This Approach Will Not Help Victims of Trafficking’: Groups at Odds as Sex Bill Passes Final Stage’ *TheJournal.ie*. Available at: www.thejournal.ie/sex-bill-criminalise-prostitutes-3240336-Feb2017, accessed 28 June 2021.

²⁴ *Ibid.*

²⁵ Immigrant Council of Ireland (27 March 2017). ‘Improved protections for those trafficked for sexual exploitation start today’. Available at: www.immigrantcouncil.ie/index.php/news/improved-protections-those-trafficked-sexual-exploitation-start-today.

²⁶ Irish Human Rights and Equality Commission (7 April 2021). ‘EU Told of Ireland’s Systemic Failures in Identifying Victims of Trafficking’. www.ihrec.ie/eu-told-of-irelands-systemic-failures-in-identifying-victims-of-trafficking/.

²⁷ Section 15, *Criminal Justice (Victims of Crime) Act 2017*.

trafficking and how they can gain access to a recovery and reflection period and a renewable temporary residence permission, along with the related rules and conditions that must be complied with. It also provides information on the availability of voluntary return and the ability of a temporary residence permission holder to change status and obtain a more permanent permission (Department of Justice and Law Reform, 2011). This is described in greater detail in Chapter 5. Other relevant documents include the *Statement on Roles and Responsibilities*, which sets out the various organisations and bodies involved in identification and protection (Department of Justice and Law Reform, 2012). However, some of the organisations and Departments (and their units) listed in the Statement have changed name or are no longer operational. Similarly, the Administrative Immigration Arrangements have also not been updated to reflect these changes.

1.3 TERMINOLOGY

In 2000, the United Nations adopted three protocols to supplement the *United Nations Convention against Transnational Organized Crime*, known as the 'Palermo Protocols'. Of the three protocols, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* concerns trafficking in human beings. The protocol defines trafficking in human beings as:

*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.*²⁸

There are three components to this legal definition of trafficking. Firstly, it requires an act: 'the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons'.²⁹ Secondly, it requires a means:

*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.*³⁰

²⁸ Article 3, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children*, supplementing the United Nations Convention against Transnational Organized Crime.

²⁹ *Ibid.*

³⁰ *Ibid.*

Thirdly, it requires a purpose of exploitation, such as labour exploitation. For children, it is not necessary to establish a ‘means’ to define a situation as human trafficking.³¹

Scholars have nonetheless highlighted the problems that can arise in using a rigid definition of trafficking (Coghlan and Wylie, 2011; O’Connell Davidson and Anderson, 2006). The concepts of smuggling and trafficking are legally distinct in the Palermo Protocols. Smuggling is understood as, *inter alia*, mutually advantageous for the smuggler and the smuggled, consensual, and ending when a border has been crossed (Bhabha and Zard, 2006). Trafficking is, on the other hand, for the purpose of exploitation and by means such as coercion. Yet, Bhabha and Zard highlight how the line between smuggling and trafficking can often be blurred, with a smuggling situation sometimes becoming one of trafficking, particularly after arrival in a destination country, and the relationship between coercion and consent complex. Broader structural inequalities, such as poverty, can also blur the distinction between consent and coercion (Bhabha and Zard, 2006). In a similar way, the distinction between trafficking, the definition of which centres on exploitation (Kempadoo, 2020), and situations of labour and sexual exploitation that are not human trafficking can also be difficult, if not problematic, to discern (Skrivankova, 2010; Chuang, 2014). More broadly, as described by O’Connell Davidson and Anderson (2006), experiences of migration, exploitation and trafficking are complex, and it can be difficult to create ‘neat divisions between the trafficked, the smuggled, the legal and the “illegal”’ (Coghlan and Wylie, 2011, p. 1,516; see also: Murphy et al., 2020).

This study relies on the EMN Glossary definition for trafficking in human beings, which is based on that of the Palermo Protocols described above.³²

Other key terms for this study include:

- **Deportation order:** An order issued to a person whose application for international protection has been refused,³³ or a person who does not hold a permission to reside in the State. A deportation order is issued under section 3 of the Immigration Act 1999, as amended, which requires the person specified in the order to leave the State within a set period and remain thereafter outside of the State.³⁴
- **Dublin transfer decision:** a decision issued to an applicant for international protection where another Member State is found to be responsible for their

³¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

³² European Migration Network. Glossary 6.0. Available at: www.ec.europa.eu/home-affairs/pages/glossary_en.

³³ Section 51(3), *International Protection Act 2015*, as amended.

³⁴ Section 3, *Immigration Act 1999*, as amended.

application for international protection, pursuant to the Dublin III Regulation 604/2013, and the individual is to be transferred to that Member State.³⁵

- **Detection of (a situation of) trafficking in human beings:** The process of identifying a possible situation of trafficking in human beings.³⁶
- **Exploitation:** The act of taking advantage of something or someone, in particular the act of taking unjust advantage of another for one's own benefit (e.g. sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).³⁷
- **Identification of a victim of trafficking in human beings:** The process of confirming and characterising a situation of trafficking in human beings for further implementation of support.³⁸
- **National referral mechanism (NRM):** Mechanism aimed at identifying, protecting and assisting victims of trafficking in human beings, through referral, and involving relevant public authorities and civil society.³⁹
- **Potential victim of trafficking:** 'A person whom people think is a victim of trafficking but who has not been fully assessed as a victim by the Gardaí (police). A person who is a potential victim of trafficking will not be removed from Ireland while the Gardaí are assessing if there are reasonable grounds to believe they are a suspected victim of human trafficking' (Department of Justice and Equality, 2015, p. 28).
- **Suspected victim of trafficking:** 'A person who has been assessed and about whom a Superintendent or a Garda of higher rank in the Garda National Immigration Bureau (GNIB) has enough information to believe that they are a victim of human trafficking' (Department of Justice and Equality, 2015, p. 29).
- **Third-country national:** Any person who is not a citizen of the European Union within the meaning of Article 20(1) of TFEU and who is not a person enjoying the European Union right to free movement, as defined in Article 2(5) of the Regulation (EU) 2016/399 (Schengen Borders Code).⁴⁰

1.4 SCOPE AND METHODOLOGY

This study examines the situation of third-country national victims of trafficking in Ireland. While there are also Irish and EU nationals who are victims of trafficking, they are not covered in the scope of this study, other than in the data where it was

³⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, pp. 31-59.

³⁶ European Migration Network. Glossary 6.0. Available at: www.ec.europa.eu/home-affairs/pages/glossary_en.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

not possible to distinguish country of origin. The category of third-country nationals includes international protection applicants and persons who are undocumented in the State. With regard to temporal scope, this study examines the period between 2015 and 2020, with some references to developments in 2021. It should be noted that the analysis in this study was completed prior to the February 2022 Russian invasion of Ukraine and therefore does not include an examination of responses to Ukrainian refugee arrivals in Ireland and the related human trafficking risks.

The structure of the study is based on information gathered according to EMN specifications for a wider study, agreed by EMN National Contact Points (NCPs). NCPs gather information according to these commonly agreed specifications (a common template). The main findings are brought together and compared in an EU-level EMN report (EMN, 2022).

For the Irish national study, desk research was undertaken at the outset, including a review of policy documents, legislation, academic literature, and reports by non-governmental and international organisations. Seven semi-structured interviews were conducted with State and non-State stakeholders in 2021 and early 2022. The interview questions were based on the abovementioned EMN common template and were sent to stakeholders in advance. The stakeholders interviewed included a representative of the Garda National Protective Services Bureau, specifically the HTICU, in An Garda Síochána, two representatives of the Community Safety Policy Unit of the Department of Justice, a representative of the Irish office of the International Organization for Migration (IOM), a representative of the Immigrant Council of Ireland, a representative of the Migrant Rights Centre Ireland (MRCI), and a representative of the Irish Human Rights and Equality Commission (IHREC). These interviews were conducted between July and September 2021. A further interview was conducted with four representatives of Tusla Child and Family Agency in January 2022. This interview was conducted in order to incorporate more in-depth information on the procedures for children who are victims of human trafficking. All interviews were followed up with correspondence where further clarification was required. We also corresponded with the International Protection Accommodation Services (IPAS), the International Protection Office (IPO) and the HSE Anti-Human Trafficking Team (AHTT). All stakeholders were invited to review the study prior to publication.

The data used in this study are sourced from annual reports of the Department of Justice, the European Commission, the US Department of State's Trafficking in Persons reports, submissions to and the reports of GRETA, as well as national NGO reports. It is important to recognise that the official figures on human trafficking are likely to not be representative of the total number of persons who are potential victims of trafficking in Ireland (Breen et al., 2021). Official data are also based on

national legal definitions of trafficking and, given the complexity in defining a situation of trafficking, may therefore also be limited (ibid).

1.5 STUDY STRUCTURE

The second chapter of this study provides a picture of the Irish and EU context through presenting the available statistics on human trafficking. The third, fourth and fifth chapters examine detection, identification and protection of victims of human trafficking respectively. These chapters present the policies and procedures currently in place and draw on interviews conducted with governmental and non-governmental stakeholders. Chapter 7 concludes the study.

CHAPTER 2

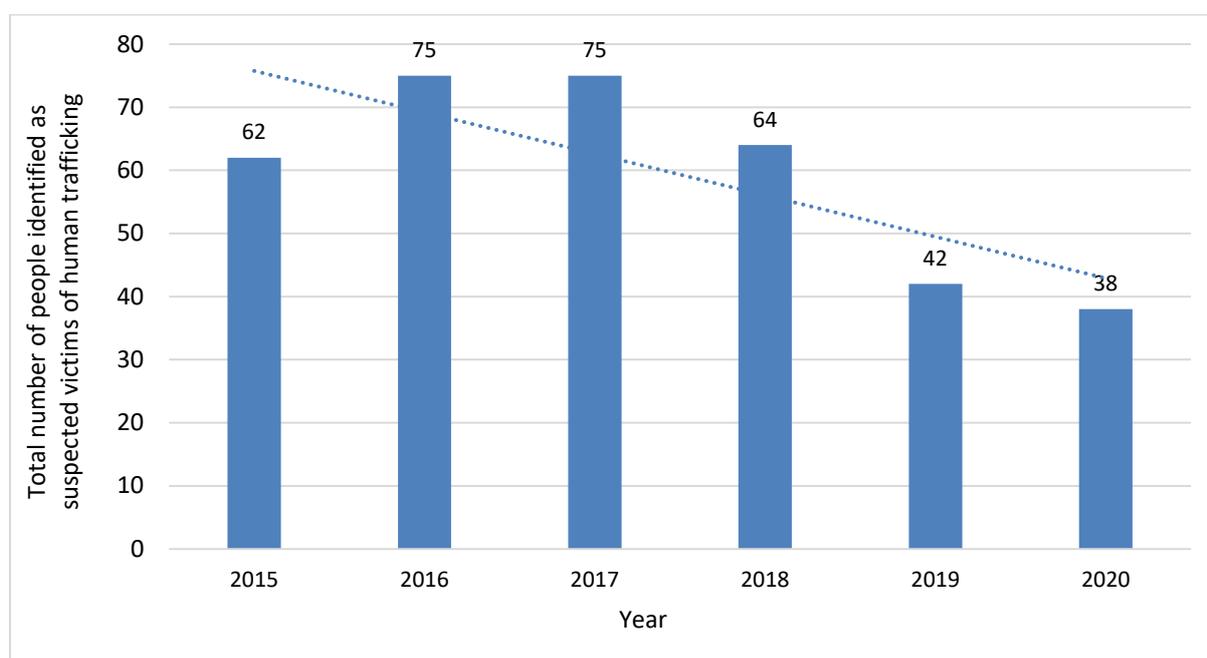
Statistics on human trafficking

This chapter presents the available statistics on victims of human trafficking in Ireland and the EU. In terms of the Irish picture, it shows a gradual decline in the number of victims of human trafficking identified between 2015 and 2020. The majority of recognised victims during this period were female and the most common trafficking purpose was for sexual exploitation. In terms of the broader EU picture, this chapter presents statistics from the European Commission for the 2017-2018 period. Ireland was eleventh among the 26 reporting EU Member States for the number of victims of human trafficking identified when made proportional to population.

As seen below, the data available in Ireland on human trafficking and specifically third-country national victims of human trafficking, are limited. It is not possible to disaggregate the data on gender, age and purpose of trafficking for third-country nationals. Additionally, further clarity on how data on victims of human trafficking are recorded for different reports and sources is needed for future research on human trafficking in Ireland. In this regard, it should be noted that most statistics provided, where not stated otherwise, include all victims of human trafficking and are not specific to third-country nationals.

2.1 STATISTICS ON IRELAND

Between 2015 and 2020, a total of 356 persons were identified as suspected victims of trafficking in Ireland by An Garda Síochána. The number of victims identified each year has decreased year-on-year since 2017 (Figure 2.1).

FIGURE 2.1 NUMBER OF PERSONS IDENTIFIED AS SUSPECTED VICTIMS OF TRAFFICKING IN IRELAND (2015-2020)

Sources: Department of Justice (2021). *Trafficking in Human Beings in Ireland Annual Report 2020*. www.blueblindfold.ie; Department of Justice (2020a). *Trafficking in Human Beings in Ireland Annual Report 2019*. www.blueblindfold.ie.

In 2015, 62 persons were identified as suspected victims of trafficking, including seven minors (Department of Justice and Equality, 2018). This figure increased in 2016 and 2017, when 75 persons were identified as suspected victims of trafficking in each year, with one and three minor victims of trafficking identified in each year respectively (*ibid*). The figure then decreased in 2018, when 64 persons were identified as suspected victims of trafficking, including five minors, and decreased further in 2019 when 42 persons were identified, including nine minors (Department of Justice and Equality, 2020).

In 2020, 38 persons were identified as suspected victims of trafficking, with no minors identified as suspected victims of trafficking (Department of Justice, 2021).⁴¹ COVID-19 and the related public health measures may have impacted on the number of persons detected in 2020.⁴² The US Department of State's most recent TIP report reasons that the lack of minors identified as suspected victims of trafficking may be due to a decision by the Office of the Director of Public Prosecutions (ODPP) in 2018 to reclassify child victims of trafficking as victims of sexual exploitation (US Department of State, 2021). As a proportion of population,

⁴¹ These figures are inclusive of EU and Irish nationals.

⁴² Interview with HTICU, An Garda Síochána, August 2021.

the number of victims of human trafficking identified in Ireland per 1,000,000 in 2020 was 7.58.⁴³

With regard to the overall decrease in the number of identified suspected victims of trafficking in the five-year period examined above, in addition to the reclassification decision by the office of the ODPP, the 2019 Annual Report of An Garda Síochána states that the changes to the Atypical Working Scheme in 2019 also contributed to the decrease. The changes to the Atypical Working Scheme meant that fishers could change employers without having to obtain a new permit. According to the report, the change resulted in ‘removing the possible control element of human trafficking’ (An Garda Síochána, 2020, p. 8). In 2018, 21 of the 64 persons identified as suspected victims of trafficking were fishers. However, in 2019 there were no victims identified as part of the ‘Atypical Working Scheme reported or recorded’ (An Garda Síochána, 2020, p. 8), and this was similar in 2020 and 2021. However, these figures only concern the Atypical Working Scheme and not necessarily the fishing industry as a whole.

The US Department of State’s TIP report for 2021 highlights this as a concern raised by experts, and details submissions that the amendments to the rules of the Atypical Working Scheme in 2019 have not been enforced, victims of human trafficking were no longer being identified in the sector, and the statuses of fishers who were previously identified as victims of trafficking were being revoked. (US Department of State, 2021). Similarly, Murphy et al. (2021) found that most fishers who had been employed in the fishing sector from before 2016 who were interviewed in their research had found conditions had worsened in the sector. The researchers highlighted that the Atypical Working Scheme permission, which, despite the 2019 changes to remove of the requirement of the employer to consent to a change of employer, remains linked to a specific employer who is required to renew it each year. The workers interviewed were also not aware of their ability to change employers (Murphy et al., 2021). In response to the publication of the 2021 TIP report, Minister of State at the Department of Justice stated that:

*no evidence was found to support the allegations of widespread human trafficking in the fishing industry. It is unclear why the State Department chose to place weight on one voice and not to take account of the balance of stakeholder assessment – including assessment by NGOs active in Ireland in tackling human trafficking – that these accusations are without foundation.*⁴⁴

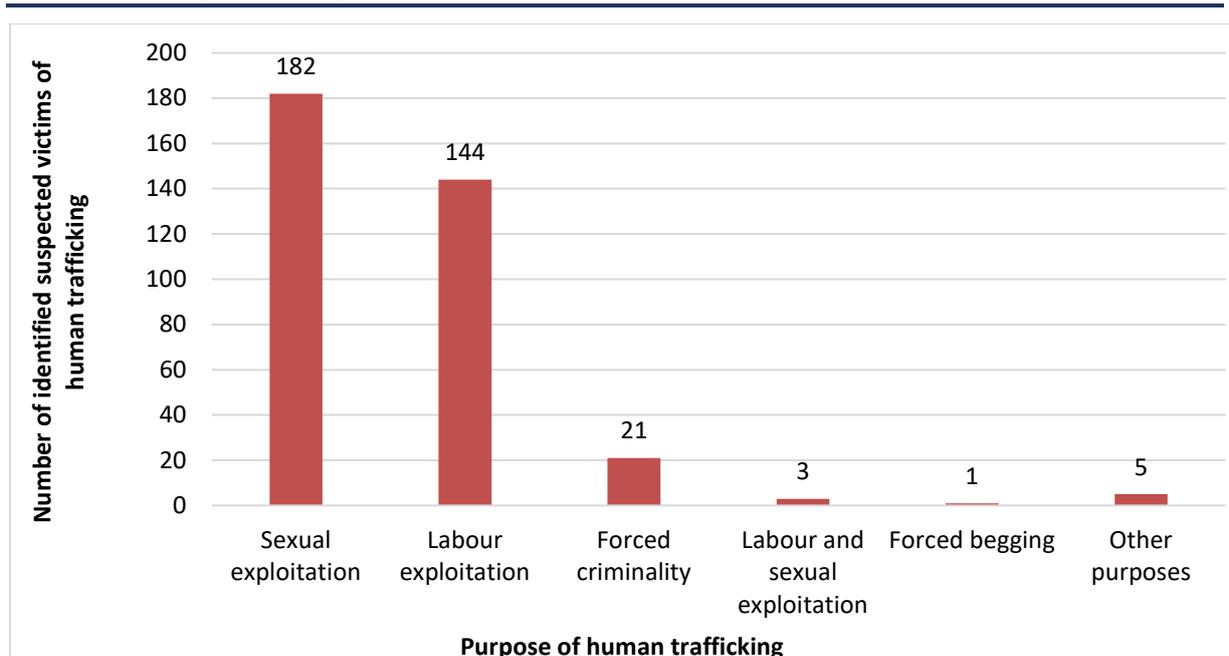
⁴³ Irish population estimate based on the Central Statistics Office estimate for April 2021 of 5,011,500. Central Statistics Office (31 August 2021). ‘Population and Migration Estimates, April 2021’. Available at: www.cso.ie/en/releasesandpublications/ep/p-pme/populationandmigrationestimatesapril2021/mainresults.

