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Human Trafficking

by

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WHAT IS HUMAN TRAFFICKING?

Trafficking in human beings is a gross violation of human rights, a modern form of slavery and an extremely profitable business for organised crime.

Governments first agreed on an international definition of trafficking in persons in 2000 in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organised Crime (commonly known as the Palermo Protocol). Article 3(a) of the Protocol provides:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

This definition has three distinct elements, which must be fulfilled for a situation to be one of trafficking – there must be an act, a means and a purpose. The **act** can be issues such as the recruitment, transportation, transfer, harbouring or receipt of persons. The act must be done **by a means** such as the threat or use of force or other forms of coercion; abduction; fraud; deception, abuse of power or of a position of vulnerability or the giving or receiving of payments and it must be for the **purpose of exploitation**. The **exploitation** will include, at a minimum, exploitation for the purposes of prostitution or other forms of sexual exploitation; exploitation for forced labour, slavery or similar practices or exploitation for the purposes of organ removal.

The consent of the victim is irrelevant when any of the means outlined above have been used. Furthermore, in the case of children, defined as anyone under 18 years of age, actions taken for the purpose of exploitation constitute trafficking even where the means have not been used. There is no requirement that a person must have crossed a border for trafficking to take place – it can and does take place within national borders.

Example of Labour Exploitation (not a real case)¹

Felipe and Consuelo, an illiterate married couple, aged in their early 20s living in a rural village in Brazil where they do occasional physical jobs and subsistence agricultural work. Their house and surrounding land was given to them by Felipe's father as a marriage gift – it had been the family home where Felipe was born and had been brought up. The difficult living conditions they faced led them to seek employment opportunities elsewhere and an acquaintance introduced them to a person named Juan who had previously worked in Europe. Juan promises them that he can arrange well paid jobs for them in Europe and he organises their travel documents and travel arrangements to Ireland where he says that he has found work for them. In exchange for this employment they agree to pay Juan the sum of US \$1,000 in advance and another US \$8,000 after three months work. As a guarantee Juan obtains signed documents that entitle him to buy their house and land for a sum of US \$2,000 within a month on the default of the US \$8,000. As Brazilian nationals do not require tourist visas for Ireland, Felipe and Consuelo travel on Brazilian passports and Juan organises the flight details. On arrival in Dublin, Felipe and Consuelo are met by someone and are taken by bus to a factory near Athlone where they are given beds in separate dormitories in converted cowsheds. In their work they have to use chemicals but receive no training or protective clothing. They are expected to work for 14 hours per day, six days per week and receive €3.50 per hour. Additional money is deducted from their wages to cover accommodation, food and other unspecified costs. On their day off they are only allowed to leave the factory complex with the authorisation of the manager. They soon realise that they will never be able to repay the US \$8,000 and that they will lose their family home.

EXTENT OF THE PROBLEM

It is difficult to estimate the extent of the crime, since criminal activities related to trafficking are hidden behind widespread phenomena such as prostitution or immigration. A wide range of estimates exist. The International Labour Organisation – the United Nations agency charged with addressing labour standards, employment and social protection issues – estimates that there are 12.3 million people in forced labour, bonded labour, forced child labour and sexual servitude at any given time. Annually, according to U.S. Government-sponsored research completed in 2006, approximately 800,000 people are trafficked across national borders, which does not include millions trafficked within their own countries. Approximately 80% of transnational victims are women and girls and up to 50% are minors with the majority being trafficked into commercial sexual exploitation. These numbers do not include millions of male and female victims around the world who are trafficked within their own national borders – the majority for forced or bonded labour.²

The scope of the problem in Ireland, as with many other countries, is, as yet, largely unknown. Some research has been conducted but these studies³ were conducted prior to the introduction of the Criminal Law (Human Trafficking) Act 2008, which defines human trafficking. Organisations applied their own definition of what constituted trafficking in human beings. The lack of a common definition of trafficking at that time had implications in terms of providing a reliable estimate of the extent of trafficking in Ireland in that a very broad definition of trafficking inflates the number of those understood as being trafficked. The study entitled 'The Nature and Extent of Trafficking of Women into Ireland for the Purposes of Sexual Exploitation 2000-2006' concluded that the probable minimum number of women trafficked into Ireland between 2000 and 2006 was 76. The report 'No Way Forward, No Going Back' was

¹ Sample case study provided by the International Organisation for Migration (IOM)

² US Trafficking in Persons Report, June 2008

³ The Nature and Extent of Trafficking of Women into Ireland for the Purposes of Sexual Exploitation 2000-2006: A Report of Findings, Wylie, Gillian and Ward, Eilis (2007) NUI Galway and No Way Forward, No Going Back: Identifying the problem of trafficking for forced labour in Ireland, Migrant Rights Centre of Ireland in association with Dublin City University (DCU) 2007

published in December, 2007 and it stated that 46 people, who had accessed the services of the Migrants Rights Association of Ireland (MRCI) between July, 2005 and December, 2007 had been trafficked for forced labour. The majority were male coming from Bangladesh, Pakistan, Egypt and the Philippines. They worked mostly in the hotel and catering industry with a number employed in private homes. A recent Report⁴ commissioned by the Immigrant Council of Ireland in co-operation with the Women's Health Project and Ruhama has been passed by the Minister for Justice, Equality and Law Reform to the Anti-Human Trafficking Unit (AHTU) in his Department to consider the findings and recommendations in this report.

