



G R E T A
GROUP OF EXPERTS
ON ACTION AGAINST
TRAFFICKING IN HUMAN BEINGS

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Report concerning the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings
by Ireland

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Secretariat of the Council of Europe Convention
on Action against Trafficking in Human Beings
(GRETA and Committee of the Parties)
Council of Europe
F- 67075 Strasbourg Cedex
France

trafficking@coe.int

www.coe.int/en/web/anti-human-trafficking

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Preamble

The Group of Experts on Action against Trafficking in Human Beings (GRETA) has been set up pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("the Convention"), which entered into force on 1 February 2008. GRETA is responsible for monitoring the implementation of the Convention by the parties and for drawing up reports evaluating the measures taken by each party.

GRETA is composed of 15 independent and impartial experts coming from a variety of backgrounds, who have been selected on the basis of their professional experience in the areas covered by the Convention. The term of office of GRETA members is four years, renewable once.

GRETA's country-by-country monitoring deals with all parties to the Convention on an equal footing. In accordance with Article 38, paragraph 1, of the Convention, GRETA evaluates the implementation of the Convention following a procedure divided into rounds. At the beginning of each round, GRETA selects the specific provisions on which the evaluation procedure is to be based and defines the most appropriate means to carry out the evaluation. GRETA adopts a questionnaire for each evaluation round which serves as the basis for the evaluation and is addressed to all parties.

The first evaluation round was launched in February 2010 and the questionnaire for this round was sent to all parties according to a timetable adopted by GRETA, which reflected the time of entry into force of the Convention for each party. GRETA organised country visits to all parties in order to collect additional information and have direct meetings with relevant actors, both governmental and non-governmental. By the beginning of 2014, most of the parties had been or were being evaluated for the first time, whilst the number of parties to the Convention continues to grow.

GRETA decided to launch the second evaluation round of the Convention on 15 May 2014. Following the first round of monitoring, which provided an overview of the implementation of the Convention by each party, GRETA has decided to examine during this new evaluation round the impact of legislative, policy and practical measures on the prevention of trafficking, the protection of the rights of victims of trafficking, and the prosecution of traffickers. The adoption of a human rights-based approach to action against trafficking in human beings remains at the centre of the second evaluation round. In addition, particular attention is paid to measures taken to address new trends in human trafficking and the vulnerability of children to trafficking. For the second evaluation round, GRETA has adopted a questionnaire to be sent to all States Parties which have undergone the first round of evaluation, following a timetable approved by GRETA.

GRETA's reports are based on information gathered from a variety of sources and contain recommendations intended to strengthen the implementation of the Convention by the party concerned. In its recommendations, GRETA has adopted the use of three different verbs - "urge", "consider" and "invite" - which correspond to different levels of urgency of the recommended action for bringing the party's legislation and/or practice into compliance with the Convention. GRETA uses the verb "urge" when it assesses that the country's legislation or policy are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of an obligation of the Convention is lacking. In other situations, GRETA "considers" that it is necessary to make improvements in order to fully comply with an obligation of the Convention. By "inviting" a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are on the right track.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each party in a plenary session. The process of confidential dialogue with the national authorities allows the latter to provide, within two months, comments on GRETA's draft report with a view to providing additional information or correcting any possible factual errors. These comments are taken into account by GRETA when establishing its final report. The final report is adopted by GRETA in a plenary session and transmitted to the party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month GRETA's report, together with eventual final comments made by the national authorities, are made public and sent to the Committee of the Parties to the Convention.

I. Introduction

1. The first evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) by Ireland took place in 2012-2013. Following the receipt of Ireland’s reply to GRETA’s first questionnaire on 23 May 2012, a country evaluation visit was organised from 5 to 9 November 2012. The draft report on Ireland was examined at GRETA’s 16th meeting (11-15 March 2013) and the final report was adopted at GRETA’s 17th meeting (1-5 July 2013). Following the receipt of the Irish authorities’ comments, GRETA’s final report was published on 26 September 2013.¹

2. In its first evaluation report, GRETA noted that the Irish authorities had put in place a comprehensive legal and institutional framework for combating trafficking in human beings (THB). GRETA commended the efforts made in the area of awareness raising, training of relevant professionals and international co-operation. However, GRETA stressed the need to strengthen action to combat trafficking for the purpose of labour exploitation and to pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking. GRETA also urged the Irish authorities to improve the identification of victims of trafficking by amending the relevant regulations and promoting multi-agency involvement. Furthermore, GRETA urged the authorities to review the policy of accommodating victims of trafficking in centres for asylum seekers and to consider setting up specialised shelters for trafficking victims. Other key recommendations related to the rights of victims of trafficking concerned improving the application of the recovery and reflection period, the granting of residence permits, and access to compensation. GRETA also considered that the Irish authorities should take further steps to ensure compliance with the non-punishment provision. Finally, GRETA called on the Irish authorities to take additional measures to ensure that human trafficking offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions.

3. On the basis of GRETA’s report, on the Committee of the Parties to the Convention adopted a recommendation to the Irish authorities, requesting them to report back on measures taken by 7 October 2015.² The report submitted by the Irish authorities was considered at the 17th meeting of the Committee of the Parties (30 November 2015). The Committee of the Parties decided to transmit the authorities’ report to GRETA for consideration and to make it public.³

4. On 7 January 2016, GRETA launched the second round of evaluation of the Convention in respect of Ireland by sending the questionnaire for this round to the Irish authorities. The deadline for submitting the reply to the questionnaire was 7 June 2016. Ireland submitted its reply on 20 July 2016.⁴

¹ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, GRETA(2013)15, available at:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631cbe>

² Recommendation CP(2013)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, available at:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c8e>

³ Available at:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631c92>

⁴ <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c03e1>

5. In preparation of the present report, GRETA used the reply to the questionnaire by the Irish authorities, the above-mentioned report submitted by them to the Committee of the Parties, and information received from civil society. An evaluation visit to Ireland took place from 5 to 9 December 2016 in order to hold meetings with relevant governmental and non-governmental actors, collect additional information and examine the practical implementation of the adopted measures. The visit was carried out by a delegation composed of:

- Mr Jan van Dijk, Second Vice-President of GRETA;
- Ms Rita Theodorou Superman, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Convention.

6. During the visit, the GRETA delegation met Ms Frances Fitzgerald, Deputy Prime Minister and Minister for Justice and Equality. Discussions were also held with officials from relevant government departments and agencies, in particular the Anti-Human Trafficking Unit of the Department of Justice and Equality, the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána, the Health Service Executive, the Reception and Integration Agency (RIA), the Legal Aid Board, the Child and Family Agency (TUSLA), the Office of the Director of Public Prosecutions, the Workplace Relations Commission, and the Department of Foreign Affairs and Trade. Further, the GRETA delegation met representatives of the Irish Human Rights and Equality Commission.

7. Separate meetings were held with representatives of non-governmental organisations (NGOs) and trade unions, researchers and lawyers. The GRETA delegation also met officials from the local offices of the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

8. In the course of the visit, the GRETA delegation visited a residential unit for unaccompanied children run by TUSLA and two reception centres for asylum seekers, Hatch Hall and Mosney, which provide accommodation to victims of human trafficking.

9. The list of the national authorities, NGOs and other organisations with which the delegation held consultations is set out in the Appendix to this report. GRETA is grateful for the information provided by them.

10. GRETA wishes to put on record the excellent co-operation provided by the Irish authorities during the second evaluation visit and in particular the support received by Mr Bobby Smyth and Ms Tara Storey of the Anti-Human Trafficking Unit of the Department of Justice and Equality.

11. The draft version of the present report was approved by GRETA at its 28th meeting (27-31 March 2017) and was submitted to the Irish authorities for comments on 10 April 2017. The authorities' comments were received on 12 June 2017 and have been taken into account by GRETA when considering and adopting the final report at its 29th meeting (3-7 July 2017). The final report covers the situation up to 7 July 2017; developments since that date are not taken into account in the following analysis and conclusions. The conclusions summarise the progress made since the first report, the issues which require immediate action and the other areas where further action is needed (see pages 59-65).

II. Main developments in the implementation of the Convention by Ireland

1. Emerging trends in trafficking in human beings

12. Ireland continues to be primarily a country of destination for trafficked persons, but has also increasingly become a country of origin. The number of presumed⁵ victims of trafficking (THB) reported to or detected by An Garda Síochána (the Irish police) was 48 in 2012, 44 in 2013, 46 in 2014, 78 in 2015 and 95 in 2016. The 15% increase in the number of presumed victims of trafficking in 2016 can be attributed to one case in which 23 Romanian men were exploited in a waste recycling plant. The majority of the presumed victims in the period 2012-2016 were female (197, or 63%). There were 94 children among the presumed victims. In terms of forms of exploitation, during the reporting period, the majority of the presumed victims were subjected to sexual exploitation (200), which concerned primarily women and girls, followed by labour exploitation (82). The remainder of the victims were subjected to a combination of labour and sexual exploitation, other forms of trafficking, including forced criminality (13) and forced begging (1), or uncategoryed exploitation. As regards the origin of the presumed victims, in the period 2012-2016, citizens of EU Member States constituted the largest group (121), followed by Irish citizens (73), and persons from Western Africa, particularly Nigeria, constituted the third largest group (50).⁶ The majority of the Irish victims were children subjected to sexual abuse/child pornography within Ireland, which is criminalised under section 3(2) of the Criminal Law (Human Trafficking) Act 2008.

13. GRETA notes that the above figures do not reflect the real scale of the phenomenon of human trafficking in Ireland, due to difficulties in the identification of victims of trafficking. While according to the above-mentioned data trafficking of women and girls for the purpose of sexual exploitation remains the prevalent form of exploitation in Ireland, the number of persons trafficked for the purpose of labour exploitation, who are predominantly male, has been on the increase. Demand for workers, shortage of legal channels of migration and inconsistencies of the legal framework have contributed to the emergence of a large undocumented population in Ireland.⁷ There are reports about suspected cases of trafficking in the sectors of agriculture, fisheries, domestic work, home care and restaurants. A new trend in trafficking concerns pop-up car washes run by organised criminal groups, in particular from Romania, recruiting vulnerable unemployed men with the promise of a well-paid job in Ireland. Further, there are reports about vulnerable women from EU countries subjected to exploitative sham marriages with third-country nationals in Ireland.⁸ Civil society representatives also report cases of persons who are believed to be victims of forced criminality, for example for the purpose of growing cannabis, but are not identified as victims of trafficking.⁹

⁵ Throughout the report, the term “presumed victims” is used to describe what the Irish authorities refer to as “alleged” or “suspected” victims. In Ireland, a person remains an “alleged” victim under there is a final conviction for a human trafficking or related offence.

⁶ See Department of Justice and Equality, Second National Action Plan to Prevent and Combat Trafficking in Ireland, October 2016, pp.18-21, and the annual statistical reports prepared by the Anti-Human Trafficking Unit, available at <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/keystats-en>.

⁷ The Migrant Rights Centre Ireland (MRCI) estimate that there are between 20 000 and 26 000 undocumented migrant adults living and working in Ireland, working primarily in low paid precarious sectors.