⁴⁴ Department of Justice (23 September 2021). Response to Parliamentary Question 45816/21. www.justice.ie.

Between 2015 and 2020, the majority of identified suspected victims of trafficking in human beings were female (62 per cent) (Department of Justice, 2020; 2021). For the same period, trafficking for sexual exploitation was the most commonly identified trafficking purpose, with 182 persons identified as victims of trafficking for this purpose (173 were female, eight were male, and one was transgender).

The second most identified purpose was for labour exploitation, with 144 people identified as victims. This includes 42 women and 102 men. In addition, 21 people were identified as victims of trafficking for forced criminality (seven women, 14 men), three women were identified as victims of trafficking for labour and sexual exploitation, one woman was identified as a victim of trafficking for forced begging, and five persons were identified as victims of trafficking for other purposes (three women, two men) (see Figure 2.2) (Department of Justice, 2020; 2021).

FIGURE 2.2 PURPOSE OF HUMAN TRAFFICKING OF PERSONS IDENTIFIED AS SUSPECTED VICTIMS (2015-2020)



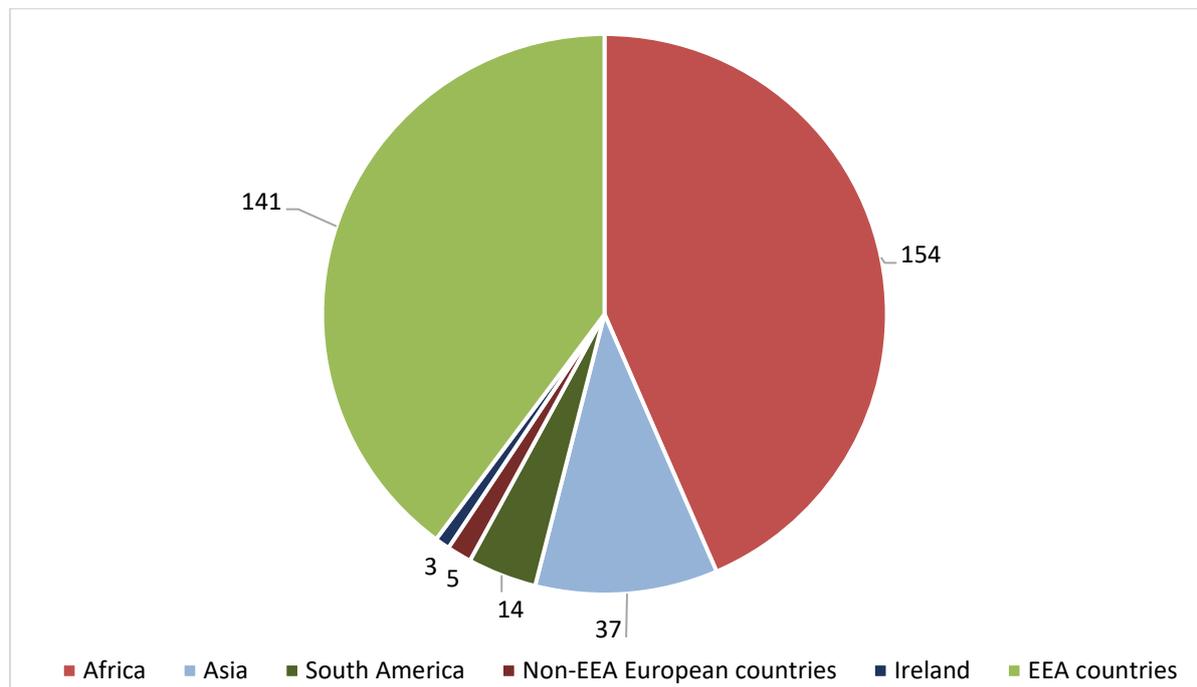
Sources: Department of Justice (2021). *Trafficking in Human Beings in Ireland Annual Report 2020*. www.blueblindfold.ie; Department of Justice (2020a). *Trafficking in Human Beings in Ireland Annual Report 2019*. www.blueblindfold.ie.

With regard to nationality, between 2015 and 2020, Africa was the region from which the highest number of third-country national victims of human trafficking originated. Of the total of 356 victims identified in those six years, 154 were from African countries (41 per cent), 37 were from Asian countries (10 per cent), 14 from South American countries, and five were from non-EEA Europe countries. Most of the other identified victims of trafficking were from EEA countries (141, or 40 per cent) or Ireland (three). Two persons have their nationality listed as ‘other’

(Department of Justice, 2020; 2021). For each year between 2015 and 2020, Nigeria was the most common country of origin for third-country national victims of trafficking (Department of Justice, 2020; 2021).

In its submission to the Anti-Racism Committee on Developing a National Action Plan Against Racism, IHREC has highlighted how human trafficking in Ireland is a racialised and gendered phenomenon (IHREC, 2021a).

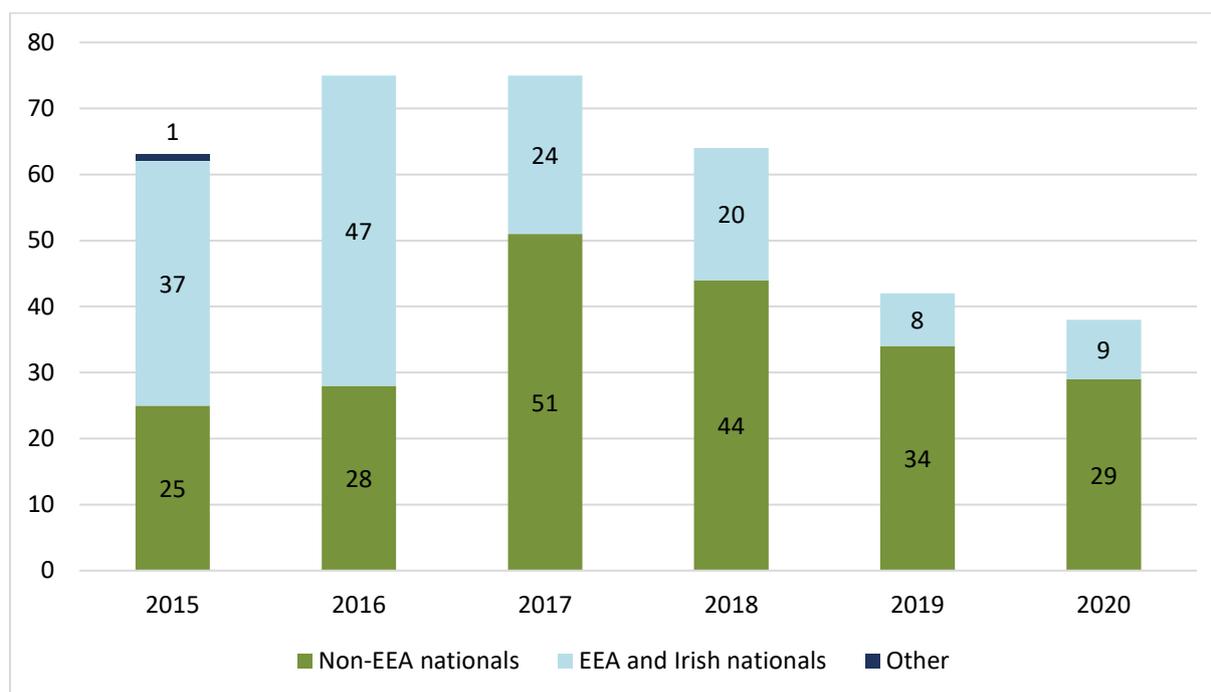
FIGURE 2.3 REGION/COUNTRY OF ORIGIN OF SUSPECTED VICTIMS OF HUMAN TRAFFICKING (2015-2020)



Sources: Department of Justice (2021). *Trafficking in Human Beings in Ireland Annual Report 2020*. www.blueblindfold.ie; Department of Justice (2020a). *Trafficking in Human Beings in Ireland Annual Report 2019*. www.blueblindfold.ie.

The proportion of third-country nationals identified as victims of trafficking, out of the total number of identified suspected victims of trafficking, has increased each year since 2015 (see Figure 2.4). HTICU stated that it is difficult to identify trends in nationality given the low number of persons who are identified and that in some years a group of persons of the same nationality can skew trends.⁴⁵ This was seen in 2016 when 23 Romanian nationals who were victims of human trafficking were detected in a waste recycling plant in County Meath (Department of Justice and Equality, 2017).

⁴⁵ Correspondence with the HTICU, An Garda Síochána, February 2022.

FIGURE 2.4 NATIONALITY GROUPS OF SUSPECTED VICTIMS OF TRAFFICKING (2015-2020)

Sources: Department of Justice (2021). *Trafficking in Human Beings in Ireland Annual Report 2020*. www.blueblindfold.ie; Department of Justice (2020a). *Trafficking in Human Beings in Ireland Annual Report 2019*. www.blueblindfold.ie

Note: The annual reports published by the Department of Justice provide figures for EEA nationals and non-EEA nationals. Although the term third-country national is used in this report, the figures for non-EEA nationals can be said to correspond to third-country nationals. For 2015, one person's nationality is listed as 'other'.

The Human Trafficking and Exploitation Project on the Island of Ireland (HTEPII) report, published in 2021, found that the number of persons trafficked in Ireland between 1 January 2014 and 30 September 2019 was at least 38 per cent higher than the official figure (Breen et al., 2021). This represented an additional 132 victims to the official figure of 346 victims for the same period. The HTEPII report provided unofficial figures on the number of victims of trafficking received from 'Non-Statutory Participating Organisations', such as MRCI and Ruhama.⁴⁶ Similar to the HTEPII report, a 2019 study on human trafficking in Ireland by the UN Office on Drugs and Crime (UNODC) estimated that the number of victims of trafficking in Ireland was approximately 50 per cent higher than official figures (UNODC, 2018).

2.2 EU STATISTICS

In 2020, the European Commission published *Data collection on trafficking in human beings in the EU*, which provides data from across the EU on victims of human trafficking for 2017 and 2018 (European Commission, 2020b). It details that for the two reference years, 26,286 persons were registered as victims of

⁴⁶ Other Non-Statutory Participating Organisations included: International Organisation for Migration, Immigrant Council of Ireland, Migrant Rights Centre Ireland, Ruhama, Sexual Violence Centre Cork (SVCC).

trafficking in the 28 Member States of the EU.⁴⁷ The UK had the highest number of persons who were registered as victims of trafficking (12,123) for that period, followed by France (2,846), Italy (1,988), the Netherlands (1,624) and Germany (1,380) (European Commission, 2020b).

Ireland registered 182 persons as victims of human trafficking in 2017 and 2018. It was 16th out of the 26 Member States that reported data for registered victims (Table 2.1). When the total is expressed as proportional to population size, Ireland is 11th out of the 26 reporting Member States for the number of registered victims of human trafficking (Table 2.2).

It should be noted that ‘registered victims’ include persons who are presumed victims of trafficking and persons who are identified victims of trafficking.⁴⁸ Ireland did not provide a breakdown of presumed and identified victims of human trafficking for the report but provided overall figures for registered victims of human trafficking. The figures provided in the EU Commission report for Ireland, that there were 182 victims of human trafficking between 2017 and 2018, differ from those provided in the Department of Justice’s annual reports on human trafficking, where it is reported that 139 victims of human trafficking were identified in these two years (Department of Justice and Equality, 2019); the US TIP reports, where it is reported that 121 victims of human trafficking were reported in the same two years (US Department of State, 2020).

Unlike most other EU Member States, Ireland does not collect data on potential victims of human trafficking and therefore it is difficult to compare Ireland with other EU Member States, particularly with regard to the pre-identification of victims of human trafficking.

⁴⁷ The term ‘registered victims’, as employed by the European Commission, comprises presumed and identified victims of human trafficking. The European Commission states, ‘[i]n line with earlier data collections, victims are referred to as “presumed” when they meet the criteria of Directive 2011/36/EU but have not been formally identified by the relevant authority as victims of trafficking in human beings or who have declined to be formally or legally identified as trafficked. Victims are considered “identified” for persons who have been formally identified as victims of trafficking in human beings by the relevant formal authority in Member States, this is to say after a process that establishes that they are victims; often, but not always, involving the police. “Identified” and “presumed” victims are referred together as “registered victims”.’ European Commission (2020). Data collection on trafficking in human beings in the EU. www.op.europa.eu/en/publication-detail/-/publication/5b93c49f-12a0-11eb-9a54-01aa75ed71a1, p.9.

⁴⁸ Sweden and the Czech Republic did not report data on registered victims.

TABLE 2.1 NUMBER OF REGISTERED VICTIMS OF TRAFFICKING IN EACH REPORTING MEMBER STATE (2017-2018)

	Member State	Number of registered victims of trafficking (all nationalities)
1	UK	12,123
2	France	2,846
3	Italy	1,988
4	Netherlands	1,624
5	Germany	1,380
6	Romania	1,159
7	Hungary	934
8	Austria	781
9	Poland	675
10	Spain	458
11	Cyprus	290
12	Belgium	274
13	Greece	273
14	Portugal	224
15	Denmark	195
16	Ireland	182
17	Finland	173
18	Slovenia	167
19	Slovakia	144
20	Croatia	105
21	Lithuania	104
22	Latvia	48
23	Malta	40
24	Luxembourg	31
25	Bulgaria	28
26	Estonia	22
27	Czech Republic*	:
28	Sweden*	:

Source: European Commission (2020). Data collection on trafficking in human beings in the EU. www.op.europa.eu/en/publication-detail/-/publication/5b93c49f-12a0-11eb-9a54-01aa75ed71a1.

Note: (*) The Czech Republic and Sweden did not report figures for registered victims of trafficking. In Sweden, at the time of the report, there was no national system to measure the number of victims of trafficking, only a national system that records the number of reported crimes for trafficking in human beings. In the Czech Republic, the police statistical database underwent reconstruction between 2016 and 2018 and therefore the data for the years 2016 to 2018 are not accurate and the data were therefore not provided.

The figure of 182 reported for Ireland for registered victims of human trafficking differs from the number of identified suspected victims of human trafficking reported in the annual reports by the Department of Justice of 139, and the US TIP reports, where 121 is reported for the same timeframe.

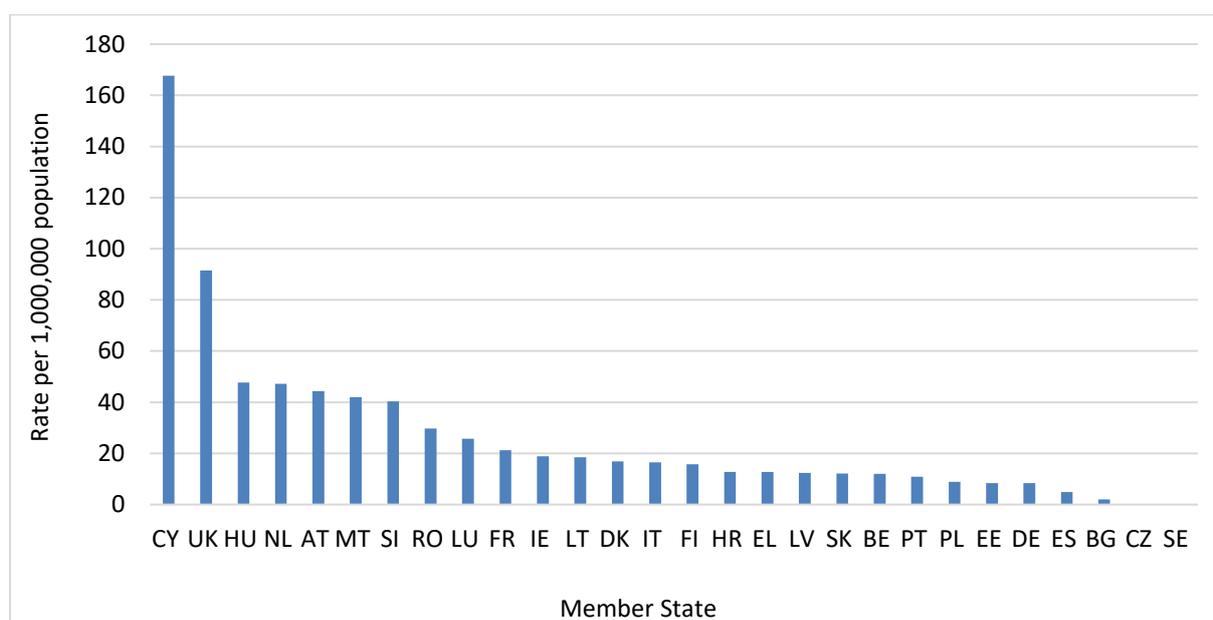
TABLE 2.2 NUMBER OF REGISTERED VICTIMS OF HUMAN TRAFFICKING PROPORTIONAL TO POPULATION (2017-2018)

	Member State	Total number of registered victims of human trafficking	Rate per 1,000,000
1	Cyprus	290	168
2	UK	12,123	91
3	Hungary	934	48
4	Netherlands	1,624	47
5	Austria	781	44
6	Malta	40	42
7	Slovenia	167	40
8	Romania	1,159	30
9	Luxembourg	31	26
-	EU-28	26,268	26
10	France	2,846	21
11	Ireland	182	19
12	Lithuania	104	18
13	Denmark	195	17
14	Italy	1,988	16
15	Finland	173	16
16	Croatia	105	13
17	Greece	273	13
18	Latvia	48	12
19	Slovakia	144	12
20	Belgium	274	12
21	Portugal	224	11
22	Poland	675	9
23	Estonia	22	8
24	Germany	1,380	8
25	Spain	458	5
26	Bulgaria	28	2
27	Czech Republic*		:
28	Sweden*	:	:

Source: European Commission (2020). Data collection on trafficking in human beings in the EU. www.op.europa.eu/en/publication-detail/-/publication/5b93c49f-12a0-11eb-9a54-01aa75ed71a1.

Note: (*) The Czech Republic and Sweden did not report figures for registered victims of trafficking. In Sweden, at the time of the report, there was no national system to measure the number of victims of trafficking, only a national system that records the number of reported crimes for trafficking in human beings. In the Czech Republic, the police statistical database underwent reconstruction between 2016 and 2018 and therefore the data for the years 2016 to 2018 are not accurate and the data were therefore not provided.

The figure of 182 reported for Ireland for registered victims of human trafficking differs from the number of identified suspected victims of human trafficking reported in the annual reports by the Department of Justice of 139, and the US TIP reports where 121 is reported for the same timeframe.