The AHTU in the Department of Justice, Equality and Law Reform implemented a data collection strategy with effect from 1 January, 2009. It is based on the definition in the Criminal Law (Human Trafficking) Act 2008 and on a template being developed at EU level. The goal of the strategy is to collect information on possible/suspected cases of trafficking by means of a standardised template from a variety of different sources (including the Health Service Executive, non-Governmental Organisations, Government Agencies and An Garda Síochána). This information is then collated with a view to providing reliable and useful data on the nature and extent of trafficking on an on-going basis for the purpose of addressing the crime and providing appropriate supports to victims.

TRAFFICKING vs. SMUGGLING

There is a general misconception that human trafficking and the smuggling of persons and illegal immigration are the same issue. This is **not** the case – there is a clear difference. Trafficking is a crime which infringes the fundamental rights of persons, while smuggling is a violation of legislation protecting the borders. In the case of illegal migration facilitated by a smuggler there is an agreement between the migrant and the smuggler. The relationship between the two usually ends when the former enters the territory of the receiving state. In the case of trafficking illicit means such as coercion, deception or abuse of a position of vulnerability are used at a certain stage of the trafficking process. In addition the transfer of the person is carried out for the purpose of further exploitation, which normally starts in the country of destination. However, while there is a distinct difference between trafficking and smuggling the practices can be interlinked. What may start out as a process of smuggling can end up as one of trafficking. For example, a person smuggled into a country may be unable to pay for the cost of smuggling and end up being exploited in the same manner as a victim of trafficking.

⁴ Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland – Kelleher, Patricia; O'Connor, Monica; Kelleher, Carmel and Pillinger, Jane. Published 16th April, 2009

TRAFFICKING AND SMUGGLING: SIMILARITIES AND DIFFERENCES



Source - International Organization for Migration, February, 2009
©IOM

WHAT ARE THE ROOT CAUSES?

The reasons that make human beings victims of trafficking are generally broken down into two categories – the so called pull and push factors. These factors depend on whether the country is a country of origin, transit or destination for victims.

A number of causes of human trafficking in countries/regions of origin (the so called push factors) include:

- a low standard of living and/or lack of prospects
- abject poverty and unemployment, especially among women;
- a lack of political, social and economic stability;
- situations of armed conflict and oppression;
- domestic violence and disintegration of the family;
- gender discrimination and discrimination among minority groups;
- lack of education;
- violation of human rights
- the HIV-AIDS reality.

Causes of human trafficking in countries/regions of destination (the so called pull factors) include:

- the prospect of a better future

- the increasing demand for cheap labour – often for those sectors of the labour market for which it is difficult to recruit nationals.
- a rise in the demand for sex workers in a highly lucrative and globalising sex industry.

Other universal causes of human trafficking include:

- ever more limits and obstacles to legal migration channels to countries with stronger economies and/or regions with better prospects;
- a lack of public awareness of the dangers of trafficking;
- the high profit potential for those engaged in the criminal activity;
- the sophisticated organisation, resources and networking capacity of criminal networks;
- disintegration of social protection networks;
- widespread corruption in countries of origin, of transit and of destination among the persons capable or responsible for combating trafficking.

It is important to be aware that people in desperate situations - especially those in countries of origin - can be trafficked by people they know like family members, boyfriends, neighbours and acquaintances.

Example of Sexual Exploitation (not a real case) ⁵

One example of how this can arise in practice is the case of Rosita a 19 year old female from a mid-sized town in a central African state. Her mother died from an AIDS related illness when Rosita was 10 year old and her father gave her to some distant relatives to help with domestic chores i.e. cleaning, cooking and looking after the family babies in return for her upkeep and shelter. Rosita had to sleep on a corridor and was forbidden to go out unaccompanied by a family member. She was not allowed to continue her education but had a little English, which was widely spoken in the country. From the age of 12 Rosita was sexually abused by all male family members. One day a male friend of the family visited and offered to buy her. A deal was struck and Rosita left with the man who gave her a passport and instructed her on how to behave and what to say to immigration authorities. She travelled with this man and two other girls and was told that if she reported her situation to the police or any other authorities, she would be killed. On her arrival in London Rosita was brought to a flat where she was forced to provide sexual services to numerous men each day. After 18 months she was taken to a night club and handed over to another man in exchange for money. Rosita was then taken to Belfast and onwards to Cork where she was eventually discovered by members of An Garda Síochána, working in a brothel. Fearful of authority Rosita initially told lies about her circumstances. Specially trained members of An Garda Síochána met with and spoke to her on a number of different occasions. Eventually Rosita came to realise that An Garda Síochána could help her and she told them her true story. “Even if an individual lies about or refuses to disclose certain information on occasions, or forgets or changes parts of her/his story, this is not a reason to discredit other information they have provided or to determine the individual is untrustworthy.”