⁸ Catherine Cosgrave, Monica O'Connor and Nusha Yonkova, HESTIA Project, *Exploitative Sham Marriages and Human Trafficking in Ireland*, Immigrant Council of Ireland, 2016.

⁹ <http://www.mrci.ie/resources/publications/trafficking-for-forced-labour-in-cannabis-cultivation-the-case-of-ireland/>

2. Developments in the legal framework

14. The expected amendment to the Criminal Law (Human Trafficking) Act 2008 referred to in GRETA's first report was enacted on 9 July 2013. With a view to transposing 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, the Criminal Law (Human Trafficking) (Amendment) Act 2013¹⁰ broadened the scope of the definition of "exploitation" to include forcing a person to engage in criminal activities, as well as expanding the definition of the term "labour exploitation" to include forced begging. Further, for the sake of clarity, it defined the term "forced labour" in line with the definition set out in the International Labour Organization (ILO) Convention No. 29 of 1930 on Forced or Compulsory Labour. Another amendment was to provide that where a trafficking offence is committed by a public official in the performance of his/her duties, that fact shall be treated as an aggravating factor for the purpose of determining the sentence. Finally, the 2013 Act amended the rules for taking evidence from child victims or witnesses of human trafficking (see paragraph 230).

15. In addition, there have been some other changes to the legislation and regulations which are relevant to the fight against human trafficking. The Civil Registration (Amendment) Act 2014 was enacted on 4 December 2014.¹¹ It contains a provision at section 18 to make it more difficult to broker a marriage of convenience, thereby protecting vulnerable persons, usually young women from EU countries, from trafficking for the purpose of exploitative sham marriages with third-country nationals. The provision gives civil registrars the power to ask questions and to inform the immigration authorities or An Garda Síochána if they have reasons to believe that a marriage is a sham. The decision may be appealed to the Circuit Family Court. The provision also applies to civil partnerships. Further, as part of the Second National Strategy on Domestic, Sexual and Gender-based Violence, measures to criminalise forced marriage were included in the Domestic Violence Bill which was approved by Cabinet in 2016. The Bill completed second stage in March 2017 and is expected to be enacted in the course of 2017.¹²

16. The International Protection Act 2015 was enacted on 30 December 2015, repealing the Refugee Act 1996 and introducing amendments to the Immigration Acts of 1999, 2003 and 2004. The new law arises from a Government commitment to "fast track" the enactment of the protection part of the Immigration, Residence and Protection Bill (the adoption of which has been delayed since 2008). The principal purpose of the Act is to reform the system for examining applications for international protection through the introduction of a single application procedure during which all grounds for seeking international protection will be examined and determined in one process. This will simplify and streamline existing arrangements and provide applicants with a final decision in a more timely fashion, reducing, as a consequence, the length of time they spend in the direct provision system. Further, the Office of the Refugee Applications Commissioner is replaced by an International Protection Office within the Department of Justice and Equality, and the Refugee Appeals Tribunal is replaced by a newly constituted and independent appeals body, the International Protection Appeals Tribunal. The Act explicitly recognises the vulnerable position of victims of trafficking, which must be taken into account when granting international protection. The commencement of the International Protection Act 2015 on 31 December 2016 has been accompanied by recruitment of additional staff in early 2017. The Irish authorities have stated that the International Protection Office has adopted an approach to prioritisation of the consideration of cases¹³ and a comprehensive information process has been put in place to ensure that protection applicants and their legal representatives are aware of the provisions of the new Act.

¹⁰ Available at: <http://www.irishstatutebook.ie/2013/en/act/pub/0024/index.html>

¹¹ Available at: <http://www.irishstatutebook.ie/2014/en/act/pub/0034/index.html>

¹² The Bill is available at:

http://www.justice.ie/en/JELR/Domestic_Violence_Bill_2017.pdf/Files/Domestic_Violence_Bill_2017.pdf

¹³ Available at: www.ipa.gov.ie

17. At the time of GRETA's visit, the Criminal Law (Sexual Offences) Bill 2015 was before the Irish Parliament. The Criminal Law (Sexual Offences) Act 2017 was signed on 22 February 2017,¹⁴ with certain provisions commencing with effect from 27 March 2017, in particular Part 4 which contains two sections providing for the criminalisation of the purchase of sexual services, including from trafficked persons (see paragraph 93).

18. The above-mentioned measures are discussed in greater detail in later parts of this report (see in particular paragraphs 93-96, 189-194, 230).

3. Developments in the institutional framework

19. The institutional framework for action against THB has undergone certain changes since GRETA's first report.

20. The Garda National Protective Services Bureau (GNPSB) was established in 2015. It brings issues relating to human trafficking as well as child protection, domestic and sexual violence and general support to victims of crime under the command of a Chief Superintendent. Since March 2015, both the Human Trafficking Investigation and Co-Ordination Unit (HTICU) and Operation Quest (which investigates prostitution and the criminality that surrounds it) have been part of the newly formed GNPSB. The inclusion of HTICU within GNPSB, instead of the Garda National Immigration Bureau to which it was formerly subordinated, means that HTICU has been placed under a structure that is separate from immigration control, as recommended in GRETA's first evaluation report. Four Divisional Protective Services Units (DPSUs) were established on 2 June 2017, based in Dublin, Cork and Louth. It is planned to create DPSUs in the remaining 25 Garda divisions from the beginning of 2018. There will be up to 15 personnel attached to each of the units. The new structures will ensure that An Garda Síochána works with key strategic partners in the investigation of crimes and support of victims of human trafficking.

21. The Child and Family Agency (TUSLA) was established on 1 January 2014 and is now the dedicated State agency responsible for promoting the safety and well-being of children. It acts under the Childcare Act 1991.

22. The Department of Justice and Equality's Anti-Human Trafficking Unit (AHTU) continues to have the lead on all policy issues on human trafficking in Ireland and works in close collaboration with other Irish government agencies, including An Garda Síochána, the Health Services Executive (HSE), TUSLA, the Office of the Director of Public Prosecutions (DPP), the Legal Aid Board and the Irish Naturalisation and Immigration Service (INIS).

23. In addition to the above-mentioned HTICU in An Garda Síochána, there continue to be two more dedicated government structured focusing on trafficking: the Anti-Human Trafficking Team in the Health Service Executive (HSE) and the Human Trafficking Legal Team in the Legal Aid Board.

24. The Interdepartmental High Level Group on human trafficking, which was established in 2007 by the Minister of Justice and Equality, comprises senior representatives from key departments and agencies. Members of this group meet with civil society and international organisations by way of a Roundtable Forum chaired by the AHTU. The AHTU also chairs five interdisciplinary working groups comprising government, civil society and international organisation representatives to discuss matters at a working level and report results to the High Level Group. These groups deal with: 1) development of a National Referral Mechanism; 2) awareness raising and training; 3) child trafficking; 4) labour exploitation issues; 5) sexual exploitation issues.

¹⁴

Available at: <http://www.irishstatutebook.ie/eli/2017/act/2/enacted/en/html>

25. However, GRETA was informed by civil society representatives that the Roundtable Forum and working groups had been largely discontinued for a considerable period of time. In 2015, only two meetings including civil society took place: a discussion of the draft new National Action Plan and a round-table meeting on the identification of victims of trafficking, which was sponsored by the Council of Europe (see paragraph 114). The second National Action Plan (see paragraphs 29-30) contains a commitment to examine the current structures to ensure that they remain relevant and are utilised in the most efficient ways possible. Thus on 1 November 2016, the first meeting of the new Roundtable Forum was convened by AHTU with the purpose of reinvigorating the working groups. It was decided to develop working groups based on a thematic grouping of the 65 actions in the new Action Plan and to arrange a second meeting of the Roundtable Forum on 14 December 2016. At that meeting, it was agreed that two working groups would be established, dealing respectively with trafficking for sexual exploitation and trafficking for labour exploitation. It was also agreed that consideration would be given to convening an ad-hoc working group on child exploitation. The Roundtable Forum members were in agreement that a fundamental review of the victim identification process should be the main priority under the new consultative structure and an ad-hoc victim identification working group was created to oversee this body of work. Since then, following major changes to its personnel, AHTU has completed a round of bilateral meetings and has convened one meeting of the ad-hoc victim identification group, arising from which work has advanced on a formal mapping of the existing National Referral Mechanism.

26. GRETA notes the importance of maintaining strong co-ordination of anti-trafficking action at national level and considers that the Irish authorities should take steps to strengthen the work of the Roundtable Forum, ensure that the working groups are enabled to make progress on the implementation of the new National Action Plan, and expand the range of relevant stakeholders involved in them.

4. National Action Plan

27. The first National Action Plan to Prevent and Combat Human Trafficking in Ireland covered the period 2009-2012. A review of its implementation took place in 2011.¹⁵ Following the expiry of the first plan, there was a period of several years during which preparations were made for a new plan. A draft second National Action Plan was eventually drawn up and issued for consultation to relevant civil society organisations in mid-2015. Submissions from 13 organisations and one individual were received by AHTU during this consultation phase. In October 2015 a meeting was held with NGOs active in the field to discuss the issues raised in the written submissions and priorities for implementation in the second plan. The draft Plan was further developed and finalised in early 2016 to take into account the outcome from the public consultation and meeting.

¹⁵ Available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/\\$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf)

28. The second National Action Plan was approved by the Government and published in October 2016.¹⁶ The new Plan seeks to build on progress made and to address issues raised in independent international evaluations of Ireland's response to human trafficking. It outlines the Government's strategic approach to this issue as well as setting out goals, actions and indicators for measuring their implementation. However, there is no indication of the agencies responsible for the different actions, nor is there an indication of the budget allocation. The Irish authorities have indicated that each relevant department or agency contributes with its own funds to the expenditure related to implementing the Plan. The cost of AHTU in 2016 was approximately €920 000, but the actual expenditure dedicated to human trafficking by the State would run to several million euro per annum. AHTU co-ordinates the actions of the Plan, in consultation with relevant State stakeholders and NGOs. Pending a decision on evaluation of the implementation of the Plan, the Interdepartmental High Level Group on Preventing Human Trafficking will continue to monitor progress on implementation.

29. Among the significant proposals contained in the second National Action Plan are:

- A fundamental re-examination of the victim identification process and the role to be played in that process by all stakeholders, including non-governmental organisations.
- A related review of the National Referral Mechanism to ensure that it remains fit-for-purpose and is adequate to address the complexity of both well understood and more recently identified forms of trafficking.
- Examination of the appropriateness and efficacy of all victim support services.
- Examination of criminal justice measures, including Garda investigative methods.
- Enhanced data analysis systems, including proposals based on Multiple Systems Evaluation to examine the feasibility of determining the undetected level of human trafficking in Ireland.
- The development of an awareness-raising and training strategy, including the identification of problematic sectors.
- Specific measures in relation to enhancing the effectiveness of anti-trafficking policy and practice concerning labour exploitation.
- New evaluation methods for examining the effectiveness of the implementation of the National Action Plan, including consideration of the role of standing independent evaluation.