FIGURE 2.5 NUMBER OF REGISTERED VICTIMS OF HUMAN TRAFFICKING PROPORTIONAL TO POPULATION (2017-2018)

Source: European Commission (2020). Data collection on trafficking in human beings in the EU. www.op.europa.eu/en/publication-detail/-/publication/5b93c49f-12a0-11eb-9a54-01aa75ed71a1.

Note: (*) The Czech Republic and Sweden did not report figures for registered victims of trafficking.

Ireland was among the EU Member States that reported the highest proportion of registered victims of trafficking for labour exploitation, with 47 per cent of registered victims being victims of labour exploitation in 2017 and 2018 in Ireland. This may, however, have been specific for those two years. Indeed, in 2019, only three of the 42 identified suspected victims of trafficking in Ireland were trafficked for labour exploitation (i.e. 7 per cent) (Department of Justice and Equality, 2020). The other Member States that recorded high proportions of victims of trafficking for labour exploitation were Malta (82 per cent of registered victims), Slovenia (80 per cent), Portugal (52 per cent), Belgium (51 per cent), and Poland (47 per cent). The most common type of exploitation in the EU in the context of trafficking, however, was sexual exploitation.

In 2017-2018, the main countries of nationality among third-country national victims in EU Member States were, in descending order, Nigeria, Albania, Vietnam, China and Sudan. The majority of registered victims of trafficking who were third-country nationals were female and, among them, the most common nationalities included Nigeria (92 per cent of Nigerian victims of trafficking were female), Philippines (75 per cent were female), Albania (64 per cent were female), China (61 per cent were female) and Ukraine (44 per cent were female).

2.3 CONCLUSION

The number of persons identified as suspected victims of trafficking in Ireland has gradually decreased between 2015 and 2020. In the EU context, the European Commission found that, for 2017 and 2018, Ireland is in the middle of EU countries in terms of how many suspected victims of trafficking are identified, ranking 16th out of 26 for the total number identified, and 11th out of 26 when made proportional to population. However, it should be noted that the number of suspected victims of trafficking identified in Ireland has decreased each year since 2018. The outbreak of the COVID-19 pandemic in 2020 may have impacted on the number of persons detected and therefore subsequently identified.

CHAPTER 3

Detection of potential victims of human trafficking

The detection of human trafficking refers to the identification of a potential situation of human trafficking. It is typically the first step towards identification and protection. This chapter examines the procedures in place in Ireland to detect a possible situation of human trafficking.⁴⁹ This includes with regard to the collection of indicators, training and awareness raising campaigns, the use of inspections and raids, screening in migration and international protection procedures, self-reporting by the victims of human trafficking themselves and the role of NGOs. Throughout, the chapter also looks at the various authorities involved as well as the limitations of current detection procedures.

Across EU Member States, Georgia and Norway, the practices in detection are similar and include measures such as awareness-raising campaigns, police raids, labour inspections, and screening in migration and asylum procedures. Some EU Member States formally distinguish between detection and identification in law and have designated authorities and/or organisations that are competent to detect (EMN, 2022). In Ireland, any person or organisation can detect a possible situation of human trafficking, whereas only An Garda Síochána can identify a suspected victim of human trafficking.

3.1 COLLECTION OF INDICATORS, TRAINING AND AWARENESS RAISING CAMPAIGNS

Awareness raising and training are key focuses of the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*. The plan contains a commitment to develop an awareness-raising and training strategy, which would include ‘the identification of problematic sectors’ (Department of Justice and Equality and Law Reform, 2016a, p. 44). However, this strategy has not been developed, but it was reported that it will be examined in drafting the new human trafficking strategy.⁵⁰

A key aspect of training and awareness raising involves the recognition of indicators of human trafficking. Below, the collection of indicators is first examined, followed by an overview of training and awareness raising.

⁴⁹ EMN Glossary 6.0. Defined as ‘The process of identifying a possible situation of trafficking in human beings’. Available at: www.ec.europa.eu/home-affairs/pages/glossary/detection-victim-trafficking-human-beings_en.

⁵⁰ Correspondence with Community Safety Policy unit, Department of Justice, March 2022.

3.1.1 Collection of indicators

In 2009, the European Commission and the International Labour Organization (ILO) published a set of indicators known as the Delphi indicators of trafficking. The Delphi methodology entails producing ‘a result based on consensus from a wide group of experts’ (ILO and European Commission, 2009, p. 2). The indicators of human trafficking were developed through ‘two successive electronic surveys of experts in the fight against human trafficking’ (ibid).

In Ireland, according to the Statement on Roles and Responsibilities (Department of Justice and Law Reform, 2012), the International Organization for Migration (IOM) *Handbook on Direct Assistance to Victims of Trafficking* is followed in determining if a person is a victim of trafficking. This entails a two-part process, including an assessment of the indicators of trafficking, which is then followed by an interview with the person. The statement describes how other international standards on indicators, such as the above-described Delphi indicators as well as those of the United Nations Global Initiative to Fight Human Trafficking (UN-GIFT), will also be relied on (Department of Justice and Law Reform, 2012). Breen et al. (2021) describe that while these indicators can be relied on, it is not a formalised procedure.

The Blue Blindfold website, a website of the Department of Justice dedicated to providing information and resources on human trafficking, presents a list of indicators of trafficking for the public. They include indicators for sexual exploitation, labour exploitation, domestic servitude, child trafficking, forced criminality and begging, forced marriage and general exploitation.⁵¹

The indicators for ‘general exploitation’ include, but are not limited to, that potential victims:

- Believe that they must work against their will;
- Be unable to leave their work environment;
- Show signs that their movements are being controlled;
- Feel that they cannot leave;
- Show fear or anxiety;
- Be subjected to violence or threats of violence against themselves or against their family members and loved ones;

⁵¹ Department of Justice. ‘Blue Blindfold’. Available at: www.blueblindfold.ie (last accessed 14/09/2021). It should be noted that this analysis of indicators precedes the February 2022 Russian invasion of Ukraine and does not include any analysis of responses to the arrival of refugees from Ukraine in Ireland and the related human trafficking risks.

- Suffer injuries that appear to be the result of an assault;
- Suffer injuries or impairments typical of certain jobs or control measures;
- Suffer injuries that appear to be the result of the application of control measures;
- Be distrustful of the authorities;
- Be threatened with being handed over to the authorities;
- Be afraid of revealing their immigration status;
- Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else;
- Have false identity or travel documents;
- Be found in or connected to a type of location likely to be used for exploiting people;
- Be unfamiliar with the local language.⁵²

For children, Tusla Child and Family Agency is the statutory child protection agency. When there is a child welfare or child protection referral for a young person who may require being brought in Tusla's care, there is a consideration of indicators of human trafficking. This consideration can include, for instance, the young person's self-presentation (for example, the clothes they wear or the amount of money they have). Tusla staff conduct a child-friendly search of a young person's belongings at the point of intake, prior to them being placed in a foster family or residential unit.⁵³

3.1.2 Training

In addition to the collection of indicators, a related aspect of detection is training in order to recognise these indicators. Under the EU Anti-Trafficking Directive 2011/36/EU, Member States are required to promote the regular training of officials who are likely to come into contact with victims or potential victims of human trafficking, including frontline police officers. This training should aim to enable them to 'identify and deal with victims and potential victims of trafficking in human beings'.⁵⁴ In the 2017 GRETA report on Ireland, it commended the efforts made on training relevant professionals, and encouraged their continuance, in particular in expanding the training provided to prosecutors and judges, as well as social workers, healthcare staff, accommodation centre staff and teachers (GRETA, 2017, para 44).

⁵² Department of Justice. 'Blue Blindfold'. Available at: www.blueblindfold.ie (last accessed 14/09/2021).

⁵³ Interview with Tusla, January 2022.

⁵⁴ Recital 25 and Article 18(3), *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, 15.4.2011, pp. 1-11.

In Ireland, training is carried out in a broad range of sectors by both State authorities and by NGOs. The following section sets out the information available on training conducted on human trafficking in Ireland. However, no data are available on the total number of people who have received training.

Within An Garda Síochána, there is a core curriculum training on human trafficking for Gardaí conducted at the Garda Training College in Templemore.⁵⁵ By the end of 2019, 4,963 members of An Garda Síochána had been provided with this training.⁵⁶ The Department of Justice’s annual report for 2020 on human trafficking states that the main purpose of this training is to create awareness regarding the importance of ‘recognising the vulnerability of persons involved in the sex trade and the appropriate manner in which to engage with them’ (Department of Justice, 2021). Within An Garda Síochána, there also a specialised three-day training course entitled ‘Tackling Trafficking in Human Beings, Prevention, Protection, Prosecution and Partnership’ delivered in conjunction with IOM Ireland and NGOs (Department of Justice, 2021). This training is delivered to law enforcement agency personnel, some representatives of the Defence Forces and the Police Service of Northern Ireland (PSNI). To date, 1,489 people have been provided with this training.⁵⁷ The training course was, however, not held during the COVID-19 pandemic and the HTICU reported that it is in the process of developing new methods for online virtual training to be brought out in 2022.⁵⁸ Members of the Garda National Immigration Bureau (GNIB), the immigration enforcement unit of An Garda Síochána, have also been trained on detecting situations of human trafficking, including situations of exploitation and child trafficking, as well as specialised training on seafarers trafficked to join fishing vessels. In 2019, GNIB delivered training to 103 Garda immigration officers on trafficking (Department of Justice and Equality, 2020a). The HTICU also provides training to Crime Prevention Officers (CPOs) who work across the country with victims of crime.⁵⁹

In an interview for this study, IOM Ireland recognised that there have been significant efforts in Ireland to deliver training and launch awareness raising campaigns.⁶⁰ Nonetheless, IOM Ireland stated that there needed to be more of a ‘trickle-down effect’ in terms of training within An Garda Síochána and that cross-collaboration between units within the Gardaí would be beneficial. For example, when a domestic violence case is reported, there is a need to examine a case more holistically to check for indicators of human trafficking.⁶¹

⁵⁵ Interview with HTICU, An Garda Síochána, August 2021.

⁵⁶ Correspondence with HTICU, An Garda Síochána, October 2021.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Correspondence with HTICU, An Garda Síochána, February 2022.

⁶⁰ Interview with IOM Ireland, July 2021.

⁶¹ Interview with IOM Ireland, July 2021. Correspondence with the Immigrant Council of Ireland, March 2022.

With regard to immigration officers within the Department of Justice, the Community Safety Policy Unit indicated that some training is conducted.⁶² For example, the Border Management Unit (BMU) of the Department of Justice (operational at Dublin Airport) have received training on human trafficking and the specialised training on seafarers (Department of Justice and Equality, 2020a). However, the Community Safety Policy Unit also recognised that more training of immigration officers could be conducted.⁶³

The detection of victims of human trafficking in the criminal context is important in ensuring the implementation of the non-punishment principle under the Council of Europe *Convention on Action against Trafficking in Human Beings* and the Anti-Trafficking Directive 2011/36/EU.⁶⁴ Detection in this context was central to the 2015 case of *P. v. the Chief Superintendent of the Garda National Immigration Bureau & ors*. In the case, a Vietnamese woman who was found in a cannabis grow house by Gardaí and charged with offences under the *Misuse of Drugs Acts 1977/84*, was not recognised as a victim of trafficking until two and a half years after she was first detected.⁶⁵ The training of law enforcement, prosecutors and judges was recommended in the 2017 GRETA report (GRETA, 2017). As reported in the 2020 *Trafficking in Human Beings in Ireland: Annual Report* by the Department of Justice, in November 2019, the Department of Justice, the Office of the Director of Public Prosecutions (ODPP) and An Garda Síochána formed a high level group to review the legislative and operational framework on human trafficking cases and to recommend improvements, including in terms of legislation and training. The training recommendations were followed up by workshops for legal staff of the ODPP and the Garda National Protective Services Bureau (GNPSB). According to the annual report, these trainings ‘have resulted in better communications where regional Gardaí now seek the specialist advice of the Office of the Director of Public Prosecutions in carrying out their investigations and preparing files for prosecution’ (Department of Justice and Equality, 2020a, p. 25).

Other frontline workers who have been trained include staff from the Workplace Relations Commission (WRC) (GRETA, 2017). The WRC have reported that all inspectors are trained in identifying indicators of human trafficking.⁶⁶ In a Joint Committee on Enterprise, Trade and Employment meeting, the Director General of the WRC stated that among the indicators looked at is:

⁶² Interview with the Community Safety Policy Unit, Department of Justice, September 2021.

⁶³ *Ibid.*

⁶⁴ Article 26, *Council of Europe Convention on Action against Trafficking in Human Beings*; Article 8, *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*.

⁶⁵ *P. v. The Chief Superintendent of The Garda National Immigration Bureau & ors*, [2015] IEHC 222.

⁶⁶ Joint Committee on Enterprise, Trade and Employment (20 October 2021). ‘Resourcing and Capacity of the Workplace Relations Commission: Discussion’. Houses of the Oireachtas. www.oireachtas.ie.

the abuse of someone's vulnerability on the part of the employer. Are the employees restricted in terms of their movements? Are they subject to violence or intimidation as part of their work? Are their travel documents retained for any periods? Are they involved in debt bondage? [...] If we do find anything we refer to the appropriate authorities, as this is very serious. This is in addition to our work with the European Labour Authority in identifying where channels of trafficking come from in particular sectors.⁶⁷

GRETA's 2017 report also described how officers of the WRC have briefed members of An Garda Síochána on employment rights and labour exploitation (GRETA, 2017).

Within Tusla, there is no formal training across the board for all social workers. However, social workers nationally are issued with Tusla's *Child Protection and Welfare Practice Handbook*. Chapter 28 of the handbook (Volume 2) concerns human trafficking. It covers research, practice notes, what professionals should be alert to in children who might have been trafficked and what to do if there are indicators of trafficking.⁶⁸ Within the Separated Children Seeking International Protection (SCSIP) unit of Tusla, a one-off training has been delivered by a UK based agency, the National Society for the Prevention of Cruelty to Children and a UK police officer.⁶⁹ Tusla is interested in pursuing more training on human trafficking and raising awareness within the Agency to ensure that cases are adequately detected and the appropriate referrals are made. However, Tusla stressed that any issue related to human trafficking would get a child protection response and that the child protection response is sufficient from their perspective insofar as it would ensure the child is in a place of safety.⁷⁰ However, concerns were raised by the Immigrant Council of Ireland as to the effectiveness of detection and subsequent referral of child victims of human trafficking to An Garda Síochána for investigation by Tusla. It stated that, if not referred, child victims of trafficking would not have access to their rights under the Anti-Human Trafficking Directive 2011/36/EU and it would also result in gaps in the data on child victims of human trafficking.

NGOS and international organisations also conduct frequent trainings on the detection and identification of victims of human trafficking and some receive funding from the Department of Justice to conduct this training (Department of Justice and Equality and Law Reform, 2016a). The Migrant Rights Centre Ireland (MRCI) received funding from the Department of Justice for information resources and awareness training on labour exploitation. Other NGOs that received funding from the Department of Justice to develop and deliver training include MECPATHS

⁶⁷ *Ibid.*

⁶⁸ Interview with Tusla, January 2022.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

(Mercy Efforts for Child Protection Against Trafficking with the Hospitality Sector), Doras, the Immigrant Council of Ireland and Ruhama (Department of Justice, 2021). The Immigrant Council of Ireland is also a partner in the EU-funded transnational projects, TRACKS and TRIPS, in collaboration with NGOs from other EU Member States on the special needs of international protection applicants and beneficiaries who are victims of trafficking. The TRACKS project examined the nexus of asylum and human trafficking and the special reception needs of asylum seekers who are victims of human trafficking (Immigrant Council of Ireland, 2018). The TRIPS project looked at the needs of beneficiaries of international protection who are victims of human trafficking (Immigrant Council of Ireland, 2021). The projects published EU reports and toolkits, as well as national toolkits by NGOs, including for Ireland by the Immigrant Council of Ireland, and the delivery of training in the national context to professionals working with victims of trafficking, state employees, and frontline social care workers (Immigrant Council of Ireland, 2018; 2021). Staff within IPAS, including managers of reception centres, have received training on human trafficking from IOM, as well as previously from the Immigrant Council of Ireland (IOM Ireland, 2021; GRETA, 2017). In 2021, the Immigrant Council of Ireland developed and delivered training on human trafficking, specifically focussing on gender-based violence service providers in the west of Ireland funded by the Lifes2good foundation.⁷¹

Other areas where training has been conducted include with trade unions and employers, as well as staff of financial institutions, the hospitality industry and in schools and universities (Department of Justice and Equality and Law Reform, 2016a). IOM Ireland reported that they have conducted training with some members of the Irish Congress of Trade Unions (ICTU), as well as the port authorities and some members of An Garda Síochána.⁷² MECPATHS conduct training within the hospitality industry, with a focus on child trafficking, and MECPATHS has recently started developing training for the aviation industry.⁷³ The HTICU has also delivered training to banks and financial institutions and such training continued in person up to the start of the COVID-19 pandemic, with some online training sessions delivered to banks and financial institutions during the COVID-19 pandemic.⁷⁴ The 2018 Annual Report stated that the objective of this training ‘is to create improved identification of suspicious transactions with a view to aiding financial investigations into perpetrators of human trafficking’ (Department of Justice and Equality, 2019, p. 27). Training was given to 120 staff of these institutions in that year. In addition, the AHTU delivered training on human trafficking and employment of domestic workers in diplomatic households to

⁷¹ Correspondence with Immigrant Council of Ireland, March 2022. For further information on the project: www.immigrantcouncil.ie/training/supporting-survivors-gender-based-violence.

⁷² Interview with IOM, July 2021.

⁷³ MECPATHS (29 July 2021). ‘E-Learning launch’. Available at: <https://mecpaths.com/e-learning-launch/>.

⁷⁴ Correspondence with HTICU, An Garda Síochána, February 2022.

diplomats in the Department of Foreign Affairs (Department of Justice and Equality, 2018; 2019).