While this is a shocking story it is unfortunately the reality. It is estimated that the sale of people is the world’s third most lucrative criminal activity after arms trading and drug dealing.

HOW TO RECOGNISE A VICTIM OF HUMAN TRAFFICKING?

Recognising that a person may be a victim of human trafficking is not an easy task. Trafficking in persons is usually an “underground” crime and it is difficult to readily identify a trafficking victim and/or a trafficking scenario or to accept that trafficking

⁵ Extract from Training manual developed by the International Organisation for Migration (IOM) on victim identification and interviewing techniques.

may be taking place in our communities. Being familiar with some of the general indicators⁶ of trafficking will be of assistance. People who have been trafficked may act in one or more of the following ways:

- Be unable to leave their work environment;
- Show signs that their movements are being controlled;
- Show fear or anxiety;
- Be subjected to violence or threats against themselves or against their family members and loved ones;
- Suffer injuries that appear to be the result of an assault;
- 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;
- Not know their home or work address;
- Act as if they were instructed by someone else;
- Be unable to negotiate working conditions;
- Have no access to their earnings;
- Work excessively long hours over long periods;
- Live in poor or substandard accommodation;
- Have limited contact with their families or with people outside of their immediate environment;
- Be unable to communicate freely with others;
- Be under the perception that they are bonded by debt;
- Have had the fees for their transport to the country of destination paid for by facilitators, whom they must pay back by working or providing services in the destination countries;
- Have acted on the basis of false promises.

It is worth noting that no one willingly signs up to becoming a slave. Traffickers frequently recruit victims through fraudulent advertisements which promise legitimate jobs such as, for example, hostesses, domestics or work in the agricultural industry. Trafficking victims of all kinds come from rural and urban settings. There are tell-tale signs when commercial establishments are holding people against their will:

- Heavy security at the establishment including barred windows, locked doors, isolated location, electronic surveillance and people are never seen leaving the premises unless escorted;
- Victims live at the same premises as the brothel or work site or are driven between quarters and work by a guard;

⁶ UNGIFT - United Nations Global Initiative to Fight Human Trafficking - Trafficking – Indicators of Human Trafficking. www.ungift.org

COMPLEXITIES CAUSED BY CULTURAL DIFFERENCES

Slavery is an issue that many of us psychologically associate with distant lands and past times. Unfortunately this is far from the truth. The hidden nature of this crime is at odds with modern society. It can be difficult for us, as modern Irish citizens, to imagine the extreme poverty that causes a parent to sell their child or the cultural practices in some countries that enable the manipulation of men, women and children. According to recent research by the IOM⁷, men are increasingly being trafficked for forced labour purposes, in particular in the construction industry. In some cultures there is a relative acceptance of the concept of human servitude, in particular the servitude of women, children and the poor. This lack of equality translates into the acceptance of trafficking as a social “norm”. The extent to which trafficking is facilitated by social acceptance can greatly inhibit efforts to combat this offence. Awareness of social values that conflict with our own must be at least recognised, if not understood, if Ireland is to succeed in preventing and combating Human Trafficking.

HOW VICTIMS PRESENT THEMSELVES AND WHY?

Victims of human trafficking may suffer from anxiety, panic attacks, memory loss, depression, substance abuse and eating disorders or a combination of these conditions. People who have suffered at the hands of traffickers may be conditioned to mask the truth and severity of the trauma which they have experienced. Victims may have been led to believe that no one will believe their story and warned to be distrustful of people in authority and of the motives of those who are actually trying to help them. It is not uncommon that, as a relationship of trust builds between a victim and, for example, a member of the Garda Síochána, changes to the victim’s original statement may unfold. The changed version of events should not necessarily always be perceived to be lies or untruths. The impact of trauma can make the job of first responders and those trying to assist victims very difficult.

The repercussions of human trafficking on a victim are complex and varied. Those dealing with victims must show compassion and respect. They should familiarise themselves with the reverberations of trauma and how it manifests itself, both physically and psychologically, so that they have a better understanding of the manner in which victims present themselves.

An issue to be aware of is the use of voodoo (juju) in the trafficking of persons and its effect on victims. Voodoo/Juju is an old cultural religious practice of Africans rooted in the ancestral spirit worship. The Priests, of such voodoo/juju religious practices, are usually reputed to have the power of life and death and to be able to communicate with the dead. The services they provide are utilized by many people – the rich and the poor, the educated and the illiterate, men and women. Traffickers subject their victims to an oath of allegiance, confidentiality, loyalty and faithfulness as a precondition to be employed in their “business undertakings” abroad. The Priest

⁷ ‘Trafficking of men - a trend less considered : The case of Belarus and Ukraine’.

www.iom.int/jahia/Jahia/cache/offonce/pid/1674?entryId=20571

takes body parts or samples e.g. fingernails, hair, blood, etc. as part of the oath. The victim believes that their being – that is, their very existence - is represented in those items collected and kept by the Priest at a “shrine”. A deviation from the terms of the oath is believed to result in death or insanity of the victim concerned in a manner that will cast shame and hatred on his/her immediate family within that society forever.