30. GRETA welcomes the adoption of the new National Action Plan, in consultation with relevant civil society actors, and its comprehensive and far-reaching scope. However, GRETA notes that there is no external evaluation or monitoring of the implementation of the Plan. In its first report, GRETA invited the Irish authorities to introduce an independent evaluation of the implementation of the National Action Plan as a tool for assessing the impact of the activities and for planning future policies and measures to combat human trafficking. Such an independent monitoring is in the spirit of the human rights-based approach to anti-trafficking action underpinning the Convention. The second Plan includes as an action to consider the establishment of "further independent monitoring mechanisms for oversight of anti-trafficking, including the possibility of putting into place a National Rapporteur". The Irish authorities have indicated that the possibility of establishing an independent National Rapporteur is currently under consideration, taking into account the merits of such an appointment, the resources required to put it in place, the role of such an appointment and its relationship to other structures.

¹⁶ Department of Justice and Equality, Second National Action Plan to Prevent and Combat Trafficking in Ireland, October 2016. Available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/LASN-AFCK621436473-en/\\$File/Second%20National%20Action%20Plan%20to%20Prevent%20and%20Combat%20Human%20Trafficking%20in%20Ireland.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/LASN-AFCK621436473-en/$File/Second%20National%20Action%20Plan%20to%20Prevent%20and%20Combat%20Human%20Trafficking%20in%20Ireland.pdf)

31. GRETA is of the view that the key features of National Rapporteurs' mechanisms within the meaning of Article 29, paragraph 4, of the Convention should be the ability to critically monitor the efforts and effectiveness of all State institutions, including national co-ordinators, and to that end maintain a constant exchange with civil society, the research community and other relevant stakeholders. A structural separation between these monitoring functions and executive functions makes possible an objective evaluation of the implementation of anti-trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations. GRETA considers that the Irish authorities should examine the possibility of establishing an independent National Rapporteur or designating another mechanism as an independent organisational entity with a view to ensuring an effective monitoring of the anti-trafficking activities of State institutions and making recommendations to persons and institutions concerned (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

5. Training of relevant professionals

32. The Human Trafficking Investigation and Co-Ordination Unit (HTICU) has devised, in conjunction with IOM, a three-day training course entitled "Tackling Trafficking in Human Beings, Prevention, Protection, Prosecution and Partnership" for members of An Garda Síochána (the Irish Police). This course takes place twice a year at the Garda Síochána College. Representatives from NGOs including the Migrant Rights Centre of Ireland, Immigration Council of Ireland and Ruhama, as well as State agencies such as the Workplace Relations Commission, Health Service Executive, Child and Family Agency (TUSLA) and the Department of Justice and Equality contribute to this training programme. International experts on human trafficking also make presentations. The course has been updated to reflect new forms of trafficking. In 2016, 69 members of An Garda Síochána of all ranks received this training as well as two military police staff. In total, 1 113 members of An Garda Síochána have now been trained on this intensive course.

33. Further, in 2015, 70 senior Garda managers (from Chief Superintendent to Commissioner level) received basic awareness-raising training on human trafficking at the Garda College, as well as 84 Senior Investigating Officers and 50 new probationer Gardai (police officers). In total, 3 246 members of An Garda Síochána have now received this basic awareness training.

34. Members of the HTICU continue to receive human trafficking training both in Ireland and abroad. In this regard training has been received through the European Police College (CEPOL), European Commission, Europol and Eurojust.

35. In addition, in the course of 2015, 50 members of An Garda Síochána who work on immigration duties at Dublin Port and 56 immigration control officers who work at Dublin Airport received awareness training on human trafficking. Irish Naturalisation and Immigration Service (INIS) civilian immigration officers, as a standard part of their induction training, receive awareness training in human trafficking.

36. Training is also provided to a wide range of frontline personnel, including those working at borders and in the Office of the Refugee Applications Commissioner (ORAC), who may come into contact with vulnerable groups, including migrants. Such training covers modules on how to identify potential victims of human trafficking and how to respond to their needs in a sensitive manner.

37. Inspectors of the Workplace Relations Commission (WRC) have been trained in the identification of indicators of trafficking (see paragraph 65). Officers of the WRC have also been involved in briefing Garda officers on the issues of employment rights and labour exploitation.

38. Personnel from the Child and Family Agency (TUSLA) have undergone joint and intensive training at the Garda College in specialised skills necessary for interviewing of children.

39. Officials from AHTU and HTICU deliver training on tackling trafficking in human beings to Department of Foreign Affairs and Trade officials and Irish diplomats prior to them being posted to Irish embassies and consulates abroad. The training includes a section on the expectations placed on diplomats by the Guidelines related to the employment of private domestic employees (see paragraph 75).

40. The Legal Aid Board organised a training event for staff in law centres and private legal practitioners on 23 May 2016, with presentations on the International Protection Act and human trafficking.

41. One of the outputs from the REACH Project (see paragraph 57) is a training module designed for frontline professionals likely to come into contact with victims and/or potential victims of sex trafficking in the course of their work, including those in health, social work, law enforcement and immigration, with a view to raising awareness of the indicators of human trafficking and setting out the appropriate course of action to be taken. Training courses were delivered to frontline professionals (multi-disciplinary audiences) in both the Republic of Ireland and Northern Ireland. These sessions served to prepare a user-friendly application which is available to professionals working with vulnerable persons. The application has been tested and the final product submitted for uploading to various platforms (Android, Windows and Apple). There is an accompanying booklet which is widely disseminated to relevant frontline professionals and is also available on the REACH Project website.¹⁷

42. Moreover, the Immigrant Council of Ireland (ICI) published a human trafficking training toolkit in January 2016 which was launched at an international conference attended by over 100 key stakeholders and has since been disseminated widely.¹⁸ Training by the ICI for staff working in State provided accommodation centres for asylum seekers which operate under contract to the Reception and Integration Agency (RIA) has started in 2017, with funding under the Dormant Accounts Action Plan 2016. The ICI has produced a handbook for staff working in accommodation centres, a leaflet for female residents and a pamphlet for victims of trafficking.

43. The second National Action Plan addresses the area of training and aims to ensure that frontline personnel are trained in the identification and protection of victims. The Plan envisages to conduct a training needs analysis, including an evaluation of existing training, and to explore training opportunities in new sectors, such as trade unions, emergency services, local authorities and Chambers of Commerce. The authorities consider that training of all staff on a country-wide basis to exercise vigilance and recognise the indicators of trafficking can improve detection and support victims in making disclosures.

44. GRETA commends the investment made in training relevant professionals on human trafficking and considers that these efforts should continue, in particular as regards prosecutors and judges, with a view to increasing the number of prosecutions and convictions in cases of human trafficking, as well as providing training to social workers, health-care staff, staff of direct provision centres for asylum seekers and teachers.

¹⁷ www.reachproject.eu

¹⁸ <http://www.earlylegalintervention.eu/resources/>

6. Data collection and research

45. Since 2009, in order to provide reliable and useful data on the nature and extent of trafficking on an on-going basis, the AHTU has implemented a data strategy based on systems developed at the EU level. The goal of this data strategy is to collect information on cases of suspected trafficking by means of a standardised template from a variety of different sources, including NGOs, government agencies, and law enforcement. Reports summarising the statistical data are issued annually by AHTU (the last available report, for 2015, was published in March 2017).¹⁹ These reports provide data on the number of presumed victims of trafficking, which is disaggregated by sex, age, form of trafficking, region/country of origin of the victims, immigration status of the victims, and the agencies and organisations which reported the victims, as well as data on investigation, prosecutions and convictions.

46. The second National Action Plan envisages continuing to collect and analyse data on human trafficking and contributing the European data collection systems, e.g. Eurostat. It is also proposed to examine methodologies to improve assessment of the potential scale of undetected victims of trafficking, through the use of Multiple Systems Estimation methodology.

47. GRETA invites the Irish authorities to continue developing the data collection and analysis system with a view to ensuring that it provides a comprehensive picture of the human trafficking situation in Ireland.

48. There is no specific budget line for research projects concerning human trafficking, but a number of research projects have been funded externally. In 2014, AHTU participated in research conducted by University College Dublin Applied Research Centre (ARC) on behalf of the European Union Agency for Fundamental Rights (FRA) entitled "Participative Action Research on Severe Forms of Labour Exploitation". The purpose of this research was to provide policy makers, practitioners and civil society at both EU and national level with country specific information and data on the situation of migrant victims of criminal forms of labour exploitation, aiming to identify, among other things, the forms and frequency of incidents of labour exploitation, economic areas affected, common risk factors, prevention measures aimed to reduce the risks of labour exploitation and the obligations of specific organisations in this area. The report was published in October 2015.²⁰

49. Further, AHTU contributed to a study conducted by Trinity College Dublin on behalf of the EU Commission on trafficking in human beings for labour exploitation. The study seeks to gather information regarding the extent of the phenomenon of trafficking for forced labour across EU Member States, with a particular focus on prosecutions of traffickers in such cases.

50. In 2015-2016, Ireland was involved in another EU-funded project entitled "Preventing Human Trafficking and Sham Marriages: A Multidisciplinary Solution (HESTIA)", which was co-ordinated by the Ministry of the Interior of Latvia and also involved the Slovak Republic, Finland, Estonia and Lithuania. The main objectives of the project was to study the phenomenon of human trafficking and sham marriages, to provide a definition of sham marriage as a form of human trafficking and to initiate comprehensive action for its prevention. The research resulted in the publication of a study edited by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), with input from partner organisations from different countries, containing recommendations for action at EU and national level.²¹ Training materials were prepared and a pilot training of multidisciplinary groups working with people vulnerable to trafficking, sham and forced marriages took place.

¹⁹ Available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/CAOF-AKWGCF13132429-en/\\$File/2015%20Annual%20Report.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/CAOF-AKWGCF13132429-en/$File/2015%20Annual%20Report.pdf)

²⁰ Available at: <http://fra.europa.eu/en/project/2013/severe-forms-labour-exploitation>

²¹ Minna Viuhko, Anni Lietonen, Anniina Jokinen and Matt Joutsen (eds.), *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*, HEUNI, Helsinki 2016.

51. An EU-funded project entitled “Early Legal Intervention for Victims of Human Trafficking” was led by the Immigrant Council of Ireland (ICI), with the participation of AHTU and the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána, involving organisations from Croatia, Bulgaria, Lithuania and UK. The project started in 2014 and a comparative report was published in 2015.²² The project has resulted in the development of a training toolkit for practitioners.

52. Further, as part of a European study led by Anti-Slavery International, entitled “RACE in Europe”, which explored responses against trafficking for forced criminal activity, the Migrant Rights Centre of Ireland (MRCI) produced a report on trafficking for forced labour in cannabis cultivation,²³ focusing on cases where Vietnamese and Chinese nationals were involved (see also paragraph 203). The report recommended an immediate multi-agency review of all cases where trafficking indicators are present and the appointment of a National Rapporteur to oversee anti-trafficking work in Ireland. MRCI have also carried out research into the *au pairs* sector, which has been identified as problematic due to identified cases of *au pairs* employed on sub-standard domestic work jobs,²⁴ as well as research into the home care sector and migrant workers’ position.²⁵

53. As part of the EU-funded REACH Project (see paragraph 57), a research study entitled “Reaching Women and Girls Vulnerable to or Experiencing Trafficking for Sexual Exploitation” was published in August 2015.²⁶ It was based on semi-structured interviews with women directly affected by prostitution and trafficking for the purpose of sexual exploitation. The study concluded that for the most part, trafficked women accessed specialist services following police interventions, therefore the knowledge of police officers in recognising indicators of trafficking is critical. In some cases, there was an immediate recognition of the indicators of trafficking, leading to appropriate measures and referral, but in other cases, women were arrested and imprisoned. Another conclusion from the study is that early legal intervention and the capacity of legal practitioners to identify victims is a major access route to specialist services.