In interviews conducted for this study, IOM Ireland, the Immigrant Council of Ireland and MRCI stated that more training on human trafficking needs to be conducted.⁷⁵ IOM Ireland stated that training in other sectors, including domestic violence shelters, should be carried out and that there was an appetite for such training.⁷⁶

3.1.3 Awareness-raising campaigns

Awareness-raising campaigns are related to the collection of indicators and training. A number of awareness-raising campaigns have been run in Ireland by authorities, organisations from specific industries, and NGOs and international organisations. The main State-run campaign is the ‘Blue Blindfold’ campaign. The Blue Blindfold website provides contact information, information about trafficking, and the types and indicators of trafficking. It also provides resources, such as annual reports, on trafficking.⁷⁷ In 2020 and 2021, the Department of Justice and IOM Ireland ran a public awareness campaign entitled ‘Anyone can be exploited’. This campaign aimed to raise public awareness on how anyone can be a victim of trafficking, victims can often be hidden in plain sight, and that it is a crime happening in Ireland. The awareness campaign was delivered through social media and adverts in transport hubs and on-street.⁷⁸ Some other examples of awareness-raising campaigns include the REACH project by Ruhama, the Women’s Health Service/Anti-Human Trafficking Team (AHTT) in the HSE, and the Anti-Human Trafficking Unit in the Department of Justice. The project sought to raise awareness of trafficking as a form of violence against women and girls.⁷⁹ Another campaign launched by Ruhama was entitled ‘What sex buyers are really thinking’. The campaign displayed posters of a woman called ‘Andreea’, a victim of trafficking for the purposes of sex, in Dublin and on several websites, along with a phone number. The campaign ‘revealed the extent to which sex buyers saw ‘Andreea’ as a service and product, rather than an actual person or a victim of Ireland’s sex trade’.⁸⁰ Other organisations, such as Act to Prevent Trafficking, the HSE and the Royal College of Surgeons, have also run awareness raising campaigns.⁸¹

⁷⁵ Interview with IOM Ireland, July 2021; Interview with the Immigrant Council of Ireland, July 2021; Interview with MRCI, August 2021.

⁷⁶ Interview with IOM Ireland, July 2021.

⁷⁷ Department of Justice. ‘Blueblindfold’. Available at: www.blueblindfold.ie.

⁷⁸ International Organization for Migration. ‘Anyone Trafficked’. Available at: www.anyonetrafficked.com.

⁷⁹ REACH Project. Available at: www.reachproject.eu.

⁸⁰ Ruhama. ‘What Irish Sex Buyers Are Really Thinking’ Video Campaign’. Available at: www.ruhama.ie/what-irish-sex-buyers-are-really-thinking-video-campaign.

⁸¹ ‘Act to Prevent Trafficking, Association of Missionaries and Religious of Ireland’. www.aptireland.org. Department of Justice (July 2019). ‘Irish Government Welcomes Launch of Programme to Raise Awareness of Human Trafficking among Worldwide Community of Nurses’. Available at: www.justice.ie/en/JELR/Pages/PR19000184.

IOM Ireland stated that awareness raising campaigns are crucial, not only in reaching out to potential victims but also in educating the public about the signs of trafficking and ways they can report a situation.⁸² However, the Immigrant Council of Ireland also stated that it knew of anecdotal evidence that the concerns of members of the public when they identify indicators of trafficking are not always recorded and investigated when reported to An Garda Síochána.⁸³

3.2 GARDA OPERATIONS, INSPECTIONS AND THE CRIMINAL CONTEXT

The detection of a situation of human trafficking can also occur through operations of An Garda Síochána, including raids and inspections. In this context, the principle of non-punishment protects against the prosecution or the imposition of penalties on victims of trafficking for their involvement in criminal activities that they have been compelled to commit in being trafficked.⁸⁴

An Garda Síochána investigates the crime of human trafficking as a transnational and typically organised crime.⁸⁵ In doing so, An Garda Síochána use mechanisms such as strategic threat assessments and intelligence collection to detect situations of human trafficking.⁸⁶ A representative of HTICU further described cooperation between HTICU and other units of the Garda National Protective Services Bureau (GNPSB), as well as the other bureaus of the Organised and Serious Crime division of An Garda Síochána, including, but not limited to, the Garda National Economic Crime Bureau (GNECB) and the Criminal Assets Bureau (CAB).⁸⁷ The investigation of human trafficking also entails cooperation with European and international authorities. In the European context, Ireland participates in Europol and Eurojust, which facilitate cooperation between Member States on criminal matters.⁸⁸ There is also close cooperation with the PSNI.⁸⁹ A representative of the HTICU is part of the Immigration and Human Trafficking sub-group of the Organised Crime Task Force (OCTF), which meets in Belfast on a quarterly basis, as well as the Cross Border Joint Agency Task Force, which is a more high-level group with a strategic focus.⁹⁰ On an international level, Ireland is also member of Interpol, and in

⁸² Interview with IOM, July 2021.

⁸³ Interview with the Immigrant Council of Ireland, July 2021.

⁸⁴ Article 26, *Council of Europe Convention on Action against Trafficking in Human Beings*; Article 8, *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*.

⁸⁵ Presentation of Assistant Commissioner Cagney, Security Analysis and Research (SAR) Conference, 8 December 2021. See also Lally, C. (8 December 2021). 'More than 100 cases linked to trafficking and slavery being investigated, gardaí say'. *The Irish Times*, www.irishtimes.com/news/crime-and-law/more-than-100-cases-linked-to-trafficking-and-slavery-being-investigated-garda%C3%AD-say-1.4750416.

⁸⁶ Presentation of Assistant Commissioner Cagney, Security Analysis and Research (SAR) Conference, 8 December 2021. See also Lally, C. (8 December 2021). 'More than 100 cases linked to trafficking and slavery being investigated, gardaí say'. *The Irish Times*, www.irishtimes.com/news/crime-and-law/more-than-100-cases-linked-to-trafficking-and-slavery-being-investigated-garda%C3%AD-say-1.4750416.

⁸⁷ Interview with HTICU, An Garda Síochána, August 2021.

⁸⁸ *Ibid.*

⁸⁹ Interview with a representative of HTICU, An Garda Síochána, August 2021.

⁹⁰ Department of Justice (2018). *Trafficking in Human Beings in Ireland, Annual Report 2017*. Available at: www.justice.ie.

particular the Interpol Task Force on Human Trafficking (ITFHT).⁹¹ Through Interpol, Ireland cooperates with third countries and coordinates responses to human trafficking. An Garda Síochána is also part of the Santa Marta Group, which is an alliance of police chiefs and bishops from around the world, focused on eradicating human trafficking. Together with the UK, Portugal and Spain, Ireland led the North Atlantic Fisheries Project (Department of Justice and Equality, 2019).

Additionally, Ireland cooperates bilaterally with police forces internationally.⁹² For example, in 2015, An Garda Síochána were in contact with Brazilian authorities as regards a transgender person and a woman who had been trafficked to Ireland for sexual exploitation.⁹³ This cooperation with Brazilian authorities is ongoing at present in relation to separate, recent cases.⁹⁴

Connecting international initiatives to the national level, An Garda Síochána and the WRC participate in Europol's annual joint days of action under the EU European Multi-Disciplinary Platform Against Criminal Threats (EMPACT).⁹⁵ As part of the joint days of action, there are raids and investigations into workplaces such as nail bars, the fishing industry and car washes, and in some cases in cooperation with the Department of Social Protection, Department of Enterprise, Trade and Employment and the Revenue Commissioners (Department of Justice and Equality, 2017; 2019; 2021; Workplace Relations Commission, 2019). There is also cooperation between the HTICU of An Garda Síochána, and GNIB, the Border Management Unit and the Immigration Service Delivery, including for example in actions at Dublin airport to identify cases of child trafficking or seafarers joining fishing vessels (Department of Justice and Equality, 2018; 2019).

The Immigrant Council of Ireland and MRCI, however, stated that these raids may not be effective in detecting persons who are victims of human trafficking. This can be because victims of human trafficking may believe such raids are immigration raids and/or they may not trust or may fear the police.⁹⁶ The fear of a police raid may also depend on the purpose of the raid, particularly whether it is to actively identify victims, or if it is to disrupt other criminal activity that may be suspected.⁹⁷ In addition to this, victims may also not self-identify as victims of trafficking.⁹⁸ The Sex Workers Alliance of Ireland (SWAI) has also criticised raids as part of a critique

⁹¹ Department of Justice (2020). *Trafficking in Human Beings in Ireland, Annual Report 2019*. Available at: www.justice.ie.

⁹² Interview with HTICU, An Garda Síochána, August 2021.

⁹³ Department of Justice (2016). *Trafficking in Human Beings in Ireland, Annual Report 2015*. Available at: www.justice.ie.

⁹⁴ Correspondence with HTICU, October 2021.

⁹⁵ Interview with HTICU, An Garda Síochána, August 2021.

⁹⁶ Interview with Immigrant Council of Ireland, July 2021; Interview with MRCI, August 2021.

⁹⁷ Correspondence with the Immigrant Council of Ireland, October 2021.

⁹⁸ *Ibid.*

of the broader criminalisation approach in Ireland as creating greater risks for sex workers.⁹⁹

One area targeted by Garda operations is cannabis grow houses, where people who have been victims of human trafficking have been found. In a report by MRCI in 2014, it raised concerns about victims of trafficking being treated as criminals, stating that:

where indicators of human trafficking are identified in cases before the courts [...] no consideration is being given to the possibility that the person is a victim of human trafficking (MRCI, 2014, p. 5).

The NGO describes how there were a high proportion of persons detained in Irish prisons for drug related offences of Asian nationality. Indeed, between 2010 and the publication of the 2014 report, no cases of trafficking for forced labour had been identified among all the Vietnamese nationals who had been arrested and charged with cannabis cultivation under the Misuse of Drugs Acts (MRCI, 2014).¹⁰⁰ In 2015, in *DPP v. Phuc Nguyen Lee and anor* concerning two appellants found in a cannabis grow house in Meath, the High Court recognised that the appellants were

*merely workers, and had been brought into this country for that purpose. They were obviously vulnerable to exploitation and may not have had absolute freedom to walk away from their involvement.*¹⁰¹

However, there is no discussion of human trafficking in the judgment.¹⁰² The Immigrant Council of Ireland stated that they have had clients of Asian nationalities who have been convicted of drug-related offences and were only identified as victims of human trafficking after the fact. In one such case, the person was later granted refugee status although trafficking was not raised during the criminal prosecution process. The Immigrant Council of Ireland stated that this raises serious questions in relation to the principle of non-punishment and also poses long-term complications for the affected individuals in relation to citizenship applications due to their criminal record and setting aside convictions.¹⁰³

In the previously described case of *P. v. the Chief Superintendent of the Garda National Immigration Bureau & ors* in 2015, the Gardaí found the appellant in a small bedroom on the premises of a cannabis grow house. The appellant informed Gardaí that she was tasked with turning the lights on and off and was not allowed to leave the building, with her food brought to the premises by men. Following her

⁹⁹ Sex Workers Alliance Ireland (28 November 2019). *Press release 'Garda Raids, Pimps, Reports and Conferences this week but no one is asking sex workers what they need'*. Available at: www.sexworkersaallianceireland.org.

¹⁰⁰ C. Gallagher (3 Nov 2013). 'Asian migrants 75% of those jailed for cannabis cultivation', *The Irish Times*, www.irishtimes.com/news/crime-and-law/asian-migrants-75-of-those-jailed-for-cannabis-cultivation-1.1582467.

¹⁰¹ Para 6, *DPP v. Phuc Nguyen Lee And Anor*. [2015] IECA 157.

¹⁰² *DPP v. Phuc Nguyen Lee And Anor*. [2015] IECA 157.

¹⁰³ Correspondence with the Immigrant Council of Ireland, March 2022.

arrest, her solicitor informed the Gardaí that she was a potential victim of trafficking. However, she was not identified as a victim of trafficking and was charged with offences under the *Misuse of Drugs Acts 1977/1984*. In the High Court ruling, it was found that there was a failure to implement an appropriate mechanism required under the Anti-Trafficking Directive 2011/36/EU to determine the appellant's status and ensure early identification.¹⁰⁴

Lastly, in terms of inspections carried out by the WRC, 7,687 labour inspections of workplaces were carried out in 2020, of which 5,202 were unannounced (Workplace Relations Commission, 2021). However, as stated in the US Department of State's TIP report for 2020, the WRC has not reported detecting any victims of trafficking in these inspections since 2017 (US Department of State, 2021). In 2017, in a report on the fishing industry, MRCI recommended that the WRC ensure workers have an opportunity to disclose any instances of exploitation and that information should be provided in several languages, inspections should be conducted with interpretation and a firewall should be in place between immigration enforcement and employment inspections to allow workers to feel comfortable in reporting workplace mistreatment and exploitation (MRCI, 2017). In 2021, Murphy et al. conducted a survey of migrant workers in the Irish fishing industry and found that less than half of the persons interviewed for the study recalled their boat being inspected by the WRC and that 'the level of control exerted by employers makes it impossible for migrant workers to engage meaningfully with inspections' (Murphy et al., 2021, p.15). The study also recommended that interpretation be provided during inspections. In response, the WRC stated that due to the short notice and unannounced nature of inspections, it was not 'practical or cost-effective' to bring in interpreters. It noted that the WRC inspectors do not encounter significant difficulties due to language and have access to translation technologies (Murphy et al., 2021).

3.3 SCREENING IN INTERNATIONAL PROTECTION AND MIGRATION PROCEDURES

Another area for the detection of victims of human trafficking is within international protection and migration procedures.

When a person applies for international protection in Ireland, they complete a preliminary interview,¹⁰⁵ through which the admissibility of their application to the Irish international protection system is assessed.¹⁰⁶ During this interview, an applicant can raise any requirements for special needs or vulnerabilities. This may also arise in later stages of the international protection procedure (Cunniffe and

¹⁰⁴ *P. v. The Chief Superintendent of The Garda National Immigration Bureau & ors*, [2015] IEHC 222.

¹⁰⁵ Section 13(2), *International Protection Act 2015*, as amended.

¹⁰⁶ Section 21, *International Protection Act 2015*, as amended.

Sheridan, 2021). The IPO reported that the officer who first notes a situation of trafficking, at whatever stage of the IPO process, will inform the applicant that they are taking a note of what the applicant has alleged, and that this information will be shared with HTICU.¹⁰⁷ The IPO officer should also advise the applicant to contact the Legal Aid Board (LAB) to seek guidance and make a complaint to the Gardaí about being trafficked into the State. The fact that the applicant has been issued with this advice should be recorded in the relevant interview record. The IPO has a 'Designated Officer' whose role is to make a referral to the competent authority to investigate criminality, the HTICU, which is done via a dedicated IPO database.¹⁰⁸ The Immigrant Council of Ireland found that it was likely that many applicants did not disclose that they were victims of trafficking and/or did not know that it could form the basis of an international protection application (Immigrant Council of Ireland, 2017). As a result, in some cases, human trafficking only arises at the appeal stage in the International Protection Appeals Tribunal (IPAT). According to the report, this is due to the fact that applicants typically navigate the initial phases of the protection procedure without legal representation (Immigrant Council of Ireland, 2017). The IPO stated that at the initial stage of the process every international protection applicant is made aware of the provision free legal aid under the auspices of the Legal Aid Board.¹⁰⁹

In December 2020, the International Protection Accommodation Services (IPAS) introduced a pilot vulnerability assessment programme to assess the vulnerability of international protection applicants in the context of reception at the start of the procedure (Department of Children, Equality, Disability, Integration and Youth, 2021). Of the 14 questions asked to applicants, one of them is 'Does the applicant indicate that they may be a victim of human trafficking or have been brought to the State against their will?'. If the answer is yes, the person is referred by IPAS to the HSE.¹¹⁰ Between 1 February 2021 and 1 February 2022, 15 persons have been detected as potential victims of trafficking through this assessment.¹¹¹

Up until the introduction of the vulnerability assessment, the Immigrant Council of Ireland and IHREC stated that the procedures were not sufficient to identify and screen for victims of trafficking in the asylum procedure.¹¹² IHREC and the Immigrant Council of Ireland stated that the extent to which the vulnerability assessment is effective in detecting situations of trafficking is yet to be established.¹¹³

¹⁰⁷ Correspondence with the International Protection Office, September 2021.

¹⁰⁸ *Ibid.*

¹⁰⁹ Correspondence with the International Protection Office, March 2022.

¹¹⁰ Correspondence with the International Protection Accommodation Services, September 2021.

¹¹¹ *Ibid.*

¹¹² Interview with the Immigrant Council of Ireland, July 2021.

¹¹³ Interview with IHREC, July 2021.

In other migration procedures, there are no proactive screening measures. Training is conducted on anti-human trafficking measures among staff within Immigration Service Delivery; however, as described above, it is recognised by the Community Safety Policy Unit that more training needs to be conducted.¹¹⁴ In voluntary return procedures where the IOM is involved, a screening mechanism is used by IOM staff to detect persons who may be victims of trafficking.¹¹⁵

With regard to children and screening, Tusla reported that they have a section on their intake assessment form that can be filled in if there are any indicators of trafficking. One particular area where Tusla conducts a screening for indicators of trafficking is in child protection family reunification (CPFR) cases. For instance, if a child arrives in the State unaccompanied and wishes to be reunited with a family member, such as an aunt or uncle, Tusla will conduct checks as to the veracity of that relationship and the living situation of the child, including a risk of exploitation.¹¹⁶ However, this part of the screening is conducted in practice but is not currently policy. Tusla is in the process of updating the screening policy to reflect more accurately what is happening in practice. The aim is to finalise the policy in 2022.¹¹⁷ Tusla also highlighted the challenge in detecting child victims of trafficking among children who may not be in touch with services or attending schools.¹¹⁸ The Immigrant Council of Ireland, however, stated that there needs to be further clarity on the procedure followed in Tusla after the detection of indicators of human trafficking for children.

3.4 SELF-REPORTING AND THE ROLE OF NGOS

One of the main ways a potential victim of trafficking is initially detected is through self-reporting to an An Garda Síochána station or through a referral from an NGO.

Should potential victims of trafficking present to a Garda station to report that they are a victim of trafficking, a report of the alleged offence will be taken in that station. The first member of An Garda Síochána to encounter the victim of trafficking will conduct the ‘reasonable grounds’ assessment.¹¹⁹ This is the first stage of the identification procedure and is described in more detail in the next chapter.

Currently, the sole authority responsible for identifying victims of trafficking in human beings is An Garda Síochána. MRCI highlighted how victims of trafficking

¹¹⁴ Interview with Community Safety Unit, Department of Justice, September 2021.

¹¹⁵ Interview with IOM, July 2021.

¹¹⁶ Interview with Tusla, January 2022.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Correspondence with HTICU, October 2021.

may not want to report to An Garda Síochána due to a fear of the police. This in some cases may be cultural, due to a fear of police in a person's country of origin, but also may be due to a lack of trust in An Garda Síochána, a fear of repercussions from traffickers, and can also relate to the role of GNIB in enforcing immigration law.¹²⁰ Persons who are victims of human trafficking may also not identify as such or may not wish to pursue a criminal case and therefore do not self-report to An Garda Síochána.¹²¹ AkiDWA has highlighted how African women who are victims of trafficking can face language barriers in reporting to An Garda Síochána, and can also experience re-traumatisation in having to recount their story. Additional barriers listed by AkiDWA include that they may fear repercussions from traffickers, including due to their familial or communal ties or that they can face a deterrent in reporting created by a juju/traditional oath taking (AkiDWA, 2020).¹²² Moreover, victims of human trafficking may not be aware that it is possible to report their situation or the mechanisms to do so; this can be due to the level of control exercised by traffickers (Doyle and Murphy, 2019). There may also be a lack of awareness of the relevant legislation, including that the *Criminal Law (Sexual Offences) Act 2017* decriminalises the sale of sex (AkiDWA, 2020).