When the oath has taken place, the victim is then indebted to the trafficker and can, for example, be bonded to repay a loan on arrival at the destination country for the voodoo oath. The so called loan sometimes includes travelling expenses, protection, accommodation, food, clothing, etc at the destination country. It symbolizes that the Priest can punish you remotely if you breach the contract. The powers of the Priest are perceived to be very real. Both victims and sometimes traffickers believe that the Priest can cause harm remotely. The fear of the Juju man is so real that victims will not disclose their traffickers under any condition in which they might find themselves. This highlights why an understanding of the nature and influence of voodoo is necessary and can be an important link in the criminal justice investigation system. It has been reported recently⁸ that 11 people accused of forcing up to 150 young Nigerian girls into prostitution in Europe have gone on trial in the Netherlands. According to the report the traffickers, mainly Nigerian, are accused of having brought the girls into the Netherlands as asylum seekers with false identity papers in 2007. The girls then disappeared from the asylum system only to reappear in other European countries. Only a small number of the girls have been located in Italy, Spain and France and it is suspected that others are located around Europe. The prosecution service has said that the traffickers used voodoo to influence the girls who had to give blood, nails or pieces of clothing and make a promise before a voodoo priest to repay the debt incurred for their trip to Europe. The report says that the Dutch authorities have been forced to enlist the help of a Nigerian priest to help the girls they have found to overcome the voodoo curse.

MEASURES BEING TAKEN TO COMBAT TRAFFICKING IN HUMAN BEINGS IN IRELAND

The Irish Government is determined to prevent and combat the trafficking of human beings into, within and out of Ireland. To demonstrate its commitment Ireland have signed both the *Palermo Protocol* and the *Council of Europe Convention on Action against Trafficking in Human Beings* in April, 2007. It is intended to ratify the Council of Europe Convention in 2009 and the Palermo Protocol in 2010 (when legislation to enable ratification of the parent Convention to that Protocol is in place). Details of the legislative, administrative and other measures taken to address the issue are set out beneath.

Legislative Developments

The **Criminal Law (Human Trafficking) Act 2008** which is fully operational since 7 June, 2008 creates offences of trafficking in adults for the purpose of their labour or

⁸ Irish Examiner – Wednesday, 18th March, 2009

sexual exploitation or the removal of their organs. The **Child Trafficking and Pornography Act 1998** (which provides for trafficking of children for sexual exploitation) is amended by Section 3 of the Criminal Law (Human Trafficking) Act, 2008 which additionally criminalises the trafficking of children into, through or out of the State for the purposes of labour exploitation or the removal of organs. The 2008 Act also increased the age by which a person can be regarded in law as a child from 17 to 18 years old. This Act also makes it an offence to sell or offer for sale, to purchase or offer to purchase any person for any purpose. Section 7 of the Act provides for extra territorial jurisdiction where an Irish citizen or resident conspires, incites or commits acts which would be offences under this Act if they were committed in Ireland and also where the victim of such acts committed outside Ireland is an Irish citizen. Committing or attempting to commit any of these offences is also an offence. The Act covers both internal and transnational forms of trafficking and also provides for the prosecution of bodies corporate. Penalties of up to life imprisonment apply in respect of these offences. It is also an offence for a person to solicit for prostitution a person who s/he knows or has reasonable grounds for believing is a trafficked person. The penalty on conviction on indictment is an unlimited fine and up to 5 years imprisonment or both.

Related Crimes to Trafficking in Human Beings



Source - Garda National Immigration Bureau

The **Immigration, Residence and Protection Bill** - which is before the Oireachtas at present - at Section 127, provides for a period of recovery and reflection of 45 days in the State for alleged victims of trafficking. Where the person trafficked wishes to assist the Garda Síochána in any investigation or prosecution in relation to the alleged trafficking, a further six months period of residence, renewable, may be availed of to enable him or her to do so. The Minister for Justice, Equality and Law Reform has indicated that he plans to increase the recovery and reflection period to 60 days and he