54. GRETA welcomes the above-mentioned research and considers that the Irish authorities should continue to conduct and support research on THB-related issues as an evidence base for future policy measures. Areas where research is needed in order to shed more light on the extent and nature of the problem of THB include trafficking in children.

²² Available at: <http://www.earlylegalintervention.eu/resources/eli-comparative-report/>

²³ Available at: <http://www.mrci.ie/resources/publications/trafficking-for-forced-labour-in-cannabis-cultivation-the-case-of-ireland/>

²⁴ Available at: <http://www.mrci.ie/wp-content/uploads/2015/06/Childcare-Paper-20152.pdf>

²⁵ Available at: <http://www.mrci.ie/wpcontent/uploads/2015/09/Migrant-Workers-in-the-Home-Care-Sector-Preparing-for-the-Elder-Boom-in-Ireland.pdf>

²⁶ Monica O'Connor, *Reaching Women and Girls Vulnerable to or Experiencing Trafficking for Sexual Exploitation*, 2015.

III. Article-by-article findings

1. Prevention of trafficking in human beings

55. In its first evaluation report, GRETA welcomed the considerable efforts made in Ireland in the area of awareness raising and education as a form of prevention of human trafficking and considered that particular attention should be paid to raising awareness of human trafficking for the purpose of labour exploitation and child trafficking, and integrating the prevention of human trafficking into policies for children of immigrant origin, asylum seekers and persons with protection status. GRETA also considered that the Irish authorities should make more efforts to discourage demand for the services of trafficked persons, in partnership with the private sector and civil society.

a. Measures to raise awareness of THB (Article 5)

56. A number of campaigns have been organised in Ireland to inform the general public and target groups about risks of THB, recruitment methods used by traffickers and ways of prevention.

57. The most recent awareness-raising campaign was carried as part of the REACH Project, which was co-funded by the EU and aimed at raising awareness of trafficking as a form of violence against women and girls across the whole island of Ireland. The project commenced in December 2013 and ran for a period of two years. The AHTU and Ruhama were lead partners along with the Health Service Executive (HSE), An Garda Síochána, the Police Service of Northern Ireland, Women's Aid Northern Ireland and the Department of Justice in Northern Ireland. In February 2015 a campaign was launched to reach out to women and girls who have been trafficked or are at risk of being trafficked into prostitution. The targeted awareness-raising activities sought to inform such women and girls of the support that is available and where they can seek help. The campaign was developed following a consultation process with women who had had experiences within the sex trade. This facilitated the development of the message of the campaign and the most effective modes of delivery to reach the women and girls most in need of support. The campaign was poster-based and the posters were distributed in key locations based on the women's recommendations, including commuter points, immigration offices, direct provision centres and health settings. The free phone text number set up as part of the campaign will remain in place for another two years.²⁷ As part of the REACH project, a training module for frontline professionals was developed, the aim of which is to provide clear, plain English information materials for professionals who are not experts in trafficking but who may encounter a person who has been or is vulnerable to trafficking (see paragraph 41).

58. The REACH campaign, and particularly its second stage, "We Don't Buy It" (see paragraph 92), was designed from the start to be measureable, using benchmarking awareness before and after the campaign period. The campaign was independently evaluated and a report measuring its impact was produced in 2015.²⁸ The evaluation found that the increase in awareness was 9%, starting from a pre-campaign awareness level of 8% to a post-campaign awareness level of 17%. The awareness rate was higher in Dublin where there was also a greater concentration of outdoor advertising because of the concentration of the target audience. Awareness in Dublin after four weeks reached 22% (from a starting position of 12%). The evaluation of social media results was also positive. For the first stage of the campaign, i.e. the one targeting women and girls, nearly 46 500 impressions were achieved, resulting in a click through rate of 1.41%.

²⁷ www.reachproject.eu

²⁸ Dr Jane Pillinger, REACH Project Evaluation, November 2015.

59. The evaluation report concluded that although it was hard to assess the impact after just one short campaign period, the initial social media results indicated that a vulnerable target audience had been reached. The conclusions of the evaluation report highlight that targeted operations aimed at the commercial sex industry need to be on-going in order to reach victims of trafficking who are highly vulnerable, controlled and isolated. Inter-agency co-operation between different services and the police is crucial for ensuring immediate support and protection for victims of trafficking. Sexual health clinics are an essential part of the response to women in prostitution providing free access to condoms, blood tests, screening and general medical health, as well as emotional support and a gateway to exiting. The conclusions and recommendations have formed a key part in the development of the second National Action Plan.

60. In their reply to GRETA's second round questionnaire, the Irish authorities have highlighted a number of other awareness-raising activities. By way of example, reference can be made to the following activities which took place in 2014-2016:

- Leaflets, bookmarks and information cards from the "Blue Blindfold" campaign²⁹ were distributed to every library in the country for display as well as to all Garda Superintendents for display in Garda stations. Leaflets and posters are also displayed in all State accommodation centres for asylum seekers.
- To mark EU Anti-Trafficking Day, a banner was placed on Liberty Hall in Dublin as part of continued public awareness-raising efforts in relation to human trafficking.
- AHTU had information stands and distributed materials at a series of conferences and meetings, such as the Public Service Executive Union meeting in April 2016, the annual conferences of the Irish Nurses and Midwives Organisation and the Irish Small and Medium Enterprises Association, the Irish Congress of Trade Unions Women's Conference, and a Sexual Health Awareness Day in Tallaght IT.
- The AHTU, TUSLA and An Garda Síochána made a number of presentations to social science and law students, e.g. Trinity College, University College Cork, Dublin City University and Dublin Institute of Technology. The purpose of the presentations was to make students aware of the issues surrounding human trafficking as these students will be the workforce of the future, as well as encouraging research in this area.
- The Law Society of University College Cork adopted the topic of Modern Slavery and Human Trafficking for their annual conference.

61. GRETA welcomes the efforts made in Ireland to raise public awareness of THB and to assess the impact of campaigns. GRETA invites the Irish authorities to continue their efforts in this area, in the light of research and the impact assessment of previous measures, focusing on new trends, e.g. trafficking for the purpose of force begging, forced criminality and exploitative sham marriages.

b. Measures to prevent THB for the purpose of labour exploitation (Article 5)

62. Ireland signed the Protocol and Recommendation to the ILO Convention on Forced Labour No. 29 at the International Labour Conference in June 2014. Ireland also ratified the ILO Maritime Labour Convention 2006 on 21 July 2014 and the ILO Domestic Workers Convention 2011 on 28 August 2014. GRETA welcomes these developments.

²⁹ See paragraph 108 of GRETA's first report on Ireland.

63. In Ireland, employing a third-country national without the State's permission is an offence for both the third-country national and the employer concerned. GRETA's first report made reference to the case *Hussein v. The Labour Court & Anor*³⁰, where the High Court ruled in 2012 that an irregular migrant, Mohammad Younis, who had worked for a number of years in an ethnic restaurant, could not benefit from protections under employment law because his employment contract was unlawful, due to his failure to have an employment permit. In June 2015, the Supreme Court set aside the decision of the High Court³¹ and upheld the two monetary awards made to Mr Younis by the Rights Commissioner (respectively of €5,000 and €86,134.42) for breaches of the Organisation of Working Time Act 1997 and the minimum wage legislation.³² However, no charges were ever brought against Mr Younis' exploiter.

64. The Employment Permits (Amendment) Act, which was enacted on 27 July 2014, seeks to address the deficiencies identified by the case of *Hussein v. The Labour Court*. The Act provides that it is a defence for the foreign national charged for being without an employment permit where he/she can show that all reasonable steps to comply with the requirement to have an employment permit were taken by him/her. The Act also stipulates that the Minister may take a civil action on the foreign national's behalf for compensation for work done or services rendered, as well as responsibility for the cost of such action. Under the Employment Permits Acts, anyone convicted of employing an illegal immigrant can be fined up to €350,000 and sentenced to a maximum of 10 years' imprisonment.

65. The National Employment Rights Authority was integrated into the Workplace Relations Commission (WRC) under the Workplace Relations Act, which came into force in 2015. WRC labour inspectors carry out both announced and unannounced workplace inspections to ensure compliance with all aspects of employment law. Irish law provide penalties for labour recruiters who use fraudulent or deceptive offers, as well as for the confiscation of a worker's passport or travel documents and withholding the payment of workers' salaries. The WRC currently employs 56 labour inspectors (organised in five officers around Ireland) who carried out over 5,100 workplace inspections in 2015 (over 2,800 of which were unannounced); 69 employers were prosecuted for employment law offences in 2015 and over €14.M in outstanding wages was recovered for employees. In 2016, a total of 2,877 unannounced inspection visits were undertaken. The WRC inspectors have been trained in the identification of indicators of trafficking and the inspections focus on sectors where employees are at an increased risk of exploitation (e.g. construction, catering, hotels, car washes, domestic work, fisheries). A card containing contact numbers has been developed in six different languages and labour inspectors give it discretely to people during inspections. The WRC has no statutory powers on THB and when inspectors encounter suspected cases of forced labour/trafficking, they have to notify An Garda Síochána. Thus in 2015, labour inspectors encountered six cases which raised suspicions and were notified to An Garda Síochána for further investigation. Joint operations as also organised by WRC and An Garda Síochána. The WRC has worked together with Romanian inspectors in relation to Romanians employed in pop-up car washes. However, civil society organisations have expressed concern that labour inspections are linked to immigration control.

66. The Atypical Working Scheme (AWS) was introduced in September 2013 as a mechanism for streamlining entrance to Ireland for non-EEA nationals for the purpose of legitimate short-term work or to provide a specialised/high skill to an industry/business which would not otherwise be covered by the normal arrangements under the Employment Permit Acts. Immigration permission issued from the Department of Justice and Equality allows such persons to enter Ireland in order to work/provide a service without the requirement for an employment permit. Over time the scheme has expanded to include different employment categories for which special arrangements are required.

³⁰ IEHC 364 (31 August 2012) <http://humanrights.ie/immigration/irregular-migrant-workers-and-employment-rights-in-ireland/>

³¹ <http://www.courts.ie/Judgments.nsf/597645521f07ac9a80256ef30048ca52/67B523D012E20C6280257E6F0053FABF?opendoc>

³² <http://humanrights.ie/civil-liberties/mohammad-younis-succeeds-in-the-supreme-court/>

67. Within the Santa Marta Project, which is an alliance of police chiefs and bishops around the world working together with civil society to eradicate human trafficking, Ireland has agreed to lead in the North Atlantic Fisheries Project, together with UK and Spain, to look at human trafficking in the fisheries industry. An international conference on this subject took place in May 2016 at the Mary Immaculate College in Limerick.