Other ways of self-reporting include through contacting the Department of Justice's 'Blue Blindfold' confidential phone line or email, both of which are provided on the Blue Blindfold website.¹²³ Additionally, the HTICU described a campaign by the Organised Prostitution Investigation Unit (OPIU) within the Garda National Protective Services Bureau in which a total of over 4,000 text messages were sent out across three batches to persons who put their phone numbers on websites offering sexual services. Text messages were sent in three languages (English, Romanian and Portuguese) to provide information on seeking help.¹²⁴ The campaign ran for 18 months, between mid-2020 and December 2021.¹²⁵ Figures are not currently available on how many people made contact with An Garda Síochána after receiving this text.¹²⁶

¹²⁰ Interview with MRCl, August 2021. See also: Breen, M., A. Healy and M. Healy (2021). *Report on Human Trafficking and Exploitation on the Island of Ireland*, the Human Trafficking and Exploitation Project on the Island of Ireland (HTEPII), Mary Immaculate College, Limerick. Available at: www.mic.ul.ie.

¹²¹ Interview with Community Safety Policy, Department of Justice, September 2021; Interview with the Immigrant Council of Ireland, July 2021; Interview with MRCl, August 2021.

¹²² According to AkiDWA, 'Human trafficking in Edo state is laced with juju rituals employed by traffickers as a means of securing victims' cooperation and ultimately control. Before a girl is taken abroad, it is common practice for her to swear an oath to pay back her debt as well as never betray or abscond from her madam. This oath is typically sworn at a juju shrine where articles of the victim such as a lump of her hair, her underwear or even her blood, is used to perform a ritual and often retained in the shrine.' And 'where there are no familial or communal ties between traffickers and the victim's community, the juju oaths create a belief that some spiritual evil would manifest in the life of the victim or her loved ones.' AkiDWA (2020). *Mobile Bondage: Human Trafficking of Migrant Women*. www.akidwa.ie, pp. 27 and 29.

¹²³ Interview with HTICU, August 2021.

¹²⁴ Interview with HTICU, August 2021. Correspondence with HTICU, October 2021.

¹²⁵ Correspondence with HTICU, An Garda Síochána, February 2022.

¹²⁶ Interview with HTICU, August 2021.

A person may also present to an NGO, and they can then be assisted in presenting to An Garda Síochána to report their situation.¹²⁷ NGOs such as MRCI, the Immigrant Council of Ireland and Ruhama, as well as international organisations such as IOM Ireland, play a role in the detection of potential victims of trafficking in Ireland, as well as in training other organisations/workers.¹²⁸ Breen et al. (2021) describe how these NGOs provide services to victims of human trafficking and how some victims of human trafficking may not want to report to An Garda Síochána but can continue to access the services and supports of NGOs.

3.5 CONCLUSION

The detection of victims of trafficking is the first step towards identification. One of the ways in which a situation of trafficking is detected is through self-reporting to an An Garda Síochána station by the victim themselves or via a referral from an NGO. However, not all victims of trafficking may want to report to An Garda Síochána. Other ways in which a situation of human trafficking may be detected is through the collection of indicators, the training of frontline personnel across relevant sectors, awareness-raising campaigns, inspections and raids, and screening in migration and international protection procedures. However, as reported by NGOs in particular, there remain limitations in the training conducted and further training is required.

¹²⁷ Interview with Immigrant Council of Ireland, July 2020. Interview with IOM, July 2021.

¹²⁸ Interview with the Immigrant Council of Ireland, July 2021; Interview with MRCI, August 2021; Interview with IOM, August 2021.

CHAPTER 4

Identification of victims of human trafficking

Following the detection of a situation of trafficking, a person who is a potential victim of trafficking must then be identified by the competent authority. The identification procedure forms the main point of access into the National Referral Mechanism (NRM).¹²⁹ Under Article 10(2) of the Council of Europe's *Convention on Action against Trafficking in Human Beings*, States party to the Convention are required to adopt legislation and/or other measures necessary for the identification of victims, and, where the competent authorities have reasonable grounds to believe that the person is a victim of trafficking, they shall not be removed from the State until identification as a victim of an offence is complete.¹³⁰ In EU legislation, the Anti-Trafficking Directive 2011/36/EU requires Member States to establish appropriate mechanisms for the early identification of victims of human trafficking.¹³¹

In most EU Member States, Georgia and Norway, the police are the most common authority responsible for identification. Some EU Member States and Norway also allow other authorities to identify victims of human trafficking, including, among others, border guards, labour inspectors, migration services, asylum case officers, civil society organisations and public prosecutors (EMN, 2022).

In Ireland, the identification procedure is carried out by An Garda Síochána. This chapter sets out the procedure followed as well as four key challenges raised by stakeholders interviewed for this study. The final part of this chapter describes recent Government proposals for a reform of the current procedure.

4.1 IDENTIFICATION PROCEDURE

The identification procedure initiates when the first member of An Garda Síochána to encounter a potential victim of trafficking conducts a 'reasonable grounds' assessment.¹³² This assessment is used to determine if the person is a victim of the crime of human trafficking under sections 2 or 4 of the *Criminal Law (Human Trafficking) Act 2008* or section 3 (other than subsections (2A) and (2B)) of the *Child*

¹²⁹ 'Mechanism aimed at identifying, protecting and assisting victims of trafficking in human beings, through referral, and involving relevant public authorities and civil society'. European Migration Network. Glossary 6.0. Available at: www.ec.europa.eu/home-affairs/pages/glossary_en.

¹³⁰ Article 10(2), *Convention on Action against Trafficking in Human Beings*, Council of Europe.

¹³¹ Article 11(4), *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, 15.4.2011, pp. 1-11.

¹³² Correspondence with HTICU, An Garda Síochána, October 2021.

Trafficking and Pornography Act 1998 (Department of Justice and Law Reform, 2011). ‘Reasonable grounds’ is defined as:

a standard for what is fair and appropriate under usual and ordinary circumstances; that which is according to reason; the way a rational and just person would have acted (Department of Justice and Law Reform, 2012, p. 2).

The result of the reasonable grounds assessment is then sent to the competent authority: a member of An Garda Síochána not below the rank of Superintendent in the Garda National Immigration Bureau (GNIB). As the competent authority, they are the final arbiter of the identification decision.¹³³ Depending on where the crime of human trafficking is first reported, the investigation of the crime falls within the remit of the local Superintendent of An Garda Síochána. A person may be referred to the Human Trafficking Investigation and Coordination Unit (HTICU) in An Garda Síochána, and the HTICU can transfer the case to the local Garda station for investigation. In some cases, typically where the offence took place outside of the State, the HTICU handles the investigation.¹³⁴

The HTICU stated that a person who is a potential victim of trafficking gains immediate access to the supports of the NRM when they report the crime, pending identification as a suspected victim of human trafficking.¹³⁵ In this sense, access to the NRM, according to the HTICU, uses a low threshold: if a person presents as a victim of trafficking, they are treated as such unless there is compelling evidence to refute that claim.¹³⁶ Pursuant to the Statement on Roles and Responsibilities, An Garda Síochána endeavour to identify victims of trafficking within a maximum of 31 days of referral (Department of Justice and Law Reform, 2012). This is subject to the provision and availability of information (Department of Justice and Law Reform, 2012). In the Irish Government’s response to GRETA’s draft report in 2017, it stated that ‘a very small number of cases have been delayed over six months in cases where unique circumstances exist’ (GRETA, 2017, para. 115).

There is no difference in the identification procedure followed by the HTICU for different nationalities or immigration status, including for persons in the international protection procedure: the same reasonable grounds assessment is conducted.¹³⁷ In Ireland, there is no formal recognition of an identification status; a potential victim of human trafficking can be recognised as a suspected victim of

¹³³ Correspondence with HTICU, An Garda Síochána, October 2021.

¹³⁴ Interview with HTICU, An Garda Síochána, August 2021.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

trafficking by An Garda Síochána, but no certificate or card attesting to same is issued.¹³⁸

4.1.1 Identification procedure for children

Tusla Child and Family Agency has responsibility for all children identified as being in need of protection, including unaccompanied minors, and can include victims of trafficking (GRETA, 2017). According to the Second National Action Plan:

Tusla and HTICU have developed a protocol in relation to unaccompanied minors who arrive at ports of entry in Dublin (usually Dublin Airport). The Protocol covers areas such as co-operative interviewing, joint training and awareness-raising and the sharing of information (Department of Justice, Equality and Law Reform, 2016a, p. 73).

As also set out in the Second National Action Plan, under section 12 of the *Child Care Acts 1991*, as amended, An Garda Síochána can remove a child from a family situation in which the child is deemed to be at serious risk. The Gardaí liaise with Tusla in such cases, and these can include cases where there are indicators of human trafficking. In other cases, Tusla will contact An Garda Síochána where there is reason to believe a child is a potential victim of trafficking. Tusla act *in loco parentis* for children in their care.¹³⁹ An Garda Síochána conduct the formal identification procedure for children and Tusla representative or a social worker will accompany children to interview and assist them in securing legal aid.¹⁴⁰ Sometimes An Garda Síochána can conduct the interviews in Tusla offices. Tusla stated that when an issue of trafficking arises, they are required to establish a robust plan to ensure the child is safe, whether that is in their own home or in the care of Tusla.¹⁴¹ HTICU stated that there are specific challenges in conducting an identification procedure with a child who has been brought to their attention. Such challenges can include, for example, that the child does not know why they were trafficked.¹⁴²

4.2 CHALLENGES FACED IN IDENTIFICATION

Four inter-related challenges in the identification procedure emerged from interviews conducted with State and non-State actors for this study, as well as from scholarship and reports on human trafficking in Ireland.

¹³⁸ *Ibid.*

¹³⁹ Interview with Tusla Child and Family Agency, January 2022.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² Correspondence with HTICU, An Garda Síochána, February 2022.

The first challenge is that the identification procedure is not a formalised one on statutory footing (IHREC, 2021b; US Department of State, 2021; GRETA, 2017).¹⁴³ According to HTICU, the identification of victims of human trafficking follows a specific procedure within An Garda Síochána.¹⁴⁴ Some NGOs and independent bodies, however, highlight that the procedure followed should be more transparent (GRETA, 2017; Breen et al., 2021), and should be placed on a statutory footing to ensure victims of human trafficking can access a clear set of rights, including to appeal decisions made on the identification.¹⁴⁵ Beyond the procedure, NGOs emphasised that there is no formal identification decision issued to identified suspected victims of human trafficking.¹⁴⁶ The Immigrant Council of Ireland stated that this can deprive some victims of human trafficking of their entitlements under the Anti-Human Trafficking Directive 2011/36/EU.¹⁴⁷ Undocumented third-country national victims of human trafficking may receive a Temporary Residence Permission (TRP) on the grounds that they are a suspected victim, but persons with other legal statuses in the State, such as international protection applicants, do not receive a TRP. In its call for a simpler identification procedure, the Immigrant Council of Ireland recommends that the procedure include a formal acknowledgement in writing offering a recovery and reflection period to all identified (Immigrant Council of Ireland, 2020c).

The HTICU stated that when a reasonable grounds assessment is concluded the victim is identified as a suspected victim of human trafficking. However, it recognised that a victim is not provided with any card or certificate as a victim of trafficking and there is no way of recording this status under the current process for recording immigration permissions.¹⁴⁸ Additionally, the government's response to the GRETA draft report noted that 'any negative decision would be followed up by a request for further information' (GRETA, 2017, para 115), but it acknowledged that there was no appeals procedure in the relevant policy document.

The second challenge relates to the early identification of victims of human trafficking and the potential for delays in initial identification. This issue was central to the High Court judgment in *P. v. The Chief Superintendent of The Garda National Immigration Bureau & ors* in 2015. The High Court found that the identification procedure under the Administrative Immigration Arrangements was in breach of the requirements of the Anti-Trafficking Directive 2011/36/EU.¹⁴⁹ More specifically, it found flaws in the State's mechanism to ensure early identification of victims of trafficking. The Immigrant Council of Ireland highlighted how, six years

¹⁴³ Interview with IHREC, July 2021; Interview with the Immigrant Council of Ireland, July 2021.

¹⁴⁴ Correspondence with HTICU, An Garda Síochána, October 2021 and February 2022.

¹⁴⁵ Interview with IHREC, July 2021.

¹⁴⁶ Interview with MRCI, August 2021; Interview with the Immigrant Council of Ireland, July 2021.

¹⁴⁷ Correspondence with the Immigrant Council of Ireland, March 2022.

¹⁴⁸ Correspondence with HTICU, An Garda Síochána, October 2021.

¹⁴⁹ *P. v. The Chief Superintendent of The Garda National Immigration Bureau & ors*, [2015] IEHC 222.

on from the case, a reform to the early identification mechanism has still not been implemented.¹⁵⁰ In the experience of the Immigrant Council of Ireland, the *P.* case is not an isolated one; a client of the Immigrant Council of Ireland had a similar experience. The client served three years of a sentence and it was not until post-release that a third-party organisation thought to pursue the trafficking identification procedure.¹⁵¹ In the 2018 case of *Trang and Vu v. the Governor of the Dóchas Centre*, Justice Humphreys of the High Court held that the applicants could remain detained in prison for immigration-related purposes while a decision was made as to whether the applicants could be identified as victims of trafficking and enter the NRM.¹⁵² GRETA's 2017 report relayed reports of NGOs and lawyers that stated that victims of trafficking are sometimes interviewed repeatedly over extended periods by An Garda Síochána officers in order to meet the 'reasonable grounds' determination, delaying their access to the recovery and reflection period (GRETA, 2017, para 162). The response of the Irish government was that this may have occurred early on in the introduction of the *Criminal Law (Human Trafficking) Act 2008*, but the 'intensive training programme embarked on by An Garda Síochána and the widespread engagement with victims groups including NGOs have ensured that this is no longer the case' (ibid.).

Related to the delays in identification, the Anti-Human Trafficking Team (AHTT) in the HSE described how the identification process can be slow and this means that the AHTT is delayed in implementing a care plan for victims of human trafficking.¹⁵³

The third challenge is the position of An Garda Síochána as the sole competent authority for identification and the inability of other bodies or organisations to identify victims. As a result, the identification procedure forms part of a criminal report. IOM Ireland, MRCI and the Immigrant Council of Ireland described how some victims of trafficking do not want to report to An Garda Síochána and open a criminal case; this relates to previously described issues in the detection of victims of human trafficking (see Section 3.2). As a result, these persons are not identified as potential victims of trafficking and cannot enter the NRM.¹⁵⁴ MRCI described how victims of trafficking sometimes have to balance their fear of the trafficker, fear of police and the other options that might be available to them when deciding to report to An Garda Síochána. For some victims of trafficking, reporting their situation may not be worth it due to the overwhelming obstacles they face and the viability of other options.¹⁵⁵ IOM Ireland described a willingness among the Gardaí to be open and to provide immediate access to the NRM; however it also

¹⁵⁰ Interview with the Immigrant Council of Ireland, July 2021.

¹⁵¹ *Ibid.*

¹⁵² *Trang v. the Governor of the Dóchas Centre; Vu v. the Governor of the Dóchas Centre* [2018] IEHC 211.

¹⁵³ Correspondence with the HSE Anti-Human Trafficking Team.

¹⁵⁴ Interview with IOM Ireland, July 2021; Interview with Immigrant Council of Ireland, July 2021; Interview with MRCI, August 2021.

¹⁵⁵ Interview with MRCI, August 2021.

recognised that their role as the sole competent authority may limit the number of people who seek to be identified.¹⁵⁶

In an effort to separate immigration control from supports for victims of trafficking, in 2015 the HTICU was transferred from the Garda National Immigration Bureau (GNIB) to the Garda National Protective Services Bureau (GNPSB).¹⁵⁷ However, NGOs, such as MRCI and the Immigrant Council of Ireland, as well as IHREC, highlight the fact that the sole responsibility for identification still lies within An Garda Síochána.¹⁵⁸ In the 2013 and 2017 GRETA reports on Ireland, the group urged the creation of a multiagency approach to identification, including a role for specialised NGOs and other relevant actors, such as labour inspectors, to identify victims of human trafficking (GRETA, 2013; 2017). The HSE's Anti-Human Trafficking Team (AHTT) similarly stated that if a non-police officer could be trusted to identify victims, they would be able to access services prior to engaging with An Garda Síochána. This would support persons in pursuing the identification process and would allow potential victims to first settle in and regain trust in the authorities.¹⁵⁹

The fourth challenge in the identification procedure arises from the legal definition of human trafficking and requirements to meet this definition. Discrepancies arise between actors in terms of what constitutes human trafficking. In an interview for this study, the Community Safety Policy Unit in the Department of Justice stated that defining the boundaries between trafficking and smuggling, and between trafficking for labour exploitation and labour exploitation, can be difficult. With regard to the latter difference, the unit stated that there may be cases of labour exploitation in the fishing industry and that the working conditions can be particularly difficult, but that it is not necessarily a case of human trafficking. It was stated that there needs to be an additional element of coercion and/or deception in order to qualify as trafficking.¹⁶⁰ With regard to the fishing industry, an October 2021 report by Murphy et al., funded by the International Transport Workers Federation (ITWF), detailed how migrant fishers working on Irish boats reported experiences of deception, in that the working conditions were different to those they had anticipated or were promised, and coercion, such as through the use of threats to refuse to pay or to dismiss the worker (Murphy et al., 2021).¹⁶¹ As described in previous chapters, defining a situation of trafficking can be difficult, not least due to the complexity of migratory journeys (O'Connell Davidson and

¹⁵⁶ Interview with IOM Ireland, July 2021.

¹⁵⁷ Interview with HTICU, August 2021.

¹⁵⁸ Interview with MRCI, August 2021; Interview with the Immigrant Council of Ireland, July 2021.

¹⁵⁹ Correspondence with AHTT, HSE, March 2022.

¹⁶⁰ Interview with the Community Safety Policy Unit, Department of Justice, September 2021.

¹⁶¹ Murphy, C. (December 2021). 'Presentation to Security Analysis and Research (SAR) Conference'. University College Cork.

Anderson, 2006), and that, as Skrivankova (2010) states, exploitation exists on a continuum.