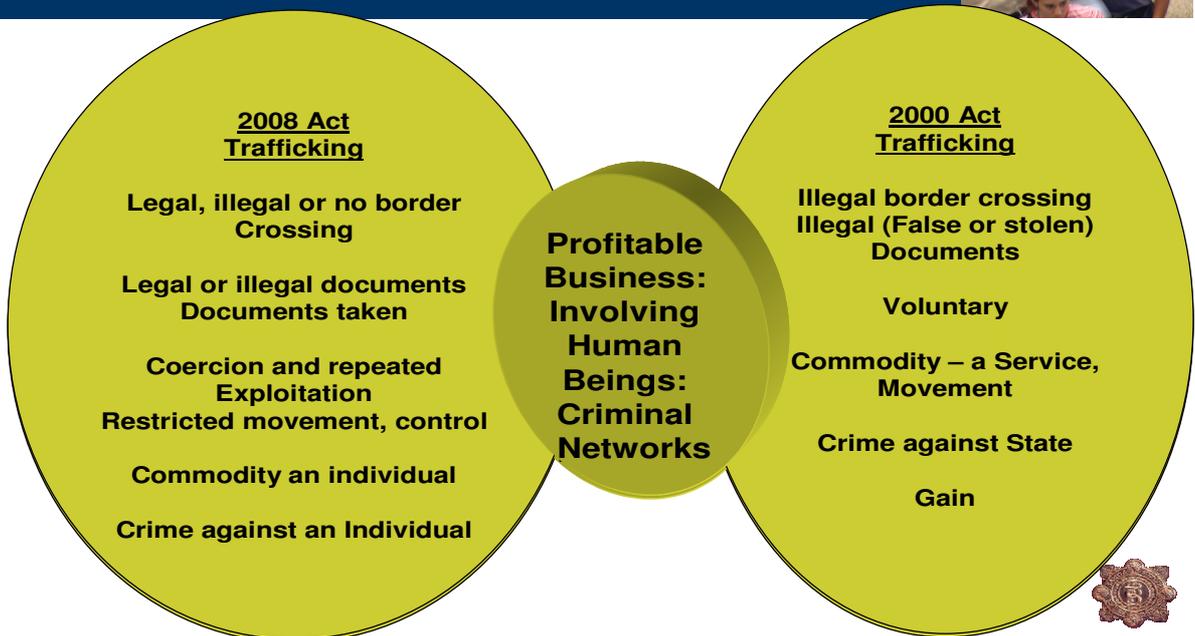
will bring forward an amendment to this effect at the Report Stage of the Immigration, Residence and Protection Bill. An administrative arrangement, broadly reflecting the provisions in the Bill, was introduced on 7 June, 2008 and subsequently updated to provide for the 60 days recovery and reflection period and will remain effective pending the enactment and commencement of the provisions of the Immigration, Residence and Protection Bill. That administrative framework also provides that a member of An Garda Síochána, not below the rank of Superintendent in the Garda National Immigration Bureau, must decide if there are reasonable grounds for believing that the person is a victim of trafficking under the Criminal Law (Human Trafficking) Act. A statement to that effect is provided to the Minister who ultimately decides to grant the recovery and reflection period.

At time of writing three suspected victims of trafficking have been granted a 60 days recovery and reflection period. Two of those persons have been granted 6 months temporary residency in the State. In no instance has a person, who is potentially a suspected victim of trafficking, been removed from the State and the public policy of the State is that no potential or suspected victim of human trafficking will be removed while their circumstances are being considered and/or investigated.

Prior to the enactment of the 2008 Act, An Garda Síochána utilised the provisions of the **Illegal Immigrants (Trafficking) Act, 2000** in cases where human trafficking was suspected. Section 2 of the Act provides penalties where a person organises or knowingly facilitates the entry into the State of a person whom he/she knows or has reasonable grounds to believe to be an illegal immigrant or a person who intends to seek asylum. On summary conviction a person is liable to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both. A person convicted on indictment is liable to the imposition of a fine or to imprisonment for a term not exceeding 10 years or to both.

In cases where activity relating to human trafficking for sexual exploitation is alleged, offences such as rape, other sexual assaults and false imprisonment may be revealed, rendering suspects liable to up to life imprisonment.

Trafficking 2000 Act/2008: Similarities and Differences



Source - Garda National Immigration Bureau

Administrative Arrangements

On the administrative front the strategies in place to assist the process of dealing with this form of criminal activity include:

- The establishment of the **Anti-Human Trafficking Unit (AHTU)** in the Department of Justice, Equality and Law Reform under the stewardship of an Executive Director in February, 2008. The Unit is working to ensure the State's response to human trafficking is coordinated, comprehensive and holistic. A key element of this strategy is the development of a National Action Plan to Prevent and Tackle Trafficking in Human Beings under four main headings:
 - Prevention and Awareness Raising
 - Prosecution of the Traffickers
 - Protection of Victims
 - Child Trafficking

The Plan⁹, which was published on 10 June this year, sets out the structures to facilitate ratification of the *Council of Europe Convention on Action Against Trafficking in Human Beings* and the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. The main aim of

⁹ National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland, 2009-2012

the National Action Plan is to ensure that Ireland's response to trafficking in human beings is appropriate to the nature and scale of the problem and in line with international best practice.