68. In November 2015, following reports of alleged abuses of migrant workers on board Irish fishing vessels,³³ the Government established a Task Force on non-EEA workers in the Irish fishing industry. It was chaired by the Minister for Agriculture and involved the Minister of State for Business and Employment and senior officials from relevant Government departments and agencies. The Task Force received presentations and submissions from a number of relevant stakeholders. The report of the Task Force, published on 14 December 2015,³⁴ recommended a new sector-specific Atypical Worker Permission system to enable employers in specific parts of the Irish fishing fleet ("whitefish fleet"), under a structured and transparent framework, to source and employ workers from non-EEA countries. The Atypical Working Scheme (AWS) for Seafishers was launched in February 2016 to facilitate the employment of fishers on boats of 15 metres and over in length. It was not a regularisation scheme for undocumented workers but rather the putting into place, for the first time, of a regulatory regime for the employment of non-EEA workers. The AWS provides that employees will be guaranteed, at a minimum, the national minimum wage and statutory terms and conditions in accordance with national law, which will be underpinned by the requirement for employers to provide a legally binding contract of employment. A Memorandum of Understanding on the issue of enforcement has been finalised between the different agencies having a role in the oversight of the industry.³⁵ Applications must be made by the employer who has a suitable vacancy and has identified an employee to fill that vacancy. The Irish Naturalisation and Immigration Service (INIS) considers the applications and issues AWS permissions where the applicants meet the published criteria.

69. According to information provided by the Irish authorities, since the AWS scheme was launched in February 2016, more than 240 permits have been granted and new applications continue to be processed by INIS. Ten WRC inspectors have received safety and sea survival training and are available to carry out inspections. In the 12-month period to 30 April 2017, the WRC carried out some 205 inspections of 141 fishing vessels. Inspections may involve surveillance, on-board inspections of records and interviews with crews, on-shore inspections of records at the owner's premises, and interviews with crews in fishing ports and landing places. The WRC objective is to achieve compliance and, where possible, to avoid recourse to legal proceedings and prosecutions, but some employers fail to rectify contraventions and/or to pay the unpaid wages due to their employees or continue to employ persons without work permission. Four prosecutions have to date been initiated against whitefish vessel owners (i.e. 2.8% of vessels inspected to date). There have been a number of operational interventions in the fisheries industry, one of which led to the identification of a victim of human trafficking (the case is currently under investigation). In October 2016 a major joint enforcement operation by the WRI, An Garda Síochána and other agencies was carried out in two ports, with surprise inspections of a number of vessels which, however, did not reveal any irregular workers.

³³ The Guardian, *Revealed: trafficked migrant workers abused in Irish fishing industry*, 2 November 2015. Available at: <https://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry>

³⁴ <http://www.agriculture.gov.ie/media/migration/publications/2015/TaskForceReport141215.pdf>

³⁵ Between the Department of Jobs, Enterprise and Innovation, the Department of Justice and Equality (INIS), the Department of Transport, Tourism and Sport/Marine Survey Office, the Department of Defence (Irish Naval Service), An Garda Síochána, the Irish Sea Fisheries Board, the Health and Safety Authority, the Office of the Revenue Commissioners, the Sea Fisheries Protection Authority, the Workplace Relations Commission and the Department of Agriculture, Food and the Marine. See https://www.agriculture.gov.ie/press/pressreleases/2016/february/title_95081_en.html

70. While the putting in place of a regulatory regime for the employment of non-EEA workers in the fishing industry is a welcome development, GRETA notes that the employer must support the fisher's application for a visa, which creates a dependence on the employer and if the employment relationship breaks down, places the fisher in a vulnerable position. GRETA was informed of cases where the employer refused to assist fishers to apply for the scheme and they were dismissed from their job. The number of permits issued is reportedly small in relation to the total number of workers in the fisheries industry, and those without permits accept to work overtime without pay for fear of being discovered and deported from Ireland. According to Trade Union representatives, the new scheme's provisions were not explained to non-EEA fishers, most of whom come from Egypt, Ghana, Indonesia and the Philippines, in a language they can understand. The International Transport Workers' Federation (ITF) reportedly carried out three rounds of inspections in 2016 and found numerous breaches of the AWS, which were forwarded to the WRC, but no feedback was apparently received. Inspections are reportedly largely limited to the policing of work permits, rather than monitoring the respect of employment rights. ITF was not invited to participate in the joint operation in October 2016 and another major operation in April 2017. According to ITF, less than 10% of some 100 fishers which whom they have been in contact are covered by the AWS and those who are covered have apparently had the cost deducted from their wages. Three fishers reportedly suffered serious industrial injuries and are threatened with deportation while they continue to seek redress from their employers for unpaid wages and compensation for injuries. The ITF has reportedly made applications for identification as suspected victims of human trafficking on behalf of three Egyptian men who were badly exploited in the Irish fishing fleet.

71. There is no visa scheme or work permit for domestic work in Ireland and therefore no legal route for domestic workers to be recruited from outside the EU. The Irish authorities have stated that domestic workers enjoy the same protection under Irish employment legislation as all other legally employed workers. The WRC has published a leaflet entitled "Employment Rights of Domestic Workers in Ireland". Further, the Irish Congress of Trade Unions (ICTU) has a campaign for better rights for domestic workers. Ireland was to the forefront in promoting the ILO Domestic Workers Convention during the Irish EU Presidency in 2013 and ratified the Convention at an early opportunity in 2014.

72. The recruitment of *au pairs* into sub-standard domestic work jobs has been identified by the MRCI as a growing problem, with over 50 reported cases of labour exploitation in 2015 alone.³⁶ GRETA was informed that there is case-law according to which *au pairs* fall under employment law. However, according to MRCI, the regulatory approach to the *au pair* sector is contradictory, seeking to exclude *au pairs* from employment laws, yet treating them as workers. Further, labour inspectors have no powers to deal with illegal advertising by *au pair* recruitment agencies, their only role being to ensure that the agencies are registered in Ireland and pay a fee under the Employment Agencies Act. The Irish authorities have stated that where the WRC receives a complaint involving somebody described as an *au pair*, it will investigate with a view to establishing whether a person has statutory entitlements under employment law. The rights of persons employed in private homes are set out in a Code of Practice for Persons Employed in Other People's Homes. Where agencies which deal with *au pairs* are located in the Irish jurisdiction, they are required to register under the Employment Agency Act 1971. Following a series of inspections in 2016 and 2017, 16 *au pair* recruitment agencies were registered.

73. Home care is one of the fastest-growing sectors in Ireland and a high proportion of home care workers are migrants. There are no legal channels of migration into Ireland to work in the home care sector. In 2013, MRCI published research which identified poor terms and conditions of employment experienced by migrant care workers in Ireland, some of whom were employed in home care. Further, in 2015 MRCI examined the trends in the home care sector and migrant workers' position, organising a series of participative workshops with migrant home care workers, and published a report which refers to poor working conditions, lack of regulation and concerns regarding the quality of care.³⁷

³⁶ Available at: <http://www.mrci.ie/wp-content/uploads/2015/06/Childcare-Paper-20152.pdf>

³⁷ Available at: <http://www.mrci.ie/wpcontent/uploads/2015/09/Migrant-Workers-in-the-Home-Care-Sector-Preparing-for-the-Elder-Boom-in-Ireland.pdf>

74. In 2015 MRCI received funding of €40 000 under the Dormant Accounts Scheme for a three-stranded project involving, *inter alia*, the prevention of trafficking for the purpose of labour exploitation in the restaurant sector and domestic work by assisting migrants to move from precarious work situations to decent employment. MRCI runs a drop-in centre for migrants in Dublin, which receives some 3000 people annually, including undocumented workers who are provided with advice. A further €43 000 was provided under the Dormant Accounts Funding Scheme to the NGO Doras Luimní to provide assistance to people affected by THB and to specifically target labour exploitation in the Limerick region. In 2016, MRCI was awarded €40 000 for a project on strengthening the integration of migrant workers in the Irish labour market and Doras Luimní, €40 000 for and developing initiatives to prevent migrant exploitation and awareness raising of THB (see also paragraph 245).

75. On 12 September 2014, the Minister for Foreign Affairs and Trade announced the introduction of guidelines for members of diplomatic missions in Ireland who intend to employ private domestic workers.³⁸ An agreed undertaking of the terms and conditions of employment, in line with Irish employment law, signed by both the employer and the employee, is required prior to arrival in Ireland. The employee must have a bank account in order that proof of payment may be produced if necessary. Employees are entitled to receive a pay slip with every payment of wages, which show gross wage and the nature and amount of each deduction. Prospective employees must be over 21 years of age and must not be related to the employer or his/her spouse. After the private domestic employee has arrived in Ireland, the relevant sending State's embassy must submit notification to the Department of Foreign Affairs and Trade and the employee must personally collect his/her ID card at the Department.

76. The second Cross Border Conference on Forced Labour, jointly organised by AHTU and the Department of Justice of Northern Ireland, was held on 21 January 2015. It focused on cross border investigative challenges, prevention and identification challenges in trying to locate and remove victims from abusive situations. The third Cross Border Conference took place on 22 June 2016 and focused on engagement with the private sector to raise awareness of the indicators of serious labour exploitation and to advise them on how to prevent it in their businesses and supply chains (see also paragraph 97).

77. The Department of Foreign Affairs and Trade has prepared a working outline of Ireland's first National Plan on Business and Human Rights (2016-2019), which sets out a number of actions. The draft Plan has recently been circulated to members of the Inter-Departmental Committee on Human Rights with a view to a launch date in June/July 2017. It foresees a Business and Human Rights Implementation Group with an independent Chair and with members drawn from government, business and civil society. Further, the Irish authorities have indicated that the Office of Government Procurement (OGP) aims to ensure that human rights related matters are reflected in public procurement and is committed to following good practice on procurement and human rights standards in line with existing EU Law, which expands the grounds for excluding suppliers from contracts to include human trafficking.

78. GRETA commends the steps taken in Ireland since the first evaluation visit to prevent trafficking for the purpose of labour exploitation. GRETA stresses that addressing this problem requires a multi-faceted approach, including through establishing as a criminal offence the use of services which are the object of labour exploitation, where there is knowledge that the person is a victims of trafficking, improving labour conditions and the enforcement of labour standards in sectors vulnerable to the use of trafficked labour (such as domestic work, fisheries, restaurants, car-washing services, agriculture), and facilitating lawful migration. Further, increased attention must be paid to supply chains and procurement practices.