4.3 PROPOSED REFORM

In May 2021, the Irish Government approved a proposal from the Department of Justice for a revised National Referral Mechanism (NRM). The Community Safety Policy Unit described how they relied on reports from the European Commission on NRMs across the EU (European Commission, 2020c) and the UK NRM model in developing the new model.¹⁶²

The proposed NRM will involve an increased number of State bodies, including the Department of Justice Immigration Services, Department of Social Protection, the HSE, Tusla, and International Protection Accommodation Services (IPAS), in the Department of Children, Equality, Disability, Integration and Youth. This will allow for different pathways into the NRM. An NRM 'Operational Committee', comprising representatives from the above State bodies, is planned as 'a multi-disciplinary team would make decisions based on the recommendations of the individual partner organisations'.¹⁶³ According to the Community Safety Policy Unit, this will help in ensuring consistency and to make formal legal decisions. Select NGOs and local authorities will be designated 'trusted partners' and as such can bring cases to the NRM for identification. The Community Safety Policy Unit described how NGOs will not be empowered to identify victims of trafficking. This decision was taken so as to protect NGOs from the potential pressures of organised crime.¹⁶⁴ The 2020 *Trafficking in Human Beings in Ireland: Annual Report* published by the Department of Justice described the proposal for the revised NRM as a 'fundamental shift to our model of identification of victims' and that the:

holistic approach will encourage more victims to come forward and access the supports and protections available and, in time, build up enough trust and self-confidence to give evidence in criminal prosecutions (Department of Justice, 2021, p. 3).

The Immigrant Council of Ireland has emphasised that in any reform of the NRM, international protection applicants must be granted access to the mechanism in full and that the reform partly progressed by the Department of Justice should be completed within a specified timeframe and be made a policy priority (Immigrant Council of Ireland, 2021).

¹⁶² Interview with the Community Safety Policy Unit, Department of Justice, September 2021.

¹⁶³ Department of Justice (May 2021). 'Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports'. Available at: www.justice.ie.

¹⁶⁴ Interview with the Community Safety Policy Unit, Department of Justice, September 2021.

4.4 CONCLUSION

The identification procedure in Ireland is operated by An Garda Síochána. Persons can present to An Garda Síochána, be referred, or be found by An Garda Síochána, and regardless of nationality or immigration status, can be identified as a suspected victim of human trafficking where reasonable grounds are established. The first member of An Garda Síochána to encounter the victim initiates this procedure.

There are, however, a number of challenges in the identification procedure. These include the lack of a formalised identification procedure on statutory footing, challenges in early identification, that An Garda Síochána is the sole competent authority, and defining the parameters of the definition of human trafficking. The proposed reform of the identification procedure seeks to address some of these challenges, particularly through the empowerment of more actors to participate in the identification procedure.

CHAPTER 5

Protection of victims of human trafficking

The protection and assistance provided to victims of trafficking are central components of EU law on anti-human trafficking and National Referral Mechanisms (NRMs). Article 11 of the Anti-Trafficking Directive 2011/36/EU provides that Member States are obliged to provide assistance and support to identified victims of trafficking. Article 11(5) of the Directive defines the minimum assistance and support measures as including:

standards of living capable of ensuring victims' subsistence through measures such as 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.¹⁶⁵

The Council of Europe's Convention on Action against Trafficking in Human Beings similarly sets out protection and assistance measures that States party to the Convention must provide. Article 12 states, *inter alia*, that:

[e]ach Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.¹⁶⁶

There are also other provisions for a recovery and reflection period, residence permits, compensation and repatriation.¹⁶⁷

In Ireland, while An Garda Síochána is the sole responsible authority for identification, various other State bodies are involved in the provision of protection and supports to victims of trafficking as part of the NRM. NGOs also provide assistance to victims of human trafficking. As detailed previously, according to the HTICU, entry to the NRM uses a low threshold: if a person presents as a victim of trafficking, they are treated as such unless there is compelling evidence to refute that claim.¹⁶⁸ The following chapter presents the main supports provided in the NRM, with reference to the authorities involved and key challenges faced. This includes recovery and reflection periods, residence permits, access to healthcare, accommodation, access to legal aid and justice, international protection and *non-*

¹⁶⁵ Article 11(5), *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, 15.4.2011, pp. 1-11.

¹⁶⁶ Article 12, *Council of Europe Convention on Action against Trafficking in Human Beings*, Council of Europe.

¹⁶⁷ Articles 13-16, *Council of Europe Convention on Action against Trafficking in Human Beings*, Council of Europe.

¹⁶⁸ Interview with HTICU, An Garda Síochána, August 2021.

refoulement, information and interpretation, socio-economic supports and voluntary return.

Data are provided where available on the number of victims of trafficking who availed of the various protections; however there are limited data available as regards the number of victims of human trafficking accessing healthcare and social welfare, in particular.

5.1 RECOVERY AND REFLECTION PERIODS AND RESIDENCE PERMITS

Upon identification as a suspected victim of human trafficking by An Garda Síochána, a victim of trafficking may be granted a period for recovery and reflection of 60 days. Following the 60-day period, where a third-country national victim of trafficking does not hold a valid immigration permission or does not have an ongoing international protection application, they can be granted a Temporary Residence Permission (TRP).

The EMN study (2022) details how all participating EU Member States, Norway and Georgia provide a period of reflection for victims of human trafficking upon identification. Differences between Member States arise in which authorities are competent to request a reflection period, although, as in Ireland, the police are the most common authority. There are also differences in the conditions that are attached to the reflection period. Where countries impose conditions, the most common two were cooperation with national authorities and avoiding contact with the perpetrator or other persons who may influence the victim's decision to cooperate. In Ireland, the condition of cooperation does not apply during the recovery and reflection period but reporting to the police is required prior to the granting of a reflection period. This is also the case in Sweden. Other differences in the reflection period arise in the length of the period granted. In most Member States and Georgia, it is 30 days, whereas other countries permit reflection periods of 60 days – like Ireland – or 90 days. In some Member States, the reflection period is flexible and can range up to six months in Finland and Italy. In terms of residence permits, most EU Member States participate in the EU's Residence Permits Directive, and therefore have permits in line with the Directive. Most permits are issued for an initial duration of six to 12 months, with the exceptions of Spain, where the permit is issued for an initial period of five years, and Latvia, where it depends on the necessity of the victim's presence in the State for the investigation (EMN, 2022). As described below, the Irish TRP is similar to that provided under the Residence Permit Directive.

5.1.1 Recovery and reflection period

In Ireland, according to the Administrative Immigration Arrangements, the purpose of the recovery and reflection period is to give a person time to recover from the trafficking and to escape the influence of the alleged perpetrator in order to:

take an informed decision as to whether to assist Gardaí or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking (Department of Justice and Law Reform, 2011, para 5).

The third-country national cannot be removed from the State during the recovery and reflection period.¹⁶⁹

Where the third-country national is undocumented, they can be granted permission to lawfully remain in Ireland for the 60-day period (Department of Justice and Law Reform, 2011, para 6). According to the Guide to Procedures for Victims of Human Trafficking in Ireland, An Garda Síochána aim to inform the Minister for Justice between five days to one month after the person has reported that they are a victim of trafficking (Department of Justice and Law Reform, 2011). If the third-country national holds an immigration permission they will not be issued with an immigration permission for the 60-day recovery and reflection period, save where their valid permission expires (Department of Justice and Law Reform, 2011, para 10). If the identified suspected victim of trafficking is below the age of 18, they may be granted a recovery and reflection period for longer than 60 days (Department of Justice and Law Reform, 2011, para 11).

The Administrative Immigration Arrangements also detail the reasons for which the 60-day recovery and reflection period can be terminated. These reasons include that:

(a) the victim has actively, voluntarily and on his or her own initiative renewed contact with the alleged perpetrators of the trafficking,

(b) it is in the interest of national security or public policy ('ordre public') to do so, or

(c) victim status is being falsely claimed (Department of Justice and Law Reform, 2011, para 8).

¹⁶⁹ Interview with HTICU, An Garda Síochána, August 2021.

In some cases, where the suspected victim of trafficking wishes to advance the criminal investigation, they can waive the recovery and reflection period.¹⁷⁰ However, MRCI described a case where their client was in the recovery and reflection period and An Garda Síochána sought to start the investigation before the end of the 60-day period. The victim of trafficking did not want to start the investigation and the MRCI advocated on their behalf to stop interviews during the recovery and reflection period.¹⁷¹ MRCI also, nonetheless, reported that they have seen the recovery and reflection period observed well in a recent case.¹⁷² The Immigrant Council of Ireland stated that there can be a lack of understanding with what to do when a person wants to waive their recovery and reflection period in order to initiate the investigation sooner.¹⁷³ IHREC and IOM Ireland highlighted how the 60-day period is not particularly long and some victims of human trafficking may need more time.¹⁷⁴

5.1.2 Temporary Residence Permission (TRP)

Following a recovery and reflection period, where the Minister for Justice is satisfied that:

(a) the person has severed all contact with the alleged perpetrators of the trafficking, and

(b) it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking,

a person without a residence permission in the State can be granted a TRP for six months, which is renewable (Department of Justice and Law Reform, 2011, paras 12-13). The permission is issued after the 60-day recovery and reflection period, where the person has severed all contact with the alleged perpetrators and where it is necessary for the investigation or prosecution that that person remains in the State (Department of Justice and Law Reform, 2011). A TRP is issued on Stamp 4 basis. TRP holders can immediately access the labour market and can also access social welfare supports. If a third-country national already holds an immigration permission, such as a student on a Stamp 2 permission in the State, they can request a change of permission to a TRP.¹⁷⁵

The Administrative Immigration Arrangements state that the permission can be revoked in five situations. These include:

¹⁷⁰ Interview with HTICU, An Garda Síochána, August 2021.

¹⁷¹ Interview with MRCI, August 2021.

¹⁷² Correspondence with MRCI, February 2022.

¹⁷³ Interview with Immigrant Council of Ireland, August 2021.

¹⁷⁴ Interview with IHREC, July 2021; Interview with IOM Ireland, July 2021.

¹⁷⁵ Correspondence with HTICU, February 2022.

(a) the person concerned has actively, voluntarily and on his or her own initiative renewed contact with the alleged perpetrators of the trafficking;

(b) the person concerned no longer wishes to assist the Garda Síochána or other relevant authorities in relation to any investigation or prosecution arising in relation to the trafficking of the person;

(c) the allegation of trafficking is fraudulent or unfounded;

(d) any investigation or prosecution arising in relation to the trafficking has been finalised or terminated; or

(e) the Minister is satisfied that it is in the interest of national security or public policy ('ordre public') to do so (Department of Justice and Law Reform, 2008, para 14).

The HTICU stated that they recognise that it takes longer for some persons to feel that they are in a position to cooperate and, in such cases, the TRP will be renewed until such a time as the person is ready to cooperate.¹⁷⁶ After three years on a TRP, or when the investigation into the trafficking is complete (whichever is shorter), a victim of trafficking can apply for a longer-term permission to remain in the State (Department of Justice and Equality, 2016a).

According to the government's reply to the GRETA questionnaire in June 2021, 105 persons have been issued with immigration permissions by the Domestic Residence and Permissions Unit since 2017 where GNIB instructed the unit to grant permission to victims of trafficking. Of the permissions granted, 41 of those cases have been granted a longer two-year residency permission after six TRPs (GRETA, 2021).

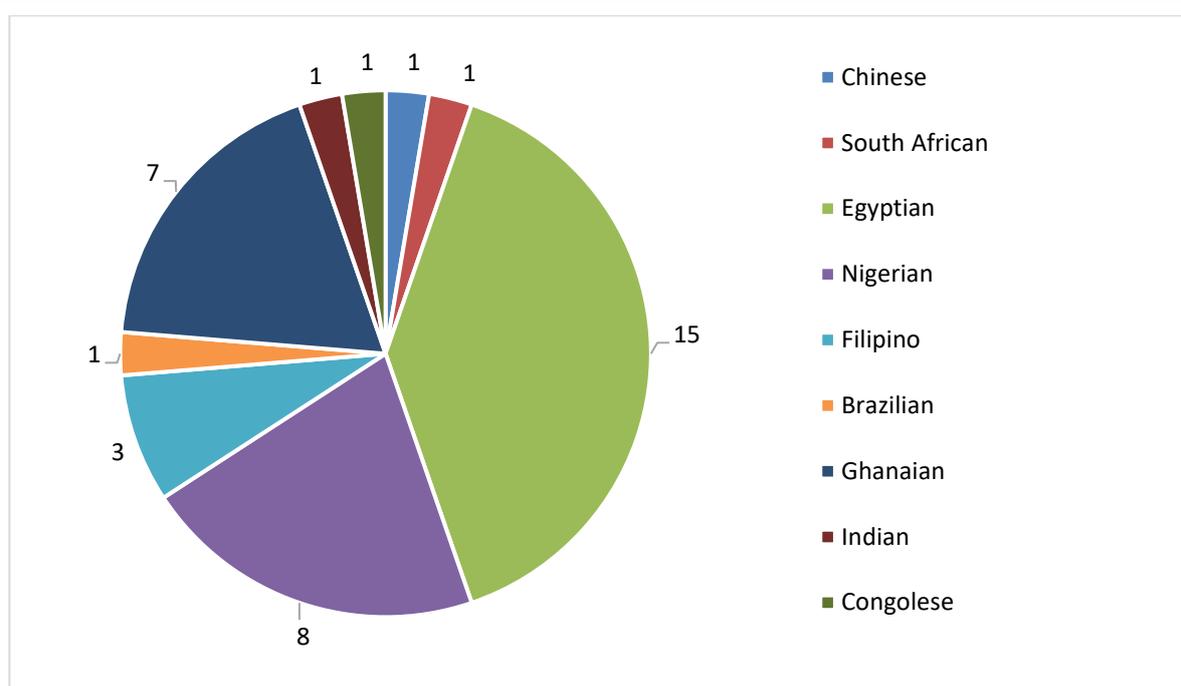
Between 2017 and 2020, 38 temporary Stamp 4 permissions were issued to third-country nationals. As stated in the Irish government's response to the GRETA questionnaire, some third-country national victims of human trafficking may already have permission to remain in the State (for example, as a student) and therefore were not issued with immigration permissions (GRETA, 2021). The Department of Justice stated that the 38 permissions were new permissions. It stated that not every case of human trafficking includes a recovery and reflection period and Domestic Residence and Permission Division in the Department of Justice acts on instructions from the Garda National Protective Services Bureau, who indicate the permission required.

¹⁷⁶ Interview with HTICU, August 2021.

Of the 38 permissions issued, the majority were issued to males: 30 were issued to males, eight were issued to females. Most permissions were issued in 2018, with 23 permissions issued that year. The most common nationality of persons who were issued with a permission was Egyptian (15), followed by persons of Nigerian (eight) and Ghanaian (seven) nationalities (see Figure 5.1). In the 2019 annual report from An Garda Síochána, it states that 21 fishers were identified as victims of trafficking in 2018 (An Garda Síochána, 2019). The most common countries of origin of migrant fishers are the Philippines, Egypt and Ghana (Murphy et al., 2021).

It is also to be noted that while most permissions were issued to males, between 2017 and 2020 most victims of human trafficking were female (Department of Justice, 2021). However, a breakdown of gender for third-country national victims of human trafficking is not available and so it is not clear what proportion of female victims of human trafficking are third-country nationals.

FIGURE 5.1 NATIONALITIES OF PERSONS ISSUED WITH PERMISSIONS UNDER THE ADMINISTRATIVE IMMIGRATION ARRANGEMENTS (2017-2020)



Source: Group of Experts on Action against Trafficking in Human Beings (GRETA) (June 2021). 'Reply from Ireland to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties'. Third evaluation round. Council of Europe. GRETA(2018)26_IRL_rep. www.rm.coe.int/reply-from-ireland-to-the-questionnaire-on-the-implementation-of-the-c/1680a4c35c.

IHREC, in an interview for this study, described how the issuance of a TRP should not be conditional on cooperation with the criminal investigation as this can deter persons from wanting to enter the NRM and thus exclude them from its

supports.¹⁷⁷ The Immigrant Council of Ireland and MRCI also reported that it is not clear as to why the six-month TRPs cannot be issued for longer periods of time, such as one-year permissions.¹⁷⁸ The Immigrant Council of Ireland highlighted the lengthy criminal investigations in trafficking cases, that often take longer than the six-month TRP.¹⁷⁹ Furthermore, MRCI reported that at times there can be lapses in the renewal of the six-month permissions, with implications for future immigration permissions.¹⁸⁰ Doyle and Murphy (2019) describe how the temporary nature of the immigration permissions leads to uncertainty for persons who are victims of human trafficking and further vulnerabilities can also emerge as a result of this temporary status.

International protection applicants cannot obtain a TRP as they hold a permission to reside in the State to pursue their protection application. However, where a person's international protection application is unsuccessful, the suspected victim of trafficking would also be eligible for a TRP. The Second National Action Plan states that a TRP 'will automatically issue, pending consideration of any other forms of immigration permission of which the person may wish to avail' (Department of Justice, Equality and Law Reform, 2016a, p. 14). Moreover, in the Administrative Immigration Arrangements, it is stated that where a person's international protection application is unsuccessful, they can have the fact that they have been identified as a suspected victim of human trafficking taken into account in any consideration of a proposal to deport under section 3(3) of the *Immigration Act 1999* (Department of Justice and Law Reform, 2011).

Nonetheless, access to protections can differ depending on the legal status held. Differences can arise in rights, including, *inter alia*, access to the labour market, access to social welfare, as well as the accommodation that can be accessed and the long-term security of the residence permission held.¹⁸¹ International protection applicants are granted labour market access six months after lodging an application for international protection, they have access to the weekly allowance for residents of IPAS, and are provided with accommodation in IPAS accommodation centres for the duration of their international protection application (Department of Children, Equality, Disability, Integration and Youth, 2021). Suspected victims of human trafficking who do not have an immigration permission in the State are issued with a TRP on a Stamp 4 basis. As a result, they can immediately access the labour market, and, on the basis of this Stamp 4 permission, can also access social welfare supports and have the possibility to leave IPAS accommodation, as described in more detail below. However, holders of TRPs

¹⁷⁷ Interview with IHREC, July 2021.

¹⁷⁸ Interview with the Immigrant Council of Ireland, July 2021; Interview with MRCI, August 2021.

¹⁷⁹ Interview with the Immigrant Council of Ireland, July 2021.

¹⁸⁰ Interview with MRCI, August 2021.

¹⁸¹ Interview with IHREC, July 2021; Interview with the Immigrant Council of Ireland, July 2021.

are not eligible for family reunification. According to the Second National Action Plan, ‘each case will be considered on its merits’ (Department of Justice, Equality and Law Reform, 2016a, p. 14). For international protection applicants whose applications are successful, differences with TRP holders can arise in terms of, *inter alia*, family reunification, the security of the permission held, and, where refugee status is obtained, the number of years of residency required for citizenship (Immigrant Council of Ireland, 2021). For applicants, this can mean choosing between pursuing their international protection application or obtaining a TRP (GRETA, 2017, para 116). A person in the international protection procedure would have to first withdraw their international protection application to be eligible for a TRP.