- The establishment by the Minister for Justice, Equality and Law Reform of an **Interdepartmental High Level Group** with representatives from key Government Departments and Public Sector Agencies. They will recommend to him the most appropriate and effective responses to trafficking in human beings – much of which is addressed in the National Action Plan. The High Level Group is supported in its work by a **Roundtable Forum** (representative of Governmental, non-Governmental and International organisations comprising some 24 stakeholders which meets about every 4 months) and 5 interdisciplinary **Working Groups** comprising some 34 different stakeholders dealing with:
 - Development of a National Referral Mechanism
 - Awareness Raising and Training
 - Child Trafficking
 - Labour Exploitation Issues
 - Sexual Exploitation Issues.

SERVICES FOR VICTIMS OF TRAFFICKING

Victims of trafficking who manage to escape from their traffickers need a broad range of support measures to enable them recover from their traumatic experience and re-integrate into society. It is, therefore, essential that the measures, which aim to protect and assist victims of trafficking, attend to their physical, psychological and social needs for recovery while taking into account the diversity of each victim's needs. Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings and Article 6 of the Palermo Protocol sets out assistance measures which State parties must provide for all victims of trafficking. It is important to note that victims of trafficking have the same rights as any Irish citizen in relation to access to social services which includes access to accommodation, health care, education and material assistance, amongst others.

The arrangements for **accommodation**, which are now in place by the State insofar as adult victims/suspected victims of trafficking are concerned, are that the Reception and Integration Agency (RIA) – a Government Agency - in conjunction with the HSE, are providing services to potential or suspected victims of trafficking referred to them by the Garda National Immigration Bureau (GNIB). Potential or suspected victims of trafficking are given the same accommodation as that provided to any newly arrived asylum seekers in direct provision i.e. accommodation in a reception centre. The reception centres at which suspected victims are accommodated include an on-site medical centre managed by the Health Service Executive (HSE). **Material assistance** such as suitable clothing and toiletries will be provided, where necessary. The Refugee Legal Service of the Legal Aid Board will provide legal aid and legal advice to potential and suspected victims of trafficking in both civil and criminal cases with

effect from July 2009. **Translation and interpretation services** are provided by each of the organisations that have an involvement with suspected victims of trafficking i.e. GNIB, HSE, INIS and RIA. In terms of **access to the labour market**, as an interim measure and pending a review of current immigration stamps, the following stamps will be issued to a suspected victim of trafficking:

- Stamp 3 during the Recovery and Reflection period – which mean no access to the labour market.
- Stamp 4 once the 6 months temporary residence permit has been granted – which allows unrestricted access to the labour market for suspected victims of trafficking who are not within the asylum process.

Insofar as potential or suspected child victims are concerned the HSE will provide all necessary supports. That policy and operational response is being developed at present. Furthermore, all children under the age of eighteen in the State are entitled to attend primary and post primary schools.

ROLE OF AN GARDA SÍOCHÁNA

An Garda Síochána in their Annual Policing Plan identify trafficking in human beings as one of the priorities for 2009¹⁰ with increased priority given to prevention, targeting of human trafficking and people smuggling through the effective enforcement of national and international immigration law.

An Garda Síochána has recently established a **Human Trafficking Investigation and Co-ordination Unit** within the Garda National Immigration Bureau (GNIB). The role of the Unit is to provide a lead on all policy issues in the area of Human Trafficking. The Unit will be a centre of excellence for the organisation and will oversee all investigations where there is an element of human trafficking and will provide advice, guidance and operational support for investigations.

GARDA OPERATIONS

In adopting a proactive approach to human trafficking, the Garda Síochána has undertaken a number of operations.

1. The Garda Síochána has given priority to the issue of child trafficking by way of '**Operation Snow**', an operation that was undertaken by GNIB in 2007, designed to prevent the trafficking of minors into, out of and within the State; to ensure the welfare of suspected victims of such criminal activity is

¹⁰ An Garda Policing Plan 2009 – Page 3

adequately provided for and to achieve prosecutions where criminal activity of the nature concerned has been detected. The arrest in Dublin in October 2007 of a person suspected to have been involved in the trafficking of children into a number of EU Member States, particularly the Netherlands and his subsequent removal to the Netherlands, on foot of a European Arrest Warrant, where he is now awaiting trial, represented an important result in the course of Operation Snow.

2. *Operation Quest* sought to investigate allegations that non-nationals are being illegally brought into the State for the purpose of employment in the sex industry. The main target of this activity was associated with lap dancing clubs. In the course of Operation Quest several hundred non-national lap dancers were interviewed and asked how they came to be employed in the sex industry. One interview led to a subsequent investigation where trafficking was identified as a factor. The investigation resulted in the identification of a suspect, a Bulgarian citizen, suspected of operating throughout Europe using a number of aliases. None of the other girls interviewed made any allegations of mistreatment or showed any indications that they were victims of trafficking.