³⁸ Available at: <https://www.dfa.ie/media/dfa/alldfawebsitemedia/newspress/publications/FINAL-GUIDELINES-RELATING-TO-THE-EMPLOYMENT-OF-PRIVATE-DOMESTIC-EMPLOYEES-BY-ACCREDITED-MEMBERS-OF-THE-MISSION.pdf>

79. GRETA considers that the Irish authorities should make further efforts to prevent trafficking for the purpose of labour exploitation, in particular by:

- continuing to sensitise relevant officials, in particular labour inspectors, police officers, prosecutors and judges, about human trafficking for the purpose of labour exploitation and the rights of victims;
- ensuring that on-going training is provided to labour inspectors to enable proactive identification of human trafficking cases, and that labour inspections are properly resourced, frequent and targeted at sectors which show a high potential for human trafficking, focusing on the rights of the workers rather than on their immigration status;
- reviewing the regulatory systems concerning migrants working as *au pairs* and home care workers and ensuring that inspections can take place in private households with a view to preventing abuse of domestic workers, including *au pairs*, and detecting cases of human trafficking;
- reviewing the application of the Atypical Working Scheme in the fisheries industry with a view to ensuring that it contains sufficient safeguards against trafficking and exploitation of fishermen;
- strengthening the monitoring of recruitment and temporary work agencies and reviewing the legislative framework for any loopholes that may limit protection or preventive measures;
- working closely with the private sector and trade unions, in line with the Guiding Principles on Business and Human Rights, and requiring businesses to report publicly on measures to reduce human trafficking or forced labour in their supply chains;³⁹
- conducting a comprehensive human rights-led revision of the State's procurement practices.

c. Measures to prevent trafficking in children (Article 5)

80. A major tool for preventing trafficking in children is raising awareness through education. The Anti-Human Trafficking Unit of the Department of Justice and Equality (AHTU), in conjunction with relevant Government agencies and NGOs, frequently undertakes initiatives to raise awareness of human trafficking in schools and universities. A resource pack for the Civil, Social and Political Education (CPSE) curriculum for secondary schools was developed and circulated to all schools. The resource pack contains leaflets, a poster, a booklet entitled "Don't Close Your Eyes to Slavery" and information cards. AHTU regularly gives presentations at secondary schools around the country as well as third-level colleges and universities aimed at raising awareness of human trafficking (see also paragraph 60).

81. An Garda Síochána and TUSLA staff have undergone joint and intensive training in the specialised skills necessary for interviewing of children.

82. The National Education Welfare Board (NEWB) is the national agency with responsibility for encouraging and supporting regular school attendance. The NEWB was established to ensure that every child attends school regularly or otherwise receives an education or training. The work of the NEWB is crucial in supporting children attending school and in ensuring that children do not drop out of school and become vulnerable to traffickers. Under the first National Action Plan, contact was established with the NEWB to explore the role it can play in supporting child victims of trafficking in the education setting. Presentations were made to staff of the NEWB in relation to human trafficking, particularly trafficking of children.

³⁹

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

83. There is a legal requirement to register the birth of a child within three months of the birth. A birth may be registered in the office of any Registrar of Births, Marriages and Deaths, regardless of where it took place. A birth notification form is usually completed with the parent(s) by hospital staff (in the case of hospital births) or by a doctor or midwife (in case of home births) to guarantee that correct and accurate information is recorded. This form outlines the information to be recorded in the Register of Births and is forwarded to the Registrar's office.

84. The prevention of human trafficking is closely linked to the on-line security of children. Recruiting victims through the Internet, via websites advertising jobs, dating sites or social media is a growing trend. The Office for Internet Safety (OIS) in the Department of Justice and Equality has primary responsibility for the development and promotion of strategic actions to promote Internet safety, particularly in relation to combating child pornography. The OIS has produced a series of booklets on Internet safety, available free of charge on the OIS website⁴⁰ and in hard copy on request. For Safer Internet Day in February each year, the OIS develops and makes available information materials in line with an annual theme. Special events for Safer Internet Day each year are organised by the Professional Development Service for Teachers Technology in Education. Thus in February 2017 a new resource for parents, the Parents' Guide to a Better Internet, was launched on Safer Internet Day. Further, An Garda Síochána has a Schools Programme where personal safety issues, including online safety, are highlighted and discussed with children (aged from 10 years old) and young people.

85. GRETA considers that the Irish authorities should continue and strengthen their efforts in the area of prevention of child trafficking, using the results of research on new trends, sensitising and training child protection professionals across the country, and paying increased attention to migrant children, especially unaccompanied and separated children.

d. Measures to prevent trafficking for the purpose of organ removal (Article 5)

86. GRETA notes that while trafficking in human beings for the purpose of organ removal as defined by the Convention and organ trafficking as defined by Articles 4 to 8 of the Council of Europe Convention against Trafficking in Human Organs⁴¹ are distinct crimes, they share similar root causes, such as shortage of organs to meet demand for transplantation and poor economic and other conditions that put persons in a vulnerable position. Therefore, measures to prevent organ trafficking can help prevent trafficking for the purpose of organ removal and the reverse is also true.⁴² Among the necessary preventive measures, GRETA underlines the importance of a robust and transparent domestic system for the removal and transplantation of human organs and the need for training of health-care professionals. GRETA also stresses the importance of conducting a thorough investigation in each case where there is information or suspicion of trafficking for the purpose of organ removal, paying attention to the abuse of the vulnerability of the "donor" and ensuring that "donors" are treated as victims of human trafficking.

⁴⁰ www.internetsafety.ie

⁴¹ Opened for signature in Santiago de Compostela on 25 March 2015.

⁴² See Council of Europe/United Nations, *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*, 2009, in particular pages 55-56; OSCE, *Trafficking in human beings for the purpose of organ removal in the OSCE region*, OSCE Occasional Paper No. 6, 2013.

87. In Ireland, the European Union (Quality and Safety of Human Organs intended for Transplantation) Regulations 2012 (S.I. No. 325 of 2012) give effect to Directive 2010/53/EC of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation. Under these Regulations, it is an offence to traffic an organ. Living donors must give their informed consent to the donation. Procurement organisations must take all necessary measures to ensure the highest possible protection of living donors in order to fully guarantee the quality and safety of organs for transplantation and ensure that living donors are selected on the basis of their health and medical history, by suitably qualified, trained and competent professionals. The Health Service Executive and transplantation centres must: (a) ensure that a register or record of the living donors is kept, in accordance with EU and national provisions on the protection of the personal data and statistical confidentiality; (b) endeavour to carry out the follow-up of living donors; and (c) implement and maintain a system in order to identify, report and manage any event potentially relating to the quality and safety of the donated organ, and hence of the safety of the recipient, as well as any serious adverse reaction in the living donor that may result from the donation.

88. The Health Products Regulatory Authority (HPRA) is responsible for granting an authorisation under the above-mentioned Regulations to a procurement organisation or a transplantation centre to carry out any prescribed activity under the legislation, having satisfied itself that such prescribed activity is carried out by persons complying with the requirements of the Regulations and the Directive. The HPRA carries out inspections to ensure compliance and has issued detailed guidance on the conditions for accepting living donors. GRETA was informed that a review of the living donor programme is envisaged. Currently, no formal guidance and training is in place for relevant professionals to prevent THB for the purpose of organ removal, to report cases and to identify and assist victims.

89. The Living Kidney Donor Programme at Beaumont Hospital in Dublin oversees and monitors the medical care and recovery of donors and recipients and manages the waiting list for kidney transplantations until such time as they are discharged back to their referring nephrologist. GRETA was informed that some 190 kidney transplants are performed on an annual basis, including around 50 from living donors. There is a waiting list of around 260 persons, with a waiting period of some 36 months.

90. Ireland signed the Council of Europe Convention against Trafficking in Human Organs on 25 October 2015 and is presently preparing the legislation necessary for its ratification. GRETA encourages the Irish authorities to ratify the Council of Europe Convention against Trafficking in Human Organs as this would contribute to the prevention of trafficking for the purpose of organ removal.

91. GRETA considers that medical professionals involved in organ transplantations and other relevant professionals should be sensitised about THB for the purpose of organ removal through training and the provision of guidance.

e. Measures to discourage demand (Article 6)

92. One of the objectives of the previously-mentioned REACH Project was to encourage zero tolerance of trafficking as a form of violence against women and girls by raising awareness of the harms caused by demand for sexual services amongst potential buyers of sex. A campaign targeting men and boys was launched in April 2015 and lasted for a period of six weeks. Its main objective was to encourage men, the majority of whom do not buy sex, to make a stand against prostitution and sex trafficking. The campaign's slogan, "We Don't Buy It", was selected as a brand for this campaign, which was delivered by way of a multi-media mix (outdoor, radio, public relations, online⁴³ and social media⁴⁴) to ensure targeted reach and maximum attention. The slogan featured on buses and telephone boxes along with 'Ad Mobiles'. Feedback from the campaign suggests that the audience liked the positive approach that the campaign took in encouraging men to collectively make a stand against prostitution and sex trafficking. According to the evaluation of the campaign (see also paragraph 58), it achieved an awareness level of 9% amongst the general public in circumstances where the industry standard would be 3-4% for a campaign of this nature and duration. The evaluation of social media results was also positive: there were over 2.5 million impressions generated over the four week campaign resulting in a click through rate of 0.11%.

93. In September 2015 the Minister for Justice and Equality published the Criminal Law (Sexual Offences) Bill 2015 which provides, *inter alia*, for the creation of offences of purchasing sexual services in the context of prostitution and trafficking.⁴⁵ The two offences contained in Part 4 of the Bill – a general offence of paying to engage in sexual activity with a prostitute (section 25) and a more serious offence of paying to engage in sexual activity with a trafficked person (section 26) – are the result of public consultation by the Department of Justice and Equality and the Joint Oireachtas Committee on Justice, Defence and Equality. Unlike the existing offences relating to prostitution such as soliciting, loitering or brothel keeping,⁴⁶ the stated purpose of these new offences is to discourage demand which fosters sexual exploitation, by criminalising the buyers of sexual services. As noted in paragraph 17, the Criminal Law (Sexual Offences) Act 2017 was signed on 22 February 2017.

94. GRETA notes that the Criminal Law (Sexual Offences) Act 2017, other than criminalising the purchase of sexual services, does not contain provisions in the areas of education and awareness-raising, nor does it contain provisions concerning exit from prostitution and related support, which address the root causes of people engaging in prostitution. In their comments on the draft GRETA report, the Irish authorities have indicated that while there are no specific provisions regarding pathways to exit prostitution in the Act, the requirement for exit support has been specifically acknowledged in events marking the passing of the Act.⁴⁷ Additional funding was provided to the NGO Ruhama (€310,000 in 2017, an increase of 13% of the level of funding provided in 2016) for the purpose of offering long-term support services to women to help them take the first steps out of prostitution. Furthermore, AHTU is exploring the possibility of developing an awareness-raising project with An Garda Síochána which is envisaged to involve an awareness campaign for those working in the sex industry and an advertising campaign for potential purchasers of sex, accompanied by the updating of information materials.

⁴³ www.wedontbuyit.eu

⁴⁴ #wedontbuyit trending on Twitter

⁴⁵ The Bill also contains provisions concerning sexual exploitation of children, sexual acts with protected persons, and incest.

⁴⁶ Prostitution is not illegal in Ireland, but virtually all activities associated with sex work are criminalised.