The Immigrant Council of Ireland stated that a person who is awaiting the outcome of their international protection application should not be automatically excluded from the benefits of a TRP. In their view, a person should have the ability to have their protection claim examined in full, including the opportunity to be granted international protection and the rights that flow from the grant of such status, while availing of the other protections that emerge from holding a TRP, such as labour market access, educational opportunities, and social welfare, among others.¹⁸² The HSE’s Anti-Human Trafficking Team (AHTT) described how international protection legislation and human trafficking legislation should complement each other.¹⁸³

5.2 INTERNATIONAL PROTECTION AND *NON-REFOULEMENT*

Persons who are victims of human trafficking can also be in the international protection system. As described above, there are differences in treatment for suspected victims of trafficking who hold TRPs as compared to those who are international protection applicants. This section examines provisions related specifically to international protection grounds and *non-refoulement*.

While not all victims of human trafficking may be seeking international protection on the grounds of being a victim of human trafficking, some victims of human trafficking have been recognised as qualifying for refugee status by virtue of being a victim. Indeed, in case law from the International Protection Appeals Tribunal (IPAT), being a victim of trafficking has been considered a ‘Convention ground’. Being a victim of trafficking has been understood to be a type of membership in a particular social group. IPAT has also held that some countries are unable to provide adequate state protection for victims of trafficking.¹⁸⁴ This section

¹⁸² Interview with the Immigrant Council of Ireland, July 2021.

¹⁸³ Correspondence with AHTT, HSE, March 2022.

¹⁸⁴ International Protection Appeals Tribunal, 1872932-IPAP-18 and 1952090-IPAP-19.

examines the protection of victims of human trafficking from *non-refoulement*, the application of the Dublin III Regulation and the Istanbul Convention.

5.2.1 Protection from *non-refoulement*

Non-refoulement is a principle of human rights law that prohibits states from removing or transferring persons from their jurisdiction to another jurisdiction where they would face a risk of ill-treatment, torture, inhuman or degrading treatment or punishment, or other serious violations of human rights.¹⁸⁵ For victims of human trafficking, *non-refoulement* is protection from being removed to a state where they may face this risk. For international protection applicants, *non-refoulement* concerns are addressed as part of an international protection application.

In national legislation, pursuant to section 50(1) of the *International Protection Act 2015*:

*a person shall not be expelled or returned in any manner whatsoever to the frontier of a territory where, in the opinion of the Minister (a) the life or freedom of the person would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or (b) there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.*¹⁸⁶

Where a person's international protection application is deemed to be inadmissible pursuant to section 21 of the *International Protection Act 2015*,¹⁸⁷ or where a person is issued with a deportation order pursuant to section 3 of the *Immigration Act 1999*, as amended, such decisions can only be issued subject to the State's *non-refoulement* obligations.¹⁸⁸ As described above, for persons who are identified as suspected victims of trafficking and subject to deportation orders, they can request their identification as a victim be:

taken into account in any consideration of whether a proposal to make a deportation order should now be made under section 3(3) of the Immigration Act 1999 (Department of Justice and Law Reform, 2011).

¹⁸⁵ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), Refugee Convention 1951 and the 1967 Protocol; Article 3 of the *European Convention of Human Rights*; Article 4 of the *Charter of Fundamental Rights of the European Union*.

¹⁸⁶ Section 50(1), *International Protection Act 2015*.

¹⁸⁷ Section 21, *International Protection Act 2015*.

¹⁸⁸ Section 51, *International Protection Act 2015*.

5.2.2 Dublin III Regulation

The Dublin III Regulation determines the Member State responsible for a person's international protection application, and some victims of trafficking may be subject to a Dublin transfer decision.¹⁸⁹ Where it is found that the person's international protection application is not to be heard in Ireland, but in another EU Member State, they will be transferred to that State.

Where a concern regarding trafficking arises during the Dublin procedure, the case is referred by the Dublin Unit in the IPO to the IPO's Designated Officer for human trafficking. Where the person is thought to be a victim of trafficking, the IPO will refer the person to the HTICU, which is done via a dedicated IPO database.¹⁹⁰

Victims of trafficking who are in the Dublin procedure are entitled to a 60-day recovery and reflection period.¹⁹¹

In the Guide to Procedures for Victims of Human Trafficking,¹⁹² it states that a person subject to a Dublin transfer will not be removed from the State while a decision is taken on whether there are reasonable grounds to believe the person is a victim of human trafficking. It further provides that:

you may be transferred outside Ireland if your asylum application is under the Dublin II Regulation and or it appears that the trafficking offence may have happened in another country. You will only be removed if the GNIB thinks that you are not a victim of trafficking in Ireland (Department of Justice and Law Reform, 2011).

Whereas some Member States have halted a Dublin transfer to another EU Member State for a victim of trafficking (EMN, 2022), the Repatriation Unit in the Department of Justice reported that no relevant cases had arisen in their experience.¹⁹³ Similarly, the IPO reported that there were no cases under Article 17 of the Dublin III Regulation, which allows Ireland to hear the case instead of pursuing the transfer procedure, concerning potential or identified victims of trafficking.¹⁹⁴

¹⁸⁹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, pp. 31-59.

¹⁹⁰ Correspondence with the International Protection Office, September 2021.

¹⁹¹ Interview with HTICU, August 2021.

¹⁹² The reference to the Dublin Regulation is outdated in this document. Reference is made to the previous Dublin II Regulation.

¹⁹³ Correspondence with the Repatriation Unit, ISD, September 2021.

¹⁹⁴ Correspondence with the International Protection Office, September 2021.

5.2.3 Istanbul Convention

The EMN-wide study asked Member States questions as regards the Istanbul Convention on preventing and combating violence against women and domestic violence, which Ireland ratified in 2019 (EMN, 2022). A Council of Europe treaty, it provides a legal framework for the protection of women from violence.¹⁹⁵

Article 60 of the Istanbul Convention relates to gender-based asylum claims, and necessitates, *inter alia*, the implementation of:

*necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.*¹⁹⁶

The *International Protection Act 2015* defines acts of persecution to include acts of a gender-specific nature.¹⁹⁷ With regard to specific social groups, the *International Protection Act 2015* provides that:

*gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.*¹⁹⁸

Article 61 of the Istanbul Convention concerns *non-refoulement*, requiring parties to the Convention to implement necessary legislation or other measures to:

*ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.*¹⁹⁹

In Ireland, when a person is identified as a presumed victim of trafficking by An Garda Síochána and there are ongoing removal proceedings, a stay is placed on any removal proceedings.²⁰⁰ As detailed above, the Second National Action Plan clarifies that where a person's international protection application is refused, the

¹⁹⁵ Council of Europe Convention on preventing and combating violence against women and domestic violence.

¹⁹⁶ Article 60(3), Council of Europe Convention on preventing and combating violence against women and domestic violence.

¹⁹⁷ Article 7(2)(f), *International Protection Act 2015*, as amended.

¹⁹⁸ Article 8(3)(b), *International Protection Act 2015*, as amended.

¹⁹⁹ Article 61, Council of Europe Convention on preventing and combating violence against women and domestic violence.

²⁰⁰ Interview with HTICU, An Garda Síochána, August 2021.

fact that they are a victim of trafficking should be considered in assessments of permission to remain. It states that:

in such cases, a temporary residence permission under the Administrative Immigration Arrangements will automatically issue, pending consideration of any other forms of immigration permission of which the person may wish to avail (Department of Justice, Equality and Law Reform, 2016a, p. 14).

5.3 ACCESS TO HEALTHCARE

Upon identification, the HTICU refers all suspected victims of trafficking to the HSE AHTT, except for child victims of trafficking who are in the care of Tusla.²⁰¹ The AHTT is a team of social workers and medical staff, and they have recently employed a senior psychologist.²⁰² The services they facilitate are medical, legal, immigration and social services.²⁰³ The HSE AHTT stated that they are assigned to carry out a risks and needs assessment through care planning, identifying relevant State agencies and NGOs to meet the needs of the victims, acting as bridge between State agencies and NGOs, as well as monitoring and evaluating the impact of support services on victims' recovery and empowerment. The AHTT further described how they also carry out home visits to suspected victims of human trafficking. The HSE AHTT work closely with the relevant Garda detective in relation to a victim's protection.²⁰⁴ The medical services provided by the AHTT in their clinic are mainly sexual health services. The AHTT have stated that while the services provided are typically in a clinical setting, they are cognisant of why that can be particularly difficult for women who have been trafficked for sexual exploitation.²⁰⁵ As described above, a challenge reported by the AHTT is the initial delay in the identification process. As a result, the AHTT are delayed in implementing care planning.²⁰⁶ A further challenge faced by the AHTT is the limited data available on the general health of victims of human trafficking as there is no centralised medical screening. The psychological impact of human trafficking and the difficulties faced by women in being separated from their children are two long-term issues that face many who present to the AHTT.²⁰⁷

If a suspected victim of human trafficking is resident in an IPAS accommodation centre and is an international protection applicant, they have access to primary

²⁰¹ Correspondence with HTICU, An Garda Síochána, February 2022.

²⁰² Linda Latham (December 2020). 'Presentation to conference on Assisting Trafficked Women. Immigrant Council of Ireland'. www.youtube.com/watch?v=l6avAABpDdl.

²⁰³ Correspondence with AHTT, HSE, March 2022.

²⁰⁴ *Ibid.*

²⁰⁵ Linda Latham (December 2020). 'Presentation to conference on Assisting Trafficked Women'. Immigrant Council of Ireland. www.youtube.com/watch?v=l6avAABpDdl.

²⁰⁶ Correspondence with AHTT, HSE, March 2022.

²⁰⁷ Linda Latham (December 2020). 'Presentation to conference on Assisting Trafficked Women. Immigrant Council of Ireland'. www.youtube.com/watch?v=l6avAABpDdl.

healthcare and a Medical Card (Department of Children, Equality, Disability, Integration and Youth, 2021). Through the Medical Card, suspected victims of trafficking can get referrals for psychological services. However, in practice, these can be hard to access.²⁰⁸ MRCI suggested that victims of trafficking should be provided with list of counsellors who have suitable training to work with persons who are victims of trafficking and are funded to do so.²⁰⁹ Some emotional and psychological supports can also be provided by NGOs, such as those provided by Ruhama (2019).

In the EMN study, the majority of Member States and Norway indicated that they provided medical assistance to (presumed) victims of trafficking who are third-country nationals. However, some Member States place limits on this, with some Member States providing medical assistance only during the reflection period. In Germany, for instance, access to medical treatment depends on residence status and the federal state in which they reside. In Poland, medical treatment is provided only during the reflection period and to asylum applicants (EMN, 2022).

5.4 ACCOMMODATION

Potential and suspected victims of trafficking in persons can be accommodated in IPAS accommodation centres for international protection applicants (Department of Justice and Law Reform, 2012; GRETA, 2021). Where the victim of trafficking is not an international protection applicant, this is for the duration of the recovery and reflection period. Nonetheless, IPAS stated that many victims of trafficking will remain in IPAS accommodation for longer periods. Each case is taken on a case-by-case basis and IPAS works with the HSE AHTT in this regard.²¹⁰ The AHTT can also assist victims of trafficking in accessing housing supports.²¹¹

Between 2015 and 2019, 180 suspected victims of trafficking were housed in IPAS accommodation.²¹² Table 5.1 details the number of victims of trafficking housed each year.

²⁰⁸ Interview with MRCI, August 2021.

²⁰⁹ *Ibid.*

²¹⁰ Correspondence with IPAS, October 2021.

²¹¹ Organisation for Security and Cooperation in Europe (April 2018). 'Presentation by Linda Latham, Manager of the Anti-Human Trafficking Team and Women's Health Service, Health Service Executive, Ireland'. Available at: www.osce.org.

²¹² Houses of the Oireachtas (27 January 2021). Response to Parliamentary Question 3737/21. Available at: www.oireachtas.ie.

TABLE 5.1 NUMBER OF SUSPECTED VICTIMS OF HUMAN TRAFFICKING HOUSED IN IPAS ACCOMMODATION (2015-2019)

Year	Number of suspected victims of human trafficking accommodated in IPAS accommodation
2015	49
2016	37
2017	27
2018	23
2019	44
TOTAL	180

Source: Houses of the Oireachtas (27 January 2021). Response to Parliamentary Question 3737/21. Available at: www.oireachtas.ie.

At the time of writing, there is no specialised accommodation facility for victims of human trafficking.²¹³ However, DCEDIY are soon to tender for new accommodation centres and if a suitable proposal for human trafficking accommodation is received, it will be examined.²¹⁴ The establishment of a specialised facility was a recommendation in both the 2013 and 2017 GRETA reports (GRETA, 2013; 2017).

The issue of accommodation has been the subject of criticism. The Immigrant Council of Ireland has called for ‘appropriate gender sensitive accommodation facilities’, particularly for women and girls trafficked for the purpose of sexual exploitation (Immigrant Council of Ireland, 2020b, p. 2). The Immigrant Council of Ireland and IHREC state that this appropriate accommodation must cater to the particular needs of victims of human trafficking and provide a safe environment in which to recover.²¹⁵ In a report from the end of 2021, the Immigrant Council of Ireland stated that the lack of appropriate accommodation exposed victims of human trafficking ‘to discrimination practices, a risk of destitution, and a risk of re-trafficking’ (Immigrant Council of Ireland, 2021, p. 10). In IHREC’s most recent submission to GRETA, it highlights the delays in the establishment of a specific accommodation facility. It emphasised that:

in tendering for such services, the financial considerations have to be balanced with the relevant expertise of the provider in a way that ensures the accommodation is safe, gender-specific and conducive to recovery from extensive trauma (IHREC, 2021b, p. 40).

With regard to current IPAS accommodation, concerns have been raised about whether staff and management are sufficiently trained on issues of human

²¹³ Interview with Immigrant Council of Ireland, July 2021; Interview with IHREC, July 2021.

²¹⁴ Correspondence with Community Safety Policy Unit, Department of Justice, February 2022.

²¹⁵ Interview with the Immigrant Council of Ireland, July 2021; Interview with IHREC, July 2021. See also: Irish Human Rights and Equality Commission (IHREC) (5 September 2016). ‘IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland’. Available at: www.ihrec.ie.

trafficking and the supports required (Joint Oireachtas Committee on Justice and Equality, 2019), as well as the sharing of rooms and sexual harassment reported in mixed gender accommodation centres (Immigrant Council of Ireland, 2020b). Similar concerns were raised in GRETA's last report on Ireland (GRETA, 2017). Additionally, IOM Ireland noted that the addresses of accommodation centres are publicly available, and the supports provided to victims in centres are not the same as those that would be provided in a Domestic Violence refuge/shelter, where tailored services are available on site.²¹⁶ Doyle and Murphy (2019) detailed how some victims of human trafficking they interviewed did not understand where they had been placed and experienced confusion during their time in IPAS accommodation. While many interviewees for the Doyle and Murphy study valued the basic amenities provided, some felt it was at the same time disempowering. One interviewee cited 'the lack of 'control of your life', and described queuing at mealtimes as 'like prisoners holding the tray, metal cereal bowls or whatever' (Doyle and Murphy, 2019, p. 242). Doyle and Murphy detailed the needs of victims of human trafficking identified by interviewees that go beyond 'basic shelter', and included support groups, counselling, legal advice on-site and 'organised meaningful activities' (Doyle and Murphy, 2019, p. 243; see also: Immigrant Council of Ireland, 2020a).

Among the recommendations of the 2020 *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* was that appropriate accommodation, with additional supports and services, be provided to victims of trafficking and sexual or gender-based violence. It stated that in the interim, 'priority should be given to designating private, non-shared rooms to trafficked people who have been abused' (Department of Justice, 2020b, p. 13). In February 2021, the government's *White Paper to End Direct Provision and to Establish a New International Protection Support Service* proposed to offer 'more bespoke housing arrangements to applicants, particularly to survivors of human trafficking and sexual exploitation' (Department of Children, Equality, Disability, Integration and Youth, 2021, p. 35). IHREC have stated concerns that:

the commitments in the White Paper do not address in sufficient detail the needs of victims of trafficking, who can be victims of crime committed against them within the State and, as such, experience different safety needs (IHREC, 2021b, p. 41).

Across the EU, the provision of accommodation to victims of human trafficking can differ. The majority of Member States provide accommodation throughout the procedure, while others, including Ireland, can limit the provision of

²¹⁶ Interview with IOM Ireland, July 2021.

accommodation depending on the situation of the victim of human trafficking (e.g. after the reflection period where the person is not an international protection applicant) (EMN, 2022). In the Netherlands, there are specific shelters for victims of human trafficking funded by the government called ‘Categorical Shelters for Victims of Human Trafficking’ (*Categoriale Opvang Slachtoffers Mensenhandel*). Minor third-country national victims of human trafficking can also be placed in protected shelters for children (EMN, 2022). In most Member States, access to accommodation is primarily provided by civil society organisations or municipalities. In some cases, the civil society organisations providing these services are funded by the State, as in the Netherlands (EMN, 2022).

5.5 ACCESS TO LEGAL AID

Legal advice for suspected victims of trafficking was put on statutory footing in the *Civil Law (Miscellaneous Provisions) Act 2011*, which amended the *Civil Legal Aid Act 1995*.²¹⁷

The Legal Aid Board provides legal advice to suspected victims of trafficking in human beings on the following issues:

- Legal status and the Administrative Immigration Arrangements;
- Redress through the employment protection legislation (legal advice only);
- Information on what is involved in a criminal trial for a victim/witness;
- Information on compensation;
- Information on voluntary return home;
- Criminal matters related to the trafficking offence.²¹⁸

The Legal Aid board provides legal advice to victims of alleged sexual offences and in some cases, legal representation if the victim’s prior sexual history is to be brought up by the accused at trial.²¹⁹

The Legal Aid Board has a Human Trafficking Specialised Unit and the legal aid provided is free for suspected victims of trafficking (GRETA, 2021). In 2020, 19 potential victims of human trafficking were referred to the Legal Aid Board and availed of legal services (see Table 5.2 for year-on-year figures).

²¹⁷ Section 3, *Civil Law (Miscellaneous Provisions) Act 2011* amending section 26 of the *Civil Legal Aid Act 1995*.

²¹⁸ Legal Aid Board, ‘Legal Advice for potential Victims of Human Trafficking’. Available at: www.legalaidboard.ie.

²¹⁹ Legal Aid Board, ‘Legal Advice for potential Victims of Human Trafficking’. Available at: www.legalaidboard.ie.