3. *Operation Boulder*, launched in 2006, centred on the management of Brothels in the Cork City area. The Operation sought to obtain evidence to support criminal charges contrary to the Criminal Law (Sexual Offences) Act 1993. Other tasks of the Operation included the identification of assets in this jurisdiction and abroad with a view to the Criminal Assets Bureau (CAB) taking appropriate action against the principles of this Operation and the investigation of suspected revenue offences, money laundering offences and human trafficking offences. As a result of Operation Boulder one person was arrested in January 2008 for suspected tax offences and a file was prepared recommending that four suspects be charged with offences contrary to the Criminal Justice (Sexual Offences) Act 1993.

At the time of writing An Garda Síochána has commenced 149 investigations into alleged trafficking in human beings, contrary to the Illegal Immigrants (Trafficking) Act 2000 and the Criminal Law (Human Trafficking) Act 2008. The majority of these incidents involve other criminal offences including prostitution, immigration offences, employment permits, etc. The investigation of these incidents indicates to An Garda Síochána the involvement of mainly Eastern European, West African and, to a lesser extent, Chinese nationals in the trafficking of human beings. Of the total number of cases 49 of the victims, all of whom are female, are Nigerian nationals. Of the 149 investigations commenced 41 have been fully investigated and no evidence to support the allegation of human trafficking has been disclosed. However in some cases evidence of other offences e.g. sexual offences, employment permit offences, etc. have been established and proceedings are being considered, have commenced or are pending in these matters. Targeted Garda initiatives have uncovered a small number of suspected trafficking cases. As part of the asylum process a total of 29 females have reported that they were victims of human trafficking. No convictions are recorded to date under the 2008 Act.

Ireland has assisted in investigations in other EU Member States and through the contribution of intelligence information and the undertaking of arrests and searches have helped ensure that prosecutions and convictions are achieved in those Member States. Following a joint police trafficking investigation between Ireland and Romania four people were prosecuted in Romania for trafficking for the purpose of labour exploitation type offences. Three European Arrest Warrants were received by the Central Authority for Mutual Assistance and Extradition in Ireland during 2008 – 1 from Lithuania, 1 from Italy and 1 from France – in two cases the offenders were surrendered (i.e. Lithuania and Italy) and the other case is pending.

INTERNATIONAL COOPERATION

Ireland has established strong international links to assist in the fight against human trafficking. Bilateral co-operation exists at the highest possible level between the United Kingdom (UK) Home Office, the UK Human Trafficking Centre, the Northern Ireland Office, the Police Service of Northern Ireland, the Garda Síochána and the Department of Justice, Equality and Law Reform. Officials meet regularly to monitor operations and exchange information on developments and best practice.

The Garda Síochána also work in close co-operation with a number of organisations in addressing the issue such as Europol, Interpol, Eurojust and Frontex. Close co-operation with the United Kingdom is ongoing and as part of that co-operation Ireland participated in **Operation ‘Pentameter 2’** - a UK initiative which concluded in 2008. The primary aim of the initiative was to ensure a co-ordinated approach to the phenomenon of human trafficking across all police forces and other Crown Agencies, such as the UK Border and Immigration Service, in the UK.

Ireland has also developed strong links with the International Organisation for Migration (IOM), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe (CoE), the United Nations (UN), the European Union (EU) and the G6 trafficking group. The G6 Initiative is a coordinated international campaign to tackle the trafficking of human beings. Ireland, the UK, the Netherlands, Poland, Italy and Spain participate in this initiative which is supported by Europol, Interpol and Eurojust. The Initiative is a multi-strand operation marrying strategic policy development with a period of operational enforcement activity. The strands of the Initiative are:

- Intelligence Gathering
- Awareness Raising
- Law Enforcement Activity
- Victim Protection.

The awareness raising strand of this Initiative is led by Ireland. It was agreed that participating countries would undertake awareness raising campaigns based on the ‘Blue Blindfold’ concept which had been developed by the UK.

AWARENESS RAISING

The Irish “Blue Blindfold” awareness raising campaign under the European G6 initiative commenced on 21 October, 2008 and was mainly aimed at the general public and public sector personnel/professionals.



The key theme of the campaign was “**Don’t close your eyes to human trafficking**” and the blue blindfold represents the risk of people having their eyes closed and being unaware of the crime that may be going on around them. The campaign comprised of newspaper advertisements; a 12 hour hotline answered by members of the Garda Síochána; wide distribution of posters and leaflets to Garda Stations, Airports, Train and Bus stations, NGO’s, Reception & Integration Agency accommodation centres, Local Health Offices, Health Centres, Hospitals, Libraries, Citizen Information Centres, etc.; Stripline/Column ads on the Luas; Skyscraper ad on the RTE website; a dedicated website – www.blueblindfold.gov.ie - with details of the hotline number, an e-mail address for the Gardaí and the indicators of trafficking.

TRAINING

An Garda Síochána has placed particular importance on ensuring that its members receive training which will equip them to tackle the phenomenon of human trafficking. A continuous professional development training course entitled ‘Tackling Trafficking in Human Beings: Prevention, Protection and Prosecution’ has been designed by An Garda Síochána, assisted by the International Organisation for Migration (IOM). The aim of the course is:

- (1) to alert operational personnel within An Garda Síochána to the existence of the phenomenon of trafficking
- (2) to empower them to identify victims so as to provide for their wellbeing and
- (3) to ensure initiation of criminal investigations, where appropriate.