⁴⁷ Notably the speech of the Tánaiste and Minister for Justice on International Women's Day in March 2017. <http://www.justice.ie/en/JELR/Pages/SP17000090>

95. GRETA notes concerns raised by some interlocutors as to the possible negative impact of the criminalisation of purchase of sexual services on the identification of victims of THB, as well as the potential for further victimising people engaged in prostitution, making them more vulnerable to traffickers and exposed to violence and health risks by customers, undermining their relationship with law enforcement and hindering intelligence gathering. Despite the previously-mentioned public consultation, some civil society actors were concerned that the Government had not sufficiently considered the views of persons engaged in prostitution and had failed to take into account independent evidence suggesting that the criminalisation of the purchase of sexual services does not fulfil the purpose of reducing prostitution and human trafficking.⁴⁸ A submission by the Sex Workers Alliance Ireland (SWAI) was made to the Committee on Justice and Equality in September 2016, proposing certain amendments to the Bill, in particular removing the section on loitering and introducing a review of the impact and operation of Part 4 of the Bill.

96. The Criminal Law (Sexual Offences) Act 2017 includes in section 27 a review of the operation of section 25 of the Act within three years from its commencement. The report will include information on the number of arrests and convictions in respect of the offence of payment for sexual activity with a prostitute and an assessment of the impact of the operation of that section on the safety and well-being of persons who engage in sexual activity for payment. GRETA welcomes the inclusion of the review clause and notes that it will be important to analyse the impact of criminalising the purchase of sexual services on the identification of trafficking victims, the protection and assistance provided to them, and the prosecution of traffickers. It will also be advisable to carry out research and to continuously assess the effects of criminalising the purchase of sexual services on the reduction of demand for services provided by victims of trafficking and more broadly on the phenomenon of trafficking for the purpose of sexual exploitation.

97. Building on the 2015 Cross Border Conference focused on Human Trafficking for Labour Exploitation (see paragraph 76), AHTU has engaged with the second largest food production company in the UK and Ireland (2 Sisters Food Group), with a focus on supply chain issues. AHTU conducted THB awareness-raising sessions in two of the Group's sites, in Longford and Naas, in October 2015. The 2016 Cross Border Conference, jointly hosted by the Department of Justice and Equality of Ireland and the Department of Justice of Northern Ireland, focused on engagement with the private sector to raise awareness of the indicators of serious labour exploitation and to advise them on how they can prevent it in their businesses and supply chains. The conference was attended by around 100 business representatives.

98. GRETA welcomes the increased attention to discouraging demand and considers that the Irish authorities should strengthen the comprehensive approach envisaged in Article 6 of the Convention, by adopting legislative, administrative, educational, social and cultural measures to discourage demand that fosters all forms of exploitation that leads to trafficking, in partnership with civil society, trade unions and the private sector.

f. Border measures (Article 7)

99. According to information provided by the Irish authorities, all immigration officers are trained in the indicators of trafficking and routinely screen for them. Targeted intelligence and surveillance led operations are used to identify and rescue suspected victims of human trafficking at the borders. These operations are carried out usually in co-operation with the authorities in the country of departure or by using Europol and Interpol channels. Carbon dioxide detectors have been deployed for use at four sea ports, namely, Dublin, Dun Laoghaire, Cobh and Rosslare. The Irish Government has recently mandated the relevant agencies to proceed with the implementation of enhanced passenger screening systems, including international links and checks against watch list information in Interpol's Lost and Stolen Documents databases.

100. Prior to being posted abroad, Irish diplomatic and consular staff receive training on how to recognise indicators of human trafficking and what measures to take based on the Handbook for Diplomatic and Consular Personnel on How to Assist and Protect Victims of Human Trafficking (developed by IOM and the Council of the Baltic Sea States) and the EU Guidelines for the Identification of Victims of THB for Consular Services and Border Guards. The training equips consular staff to do a risk analysis of visa applications, identify questionable documents or act on suspicions of third party control over visa applicants. Consular staff are trained to identify a potential victim of THB, inform the person of their options and make contact with specialised agencies or other embassy.

101. The Immigration Act 2003 is the legal framework in Ireland for carrier liability. It imposes certain requirements on carriers operating aircraft, ferries or other vehicles bringing persons to Ireland, including to ensure that passengers are in possession of any necessary immigration documentation. There is on-going enforcement of the carrier liability provisions. In 2015 there were 1010 alleged breaches of the provisions, 583 were dealt with by way of caution and a fine was imposed in 393 cases.

102. In 2012 AHTU, in consultation with counterparts in the United Kingdom, developed a training resource for airline staff to be incorporated into their training programme. The training features information on the indicators of human trafficking, case studies, steps to take in case of a suspected trafficking victim and useful contacts. Joint communications by the Irish and United Kingdom authorities have been made with airlines flying into and out of both jurisdictions seeking their support in the fight against human trafficking by providing training to airline staff on the indicators of human trafficking. A key priority under the second National Action Plan will be the development of a training needs analysis and training for these professionals will be considered.

103. Staff of the Garda National Immigration Bureau have been appointed as Airline Liaison Officers at various hub airports and are a source of intelligence for An Garda Síochána. The Human Trafficking Investigation and Co-ordination Unit (HTICU) of An Garda Síochána is a member of the EU Policy Cycle EMPACT Human Trafficking Group, which aims to disrupt organised crime gangs involved in human trafficking within the EU and from the most prevalent countries of origin, including groups using legal business structures to facilitate or disguise their criminal activities.

104. GRETA refers to recent reports concerning an investigation into a people smuggling ring at Dublin airport, involving Aer Lingus staff, which allegedly smuggled up to 600 people into Ireland at an estimated cost of around €20,000 per person.⁴⁹ While this case has been identified as a smuggling operation, it does raise questions about the capacity of airport staff and border guards to detect and identify possible victims of human trafficking. Given the scale of this operation, it is possible that some of those involved may have been victims of human trafficking. In their comments on GRETA's draft report, the Irish authorities have indicated that An Garda Síochána remain of the view that this was a smuggling operation rather than being related to human trafficking. The authorities have stated that immigration officers at Dublin Airport process around 15 million passengers per annum and around 3,300 were refused leave to land in 2016. In November 2016 Ireland launched an automated connection to Interpol's Lost and Stolen Travel Documents Database. In the first eight weeks of operating systematic checks against this database over 700,000 documents were searched, with a number of people having been refused entry to Ireland on the basis of an alert on the system having been triggered. According to the authorities, a process of civilianisation is on-going at the airport and both new and existing staff are trained to recognise the signs of human trafficking.

105. GRETA considers that the Irish authorities should continue to improve the detection of trafficking victims during border controls, in particular by:

- reinforcing training for staff carrying out identity checks so that they are more effective in detecting signs pointing to a possible victim of trafficking and their referral to assistance;
- further developing awareness within transport companies of the detection of victims, using indicators of THB, and how to refer them to assistance.

2. Measures to protect and promote the rights of victims, guaranteeing gender equality

a. Identification of victims of trafficking (Article 10)

106. In the first evaluation report on Ireland, GRETA urged the Irish authorities to promote multi-agency involvement in victim identification by formalising the role and input of specialised NGOs and involving other relevant actors, such as labour inspectors, social workers and medical staff, to amend the relevant regulations to allow asylum seekers, European Economic Area (EEA) nationals and Irish nationals to be formally identified as victims of trafficking, and to guarantee that, in practice, identification is dissociated from the suspected victim's co-operation in the investigation.

107. There have been no changes to the procedure for the identification of victims of trafficking in Ireland since GRETA's first report. As explained in that report,⁵⁰ the process for the identification of a person as a suspected victim of human trafficking for immigration purposes is set out in the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking⁵¹ (hereafter "Administrative Immigration Arrangements"), adopted in June 2008, which apply to persons who would not otherwise have a permission to be in Ireland (i.e. to non EEA-nationals who are not asylum seekers). Under the Administrative Immigration Arrangements, identification depends on there being reasonable grounds to believe that the person is a victim of an offence 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 Trafficking and Pornography Act 1998. A person is considered to be a suspected victim of human trafficking once they, or someone acting on their behalf, make a claim of having being trafficked to An Garda Síochána, until such time as there is compelling evidence that they are not.

⁴⁹ <http://www.herald.ie/news/600-smuggled-in-as-fake-aer-lingus-staff-in-12m-scam-35392562.html>

⁵⁰ See paragraphs 146-152 of GRETA's first report.

⁵¹ [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/ACJN-8YSMJ41738285-en/\\$File/Immigration%20arr.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/ACJN-8YSMJ41738285-en/$File/Immigration%20arr.pdf)

108. Suspected victims of human trafficking are referred to the Human Trafficking Investigation and Co-Ordination Unit (HTICU) of An Garda Síochána for identification and investigation of the case. Referrals to HTICU can come from other agencies, NGOs or private citizens. As mentioned in paragraph 20, since March 2015 HTICU has been placed under the Garda National Protective Services Bureau, instead of the Garda National Immigration Bureau (GNIB), to which it was formerly subordinated. GRETA welcomes the separation of trafficking victim identification from immigration control. Referral to HTICU gives the suspected victim the right to accommodation and other assistance (see paragraph 128). An Garda Síochána has produced a victim information leaflet, available in some 35 languages, which explains to victims of crimes their rights (including the right to legal advice and compensation) and the process.

109. As noted in GRETA's first report, as part of the first National Action Plan, a Statement of Roles and Responsibilities for State organisations, NGOs and international organisations in Ireland engaged in co-operation regarding the prevention, protection of victims and prosecution of trafficking in human beings was drawn up.⁵² This document is currently being updated to reflect organisational changes. A process map of the National Referral Mechanism (NRM) was also drawn up to show how the various agencies interact with each other.⁵³ Information on how to report suspected cases of victims of trafficking and relevant victim support contacts are available online.⁵⁴

110. The GNIB has a standard operating procedure in place for best practices for interviewing victims after the conclusion of the recovery and reflection period. Guidelines on human trafficking have also been circulated to frontline staff in the Department of Social Protection. These guidelines outline the signs of human trafficking which staff may come across in their daily work and how suspected cases are to be reported.

111. GRETA refers to the High Court judgment of 15 April 2015 in the case of *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors*.⁵⁵, in which the Court found a number of flaws in the mechanism in place in Ireland to ensure early identification of victims of trafficking, in so far as it relates to persons suspected of involvement in criminal activity. The applicant in this case was a Vietnamese woman who was arrested by the Gardai in November 2012 after being found in a cannabis grow-house in west Dublin and charged under the Misuse of Drugs Act. The applicant's solicitor wrote to the GNIB on 6 December 2012, requesting her identification as a victim of trafficking. The woman had reportedly been transported to Ireland by sea, expecting a job cleaning or minding children, but had been forced instead to work in a cannabis grow-house. As part of the identification process, the applicant was examined by a forensic psychologist and a forensic psychiatrist, whose reports supported her claims that she had been trafficked. However, she was not identified as a victim of trafficking and spent two and a half years in custody. The Gardai's refusal to identify her as a victim of trafficking followed from a prolonged process of collecting evidence, including independently obtained intelligence, Interpol information and interviews with the victim, which suggested that her account was "inaccurate" and "vague".