TABLE 5.2 VICTIMS OF HUMAN TRAFFICKING REFERRALS TO LEGAL AID BOARD (2015-2020)

Year	Number of potential victims of human trafficking referred to the Legal Aid Board and availed of legal services
2015	34
2016	54
2017	31
2018	21
2019	9
2020	19

Sources: Legal Aid Board (2016). *Annual Report 2015*; Legal Aid Board (2017). *Annual Report 2016*; Legal Aid Board (2018). *Annual Report 2017*; Legal Aid Board (2019). *Annual Report 2018*; Legal Aid Board (2020). *Annual Report 2019*; Legal Aid Board (2021). *Annual Report 2020*. www.legalaidboard.ie.

One challenge raised by IOM Ireland and the Immigrant Council of Ireland is that legal aid is not provided at an early stage (i.e. prior to entering the NRM, during the identification procedure).²²⁰ IOM Ireland reported that early legal intervention is key to ensuring adequate victim support, particularly given the importance of victim cooperation in investigation of human trafficking.²²¹

Information and advocacy support may be provided by NGOs such as MRCI and Ruhama, as well as international organisations such as IOM Ireland. Victims may also have access to legal advice and representation through Independent Law Centres such as Immigrant Council of Ireland and the Irish Refugee Council, as well as pro bono legal representation, or they may pay for their legal representation privately.²²²

With regard to compensation, courts can rely on section 6 of the *Criminal Justice Act 1993* to require the convicted person pay a Compensation Order to the victim; in addition to any other penalty imposed, civil action can also be pursued. Compensation may also be sought by way of the Criminal Injuries Compensation Tribunal (GRETA, 2021). The Workplace Relations Commission also has an adjudication service to recover unpaid wages and a victim of trafficking could use this mechanism. However, as highlighted by MRCI, there are limitations in the legal aid that can be provided to victims of trafficking in employment cases.²²³ In particular, for the Criminal Injuries Compensation Tribunal and the Workplace Relations Commission, the Legal Aid Board can provide information but not representation.²²⁴ The Immigrant Council of Ireland stated that it is their experience that victims of trafficking for sexual exploitation ‘do not currently have

²²⁰ Interview with the Immigrant Council of Ireland, July 2021; Interview with IOM Ireland, July 2021.

²²¹ Interview with IOM Ireland, July 2021.

²²² Interview with Immigrant Council of Ireland, July 2021.

²²³ Interview with MRCI, August 2021.

²²⁴ Legal Aid Board, ‘Legal Advice for potential Victims of Human Trafficking’. Available at: www.legalaidboard.ie.

viable avenues to compensation in the majority of cases', particularly as compared to victims of trafficking for labour exploitation (Immigrant Council of Ireland, 2021, p. 30).

A challenge raised by the Community Safety Policy unit in the Department of Justice in terms of access to justice regarded the delays in prosecutions of trafficking crimes. Some cases can take a number of years, and victims of trafficking may decide, due to the length of proceedings, to drop their case.²²⁵

The EMN-wide study found that nearly all states that contributed to the study allowed (presumed) victims of trafficking to access legal counselling and representation during the reflection period. However, the situation varied after the reflection period, with only half of reporting states granting legal counselling and legal representation throughout all phases of a victim's identification and protection journey (EMN, 2022). In Ireland, which falls in the latter group, legal counselling can be provided upon identification and throughout the protection process.

5.6 ACCESS TO INFORMATION, INTERPRETATION AND VICTIM PROTECTIONS

With regard to access to information, according to the Second National Action Plan, victims of human trafficking are provided with leaflets and guides 'with clear, user-friendly information on their rights and the services available to them' (Department of Justice, Equality and Law Reform, 2016a, p. 48). Part of the information provided to victims includes the *Guide to Procedures for Victims of Human Trafficking* (in plain English), which the Department of Justice published in 2011 (Department of Justice and Law Reform, 2011). However, some of the information contained in this Guide, such as the names of services, is outdated. Information is also provided by the HSE's AHTT, and can also be provided by NGOs, such as the Immigrant Council of Ireland, the Migrant Rights Centre Ireland and Ruhama.

With regard to interpretation, the HTICU stated that it can be provided throughout the procedure, where needed.²²⁶ The HTICU also stated that victim information booklets can be provided to victims of human trafficking, which set out their rights and are available in a number of languages, including Amharic, Arabic, Bengali, Farsi, Georgian, Hindi, Kurdish, Portuguese, Russian, Somali, Spanish, Thai, Urdu

²²⁵ Interview with Community Safety Policy unit, Department of Justice, September 2021.

²²⁶ Interview with HTICU, An Garda Síochána, August 2021.

and Yoruba, among others.²²⁷ However, as described by Conway et al. (2022), access to interpretation in police stations in Ireland can be limited in practice. Although the study focused on criminal defence settings, concerns were raised by solicitors interviewed in their research on, *inter alia*, the process of securing interpreters, the quality of interpretation provided, the independence of interpreters and an urgent need for training of interpreters (Conway et al., 2022).

In an effort to improve access to information, the Department of Justice and IOM Ireland are collaborating on an initiative called 'Protect 2 Project', which seeks to introduce cultural mediators to support vulnerable victims and witnesses who have a migrant background, in particular victims of human trafficking and survivors of sexual and gender-based violence. Cultural mediators serve to facilitate trust, respect and communication between service providers and migrant and ethnic minority service users. They provide cultural context to service providers and information on services and processes to service users.²²⁸ According to the Irish government's recent submission to GRETA:

Building trust and providing cultural interpretation, these mediators will be fundamental in supporting and enhancing victim referrals, overall engagement and the effective information provision to those otherwise unwilling or unable to access or navigate mainstream national services (GRETA, 2021, p. 5).

Following identification as a suspected victim of trafficking, a person will also be visited by a Crime Prevention Officer (CPO) from An Garda Síochána, who will advise them about their personal safety and security, including advice about cutting contact and protecting themselves from the trafficker.²²⁹ The *Criminal Justice (Victims of Crime) Act 2017* transposes the EU Directive on Victims' Rights 2012/29/EU. Under this Act, victims of human trafficking have a number of rights in their criminal proceedings, including special protection mechanisms in court. HTICU reported as a good practice the recent legislative changes to improve the rights of victims of crime, including in the *Criminal Justice (Victims of Crime) Act 2017*.²³⁰ The Act provides for, *inter alia*, a requirement to assess the needs of the victim, the application of protection measures and special measures during investigations, and special measures to be implemented during the investigation, including in interviews.²³¹ The HTICU also stated that there are special protection mechanisms at court for victims of crime and there is a voluntary organisation called Victim Support at Court (V-SAC), which can assist victims during their court

²²⁷ Correspondence with HTICU, An Garda Síochána, February 2022. See: Garda Victim Service. Available at: www.garda.ie/en/victim-services/garda-victim-service/.

²²⁸ Correspondence with IOM Ireland, March 2022.

²²⁹ Interview with HTICU, An Garda Síochána, August 2021.

²³⁰ *Ibid.*

²³¹ *Criminal Justice (Victims of Crime) Act 2017.*

cases.²³² Although no research has been conducted specifically on victims' rights for victims of trafficking, in a review of literature report for the Department of Justice and Equality on victims' interactions with the criminal system, Deirdre Healy describes how:

[d]espite a raft of measures designed to enhance victims' experiences with the criminal justice system, this review shows that victims' rights are not always correctly implemented or enforced in practice. To address this issue, victim advocates have been appointed in some jurisdictions to help victims navigate the criminal justice system and to protect their rights (Healy, 2019, p. 96).

5.7 ACCESS TO SOCIO-ECONOMIC SUPPORTS

This section presents information on access to social welfare as well as to broader socio-economic supports and integration. First, with regard to social welfare, where a presumed victim of human trafficking is resident in an IPAS accommodation centre, they are provided with meals and have access to the weekly allowance of €38.30 for adults, and €29.80 for children (Department of Children, Equality, Disability, Integration and Youth, 2021). This is not a standard social welfare payment and is specific for residents of IPAS accommodation. According to the Administrative Immigration Arrangements, they can also be provided with exceptional needs payments (Department of Justice and Law Reform, 2011).

For all victims of trafficking, including those who do not reside in IPAS accommodation centres, the Operational Guidelines for the Habitual Residence Condition (HRC) state that the Department of Employment Affairs and Social Protection has an arrangement with the AHTT in the HSE through which they are notified that a person is a victim of trafficking.²³³ The Guidelines state that persons covered by the Administrative Immigration Arrangements:

*should be regarded as satisfying HRC for the period covered. It is also important to treat potential Victims of Human Trafficking with the utmost sympathy and avoid over-intrusive questioning of their circumstances.*²³⁴

Victims of trafficking can therefore access social welfare based on meeting the HRC. However, no information is available on the number of victims of human trafficking availing of social welfare supports. According to the HSE AHTT, victims

²³² Correspondence with HTICU, An Garda Síochána, October 2021.

²³³ Department of Employment Affairs and Social Protection (2020). 'Operational Guidelines for Deciding Officers and Designated Persons on the determination of Habitual Residence'. Available at: www.gov.ie/en/publication/fc9c5e-operational-guidelines-for-deciding-officers-on-the-determination-of.

²³⁴ *Ibid.*

of human trafficking who are international protection applicants do not have access to these social welfare payments.²³⁵

The HSE AHTT highlighted that the HRC remains a barrier in access to rent supplements under the Housing Assistance Payments (HAP) programme with local councils, and the six-month TRP limits their clients' access to housing and educational grants.²³⁶

During the COVID-19 pandemic, there was a firewall (block on information sharing) between the Department of Social Protection and the Department of Justice and as such, persons who had lost their job but were undocumented (with a PPS number) could apply for the Pandemic Unemployment Payment.²³⁷ MRCI reported this as a good practice in that undocumented persons who might have otherwise fallen into destitution and been exposed to an increased vulnerability to exploitation were able to access supports.²³⁸ It allowed undocumented persons, among others, to access social welfare assistance without their immigration status being communicated to the Department of Justice. Moreover, potential victims of human trafficking who may not have wanted to report their situation, may have been able to also access such supports.²³⁹

In terms of labour market access, this varies depending on the legal status held. If the person is an international protection applicant, they can access the labour market six months after lodging their international protection application, if no first-instance decision has been taken on their application.²⁴⁰ If the person holds a TRP, they receive a 'Stamp 4' permission, allowing them to immediately access the labour market. The TRP must be renewed every six months. As reported by NGOs, and described above, the short length of these permissions can create difficulties for victims not only in the lapses it can sometimes produce in their residence permissions,²⁴¹ but as described by Doyle and Murphy (2019) can also contribute to the precarity of their legal status.

Training and educational courses can also be accessed via SOLAS, which is an agency of the Department of Further and Higher Education, Research, Innovation and Science.²⁴²

²³⁵ Correspondence with HSE AHTT, March 2022.

²³⁶ *Ibid.*

²³⁷ Migrant Rights Centre Ireland (22 April 2020). 'Rights of undocumented workers to access social welfare supports during COVID-19'. Available at: www.mrci.ie.

²³⁸ Correspondence with MRCI, October 2021.

²³⁹ Interview with MRCI, August 2021.

²⁴⁰ *European Communities (Reception Conditions) (Amendment) Regulations 2021*, SI No 52/2021.

²⁴¹ Interview with MRCI, August 2021.

²⁴² SOLAS, www.solas.ie.

Lastly, NGOs such as Ruhama also provide educational, training and employment support to victims of human trafficking (Ruhama, 2019), but not as part of the NRM. More broadly, however, there are no specific State-run programmes to support victims of human trafficking in labour market integration or broader socio-economic integration (see also, Immigrant Council of Ireland, 2021).

5.8 VOLUNTARY RETURN

Where a third-country national who is a victim of trafficking voluntarily wishes to return to their country of citizenship or residence, Irish authorities cooperate with IOM Ireland and third countries to assist the person in returning.²⁴³ The IOM runs an Assisted Voluntary Return Program (AVRR) to assist these persons. They can provide them with additional supports throughout the return process as well as post-arrival, including escorts throughout travel, shelter accommodation, medical and psycho-social support as well as reintegration grants. In voluntary return procedures where the IOM is involved, a screening mechanism is used by IOM staff to detect persons who may be victims of trafficking.²⁴⁴

Between 2017 and 2020, 29 EU and non-EU national potential or suspected victims of trafficking were provided with assistance in returning to their country of origin or habitual residence by IOM Ireland.²⁴⁵

5.9 PROTECTION FOR CHILD VICTIMS OF TRAFFICKING

For children, Tusla Child and Family Agency reported that they have a procedure in place to detect children who have been sexually exploited or may be a victim of trafficking. If Tusla believes a child is a victim of trafficking and has no appropriate carer available to them, the child may be received into the care of Tusla. When a child is in care, an individual care plan is developed for them, and they are allocated a social worker from Tusla.²⁴⁶

Tusla stated that children in their care have access to medical care, including psychological supports through their therapy services.²⁴⁷ Where individual children have individual needs, private expertise can also be sourced. Tusla can also contact Spirasi, the national centre for the rehabilitation of victims of torture in Ireland, which have recently expanded their services to include children.²⁴⁸ Tusla also

²⁴³ Correspondence with Repatriation Unit, ISD, September 2021.

²⁴⁴ Interview with IOM, July 2021.

²⁴⁵ Correspondence with IOM Ireland, March 2022.

²⁴⁶ Interview and correspondence with Tusla, January 2022.

²⁴⁷ Interview with Tusla, January 2022.

²⁴⁸ *Ibid.*

supports children in access to education, providing for their social and recreational needs, as well as after-care needs, for when the child reaches the age of majority.²⁴⁹

In terms of accommodation, Tusla stated that the children's residential unit for separated children can be used, and these units are appropriate places for children who are victims of human trafficking. The teams in these centres would have heightened awareness around issues of trafficking. Tusla stated that they try to place children who are victims of human trafficking into foster family placements and often outside of Dublin.²⁵⁰

5.10 CONCLUSION

This chapter has outlined the various protections provided to victims of human trafficking as part of the current NRM in Ireland. This includes an initial 60-day recovery and reflection period, access to a TRP for undocumented victims of human trafficking, accommodation in an IPAS accommodation centre, access to healthcare principally through the HSE Anti-Human Trafficking Team, access to civil legal aid through the Legal Aid Board, access to information and interpretation, and socio-economic supports. It has also provided information on the protections for children.

In detailing these protections, this chapter has also set out the key challenges raised by NGOs and in the literature that relate to each type of protection provided. Principal among the challenges are the differences in treatment for suspected victims of trafficking who hold TRPs as compared to those who are international protection applicants, and the lack of specialised and appropriate accommodation facilities for victims of human trafficking.

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

CHAPTER 6

Conclusion

In Ireland, the official number of persons identified as suspected victims of trafficking has gradually decreased between 2015 and 2020. Overall, 356 persons were identified as suspected victims of trafficking between 2015 and 2020, 38 of whom were identified in 2020. The lower figure for 2020 may be due to the impact of COVID-19. As compared to other EU countries, Ireland was ranked in the middle in terms of the number of victims of human trafficking identified for 2017 and 2018 when made proportional to population.

This study has contextualised the situation in Ireland in the broader EU context and presented an in-depth mapping of the procedures and practice of detecting, identifying and protecting third-country national victims of human trafficking in Ireland.

The first stage examined in this study was detection. Among the ways a situation of human trafficking can be detected are the collection of indicators, training and awareness-raising campaigns, Garda raids, inspections, screening in international protection and migration procedures, self-reporting by the victim of human trafficking themselves or a referral from an NGO. Nonetheless, NGOs interviewed for this study highlighted that more efforts need to be made for the detection of victims of human trafficking, particularly in terms of screening for victims of human trafficking in migration procedures and in the training of frontline personnel. Concerns were also raised with regard to the effectiveness of methods such as raids by An Garda Síochána and Workplace Relations Commission inspections.

The identification procedure operated by An Garda Síochána in Ireland is the sole pathway into the National Referral Mechanism (NRM), through which victims of human trafficking can access supports. The identification procedure entails a reasonable grounds assessment conducted by the first member of An Garda Síochána to encounter the victim of human trafficking. The same identification procedure is followed regardless of nationality or immigration status. However, several challenges were identified in the operation of the procedure, which may result in fewer victims of human trafficking being officially identified. These include the fact that An Garda Síochána is the sole competent authority for identification, difficulties faced in early identification, such as in criminal cases, and that the identification procedure of An Garda Síochána is not on statutory footing. These current challenges were among the key issues highlighted previously in the 2014 EMN Ireland/ESRI report on human trafficking (Joyce and Quinn, 2014).

The final part of this study presented the protections that identified suspected victims of human trafficking can gain access to as part of the NRM. It should be noted that, according to the HTICU, victims of trafficking can be entered into the NRM even prior to identification. Following identification, a victim of human trafficking may avail of a 60-day recovery and reflection period, during which they are given time to recover and decide if they wish to cooperate in a criminal investigation. If the third-country national does not have an immigration permission, following the recovery and reflection period, they can be issued with a Temporary Residence Permission (TRP) for six months, which is renewable. The protections that form part of the NRM include, *inter alia*, accommodation, access to healthcare, socio-economic supports, and legal aid. However, non-State stakeholders pointed to limitations in the protections provided. In particular, concerns were raised by IRHEC and NGOs that the accommodation in IPAS accommodation centres is not appropriate for victims of human trafficking. Stakeholders also highlighted that victims who are also applicants for international protection have reduced access to social welfare and the labour market as compared to TRP holders. Further, the temporary nature of the TRP was identified as a source of uncertainty and insecurity.

Several good practices were also identified by stakeholders. These included the firewall between the Department of Social Protection and the Department of Justice that was introduced during the COVID-19 pandemic for social welfare supports. This allowed for undocumented persons who might have otherwise been vulnerable to exploitation on account of losing their job to access social welfare supports without fear of their immigration status being disclosed. The HTICU also reported recent efforts towards improving protections for victims of crime in criminal proceedings, in particular following the introduction of the *Criminal Justice (Victims of Crime) Act 2017*.

In terms of the available data on human trafficking in Ireland, while data are available on the number of identified suspected victims of human trafficking, there are no figures available on potential victims of human trafficking (i.e. victims of human trafficking who were not subsequently identified for reasons such as not continuing with the procedure or not meeting the definition of a victim of human trafficking). There are also discrepancies in the data available, which require further clarification. Further data on third-country nationals, and the breakdown in terms of gender, nationality and the purpose of trafficking are also required. Other limitations in data also arise with respect to the protections and supports that victims of human trafficking have access to. These data would allow for a better understanding of the extent to which victims of trafficking are accessing and availing of protections and supports in Ireland.

In May 2021, the Government proposed a revised NRM to expand the number of

bodies competent to identify victims of trafficking, to place the identification procedure on statutory footing, and to involve NGOs as ‘trusted partners’ in the NRM. Additionally, the government’s *White Paper to End Direct Provision and to Establish a New International Protection Support Service* (February 2021), also proposes specialised accommodation facilities for victims of trafficking.

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EMN Ireland is funded by the European Union's Asylum, Migration and Integration Fund and co-funded by the Department of Justice



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