Members of the Police Service of Northern Ireland (PSNI) have attended this training and the Head of the United Kingdom Human Trafficking Centre (UKHTC) has presented at each of these training courses emphasising the international and cross-border co-operation between police forces. 250 members of An Garda Síochána have been provided with this training course and 520 Probationer Gardaí have received awareness raising training as part of their final phase of training.

Since July 2008 one day basic level awareness raising training to identify the indicators of trafficking has been provided by the IOM, with participation from An Garda Síochána, the HSE/NGO's and the Anti-Human Trafficking Unit to over 130 persons. These courses included representatives from various organisations including Labour Inspectors from the National Employment Rights Authority; Health Service Executive personnel; Inspectors from the Private Security Authority; Social Welfare Inspectors of the Department of Social and Family Affairs, the Irish Naturalisation and Immigration Service), the Office of the Refugee Applications Commissioner, the Office of the Victims of Crime Office, the Probation Service, Victim's Support Helpline, Youth Detention Schools and the Department of Enterprise, Trade and Employment.

An information seminar was provided in February 2009 to in the region of 40 diplomats in the Department of Foreign Affairs being posted abroad to a variety of missions including Africa and Asia. These Diplomats deal with businesses, visa applications and education agencies. A similar seminar was provided to staff in the Department of Enterprise, Trade and Employment in March 2009 who are responsible for the examination and granting of work permits.

ROLE OF DIRECTOR OF PUBLIC PROSECUTIONS, THE LEGAL PROFESSION AND RELEVANCE TO THE JUDICIARY

As with the public and public sector professionals the Director of Public Prosecutions, the legal profession and the judiciary play an important role in Ireland's response to human trafficking.

Article 26 of the Council of Europe Convention¹¹ provides that each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so. The Explanatory Report accompanying the Convention states that Article 26 constitutes an obligation to Parties to adopt and/or implement legislative measures providing for the possibility of not imposing penalties on victims, on the grounds set out in the article. The report states, the requirement that victims have been compelled to be involved in unlawful activities shall be understood as comprising, at a minimum, victims that have been subject to any of the illicit means referred to in the Convention, when such involvement results

¹¹ Council of Europe Convention on Action against Trafficking in Human Beings (Pages 15 and 64 refers)

from compulsion. It also notes that Parties to the Convention can comply with the obligation established in Article 26 by providing for a substantive criminal or procedural criminal law provision, or any other measure, allowing for the possibility of not punishing victims when the legal requirements are met, in accordance with the basic principles of every national legal system.

Numerous contributors to the National Action Plan consultation process also raised concerns with regards to the non-punishment of suspected trafficked persons. It is important that prosecutors and members of the judiciary who are faced with cases of suspected victims of trafficking are aware of what constitutes trafficking, what are the causes of trafficking and how victims may present (having regard to the trauma they may have faced in the past including physical and emotional abuse, rape, personal threats or threats against family and even death threats). In order to protect the anonymity of a suspected victim of trafficking a judge of the court in which proceedings for trafficking for labour exploitation, sexual exploitation or organ removal takes place may exclude members of the public from the proceedings. S/he may impose conditions on the publication of information. Where such a direction is contravened an offence is committed carrying with it a conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both¹². Additionally, the judge may permit an alleged victim to give evidence through a live television link, from either within the State or abroad.

The Director of Public Prosecutions (DPP) in considering whether or not to prosecute, where involvement in unlawful activities is alleged by the suspected victim, arising from human trafficking will have regard to the Statement of General Guidelines for Prosecutors which has been issued by that Office. These guidelines state that each case is unique and must be considered on its own merits. They also state that an important issue to consider, when deciding whether or not to prosecute, is whether it is in the public interest to do so. It is unlikely that a reasonable person would consider that prosecuting someone for an act they were forced into committing is in the public interest. There may also be considerations in relation to establishing a *prima facie* case which would be relevant in a case involving a suspected victim of trafficking.

Ongoing consultations will be held between the Office of the Director of Public Prosecutions and the Garda Síochána in relation to the practical issues which will arise in cases of human trafficking and how prosecutors should address these matters. The Office of the DPP has **decided** to assign cases involving trafficking in human beings to a number of lawyers in a specific unit of that Office. It is hoped that this initiative will lead to a greater awareness and understanding of the issues surrounding such cases within the Office as specialised knowledge of the issues surrounding trafficking in human beings will thereby be built up in the office. The Office of the DPP will also decide on a policy for dealing with such cases whether by way of specific guidelines or by an amplification of the existing guidelines for prosecutors.

¹² See Sections 10 and 11 of the Criminal Law (Human Trafficking) Act, 2008

Further information on this issue can be obtained from:

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