⁵² [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/ACJN-8YSMSH1751575-en/\\$File/Statement%20of%20Roles%20and%20Responsibilities.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/ACJN-8YSMSH1751575-en/$File/Statement%20of%20Roles%20and%20Responsibilities.pdf)

⁵³ Available on: www.blueblindfold.gov.ie

⁵⁴ <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/index-en>

⁵⁵ *P. v. Chief Superintendent Garda National Immigration Bureau, the Director of Public Prosecutions, Ireland and the Attorney General*, 2013/795, available at: <http://www.mrci.ie/wp-content/uploads/2015/04/2015-04-15-P-v-Ireland-Judgment.pdf>

112. The Irish Human Rights and Equality Commission (IHREC) appeared as *amicus curiae* in the above-mentioned case, which highlights a number of shortcomings in Ireland's identification mechanism, particularly as regards the limited application of the Administrative Immigration Arrangements, their failure to set out the nature and detail of the identification process, and the lack of clarity and transparency of decision making.⁵⁶ The High Court decision in the P. case raises issues in relation to the role of the Gardai under the Administrative Immigration Arrangements to perform formal identification while at the same time investigating suspected criminal offences, which can give rise to a conflict.

113. There have been no changes to the victim identification system since the above-mentioned judgment, but the Irish government recognises the need for a fundamental re-examination of the victim identification process and the role to be played in that process by all stakeholders, including NGOs, as stated in the second National Action Plan. As a follow up to the recommendations made in GRETA's first report, the Irish authorities organised a round-table on the identification of victims of trafficking in December 2015, with funding provided by the Council of Europe. The round-table comprised relevant officials and NGOs and its aim was to examine multi-agency models of victim identification from the Netherlands and the UK (Scotland) and their applicability to the Irish context. Further, in October 2016, a study visit to England was organised for Irish officials and NGO representatives, with funding from the Council of Europe, to consider lessons learned from the review of the National Referral Mechanism of the UK. As noted in paragraph 25, the first formal meeting of the Ad-Hoc Victim Identification Working Group took place on 6 April 2017. Participants discussed the broader framework of protection that results from identification and decided that the above-mentioned Roles and Responsibilities Document required updating. The review process has been aided by a round of bilateral consultations between AHTU and various participants in March/April 2017 and an analysis of case studies received from those interacting directly with victims. The Irish authorities have indicated that AHTU will endeavour to complete the review process of the victim identification system by the end of 2017.

114. In the meantime, An Garda Síochána remains the only stakeholder taking decisions on identifying victims of THB, which not only overstretches the resources of the already busy police forces but also creates a potential conflict of priorities. There is no timeframe for identification decisions and NGOs have reported delays of over six months in delivering an initial decision on identification. The Administrative Immigration Arrangements which provide the basis for victim identification have no statutory basis and do not give rise to rights for victims. Moreover, EEA nationals, including Irish nationals, are excluded from the administrative scheme. As a result, there is still no procedure in Ireland for the formal identification of all victims of trafficking, irrespective of nationality and immigration status. It is not clear from the Administrative Immigration Arrangements what the stages of the identification process are and what standards of proof are applied (see also paragraph 120). Decisions on victim identification are not provided in writing to victims and their legal representatives and there is no appeals process against negative decisions. Another problem is that the Administrative Immigration Arrangements do not provide for the identification of victims of trafficking who were trafficked before 2008.⁵⁷

⁵⁶ <https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-GRETA-2016.pdf>

⁵⁷ The information leaflet, *Potential Victims of Human Trafficking*, issued by the Legal Aid Board entitled states: "If you came to Ireland before 7 June 2008 and the alleged trafficking was before this, the law does not allow you to be granted a temporary residence permit. In this case you can apply to the Irish Naturalisation and Immigration Service for "leave to remain" and we can assist you with this".

115. In their comment on the draft GRETA report, the Irish authorities have indicated that a potential victim of human trafficking is referred to support services immediately and prior to an identification decision. The timeframe for a “reasonable grounds” decision is set out both in the Guide to Procedures and in the Statement of Roles and Responsibilities, and indicates that Gardaí will “endeavour to identify suspected victims within a maximum period of 31 days”. According to the authorities, a very small number of cases have been delayed over six months in cases where unique circumstances exist. Further, the authorities have referred to paragraph 4 of the Administrative Arrangements which indicates that “the process outlined in paragraph 3 (i.e. the identification process) may be applied in a like manner to nationals of the European Economic Area”, therefore EEA nationals are not excluded from the scheme. Details as to the standards of proof required (i.e. the “reasonable grounds” test) are set out at paragraphs 2 and 3 in the Statement of Roles and Responsibilities. While there is no appeals process written into the procedural documents referred to above, in reality, any negative decision would be followed up by a request for further information.

116. Further, the Administrative Immigration Arrangements continue to force applicants to choose between identification as a victim of trafficking and international protection. GRETA refers to a report by the European Migration Network highlighting the difference in the identification of victims of trafficking who are also in the asylum process or are subject to forced return procedures.⁵⁸ According to this report, presumed victims of trafficking who are in the asylum process do not have simultaneous access to the Administrative Immigration Arrangements, which are often interpreted as analogous to official identification. As a result, such persons are not officially identified as presumed victims of trafficking which has implications for their access to certain targeted supports (e.g. specialised psychological assistance). Further, proactive screening is limited within the protection system, with reliance on self-reporting evident particularly at appeal and forced return stages. GRETA notes that according to AHTU’s annual reports, out of 46 presumed victims of trafficking in 2014, seven were asylum seekers, and in 2013, out of 44 presumed victims, there were nine asylum seekers.⁵⁹ In their comments on the draft GRETA report, the Irish authorities have indicated that asylum applicants who are suspected victims of trafficking are not disadvantaged by pursuing their claim for international protection. In practice, if a suspected victim of trafficking has permission to remain in Ireland on the basis that they are an asylum applicant, and that permission expires, GNIB may award temporary residence permission in accordance with the Administrative Immigration Arrangements for the purposes of concluding their investigations in relation to the trafficking issues. The authorities have affirmed that no suspected victim of trafficking is denied a period of recovery and reflection, regardless of whether they are an asylum applicant or not. In 2014, a Guidance Paper was produced by the Office of the Refugee Applications Commissioner (ORAC) in consultation with AHTU, which aims to help staff examine claims by victims of trafficking or persons at risk of being trafficked, including their referral to the relevant assistance and protection services, and the provision of advice. The Guidance Paper is currently under review.

117. The ORAC, in co-operation with UNHCR and AHTU, introduced in 2014 updated Guidelines on Human Trafficking to be used by ORAC deciding officers during the determination of international protection applications. In investigating asylum applications ORAC staff have regard to four sets of operational indicators of trafficking (for adults and children, respectively for labour and for sexual exploitation) which were developed by a joint European Commission-ILO project. Asylum seekers housed in the Reception and Integration Agency (RIA) system are screened to determine if they may have been a trafficking victim by RIA and Health Service Executive (HSE) staff.

⁵⁸ Corona Joyce, Emma Quinn, *Identifying Victims of Trafficking in Human Beings in Asylum and Forced Return Procedures*, European Migration Network, Dublin, April 2014, available at: <https://www.esri.ie/pubs/BKMNEXT246.pdf>

⁵⁹ The number of asylum applications in Ireland was 1 448 in 2014 and grew to around 3000 in 2015.

118. The Immigrant Council of Ireland is currently implementing a new international project entitled TRACKS which examines the nexus between asylum and trafficking in human beings, in particular in relation to the identification of victims of THB in the asylum procedure. The project will run until the end of 2017 and will involve the provision of training to relevant staff.⁶⁰

119. Legal support to alleged victims of trafficking has been put on a statutory footing through an amendment in 2012 to the Civil Legal Aid Act 1995. However, GRETA was informed that access to legal advice is not available at an early stage, i.e. when a possible victim of trafficking is being identified. The Legal Aid Board appears to interpret narrowly the obligation to provide legal advice to victims of trafficking (stipulated in section 26(3B) of the Civil Legal Aid Act 1995), so as not to include legal assistance/representation to victims in vindicating their rights.⁶¹ If victims do not want to avail themselves of the free legal services of the Legal Aid Board, they can hire a private lawyer against payment. Few victims of trafficking have access to qualified lawyers with specialised knowledge of human trafficking. According to lawyers representing victims of trafficking, the discretionary nature of identification depends on maintaining good personal relationships with police officers, which discourages litigation to challenge identification decisions. In their comments on the draft GRETA report, the Irish authorities have stated that legal advice provided by the Legal Aid Board is available once a victim or potential victim is referred by the Gardai. In 2016, the Legal Aid Board registered 54 new cases of human trafficking and work on these cases is ongoing. Under existing legislation, the Legal Aid Board is not authorised to provide representation in criminal trials (save where a victim's prior sexual history is raised) or to provide representation before the Workplace Relations Commission or Labour Court. It is open to an applicant to seek legal aid to challenge identification decisions.

120. According to NGOs, the setting up of the Garda National Protective Services Bureau and the subordination to HTICU to it has had a positive impact on the identification of victims of trafficking, in particular for the purpose of sexual exploitation. However, there is still a gap in the identification of victims of trafficking for the purpose of labour exploitation, including for forced begging. NGOs and lawyers have noted in this respect that victim identification is conflated with the criminal investigation and that when performing the initial identification the Gardai require evidence which goes beyond the "reasonable grounds" test and is capable of satisfying the criminal investigation standards of evidence. In their comments on the draft GRETA report, the Irish authorities have stressed that the "reasonable grounds" test as outlined in the Administrative Immigration Arrangements and Statement of Roles and Responsibilities is the test used in all human trafficking cases, including trafficking for labour exploitation and for forced begging. The authorities have stressed that the number of identified victims of trafficking for labour exploitation has been increasing over the years and the second National Action Plan aims to continue to take specific measures to address trafficking for the purposes of labour exploitation.

121. During the second evaluation visit, GRETA was provided with examples of cases in which persons were identified as presumed victims of trafficking by HTICU and were provided with assistance, regardless of whether the Administrative Immigration Arrangements were applied.

⁶⁰ The TRACKS project is co-ordinated by the French lead partner Forum réfugiés-Cosi and is implemented by the British Red Cross, Churches Commission for Migrants in Europe (CCME), ICI, Spanish Commission for Refugees, Italian Red Cross and Action for Equality, Support, Antiracism (KISA), in association with UNHCR Europe office, Office français de protection des réfugiés et des apatrides (OFPRA), Amicale du Nid Rhône, the Swiss Organisation for Refugees (OSAR), the UK Institute for Migration Research and the Human Trafficking Foundation. More information available at: <http://immigrantcouncil.ie/files/publications/7992f-tracks-project-info.pdf>.

⁶¹ The information leaflet issued by the Legal Aid Board entitled "Potential Victims of Human Trafficking" refers to "free legal advice" and "information". Legal representation can be provided in relation to asylum applications, but the victim has to pay €10 as a contribution towards legal services. The Legal Aid Board cannot provide legal representation related to the employment protection legislation.

122. One case from 2016 involved the identification, assistance and eventual repatriation of a large group of Romanian men. The group in question had been living in a house about one hour from Dublin and travelling to work at a waste recycling plant close to the capital. An alarm raised by one of the men at a business premises close to the house resulted in a Garda intervention removing the men from the house to safe accommodation, the provision of health care and legal aid, and ultimately, the repatriation of most of the men to Romania, with the assistance of the IOM. It was not necessary to apply the recovery and reflection period as they did not require immigration status in Ireland. A Garda investigation into the living and working conditions of the men was initiated, resulting in charges of human trafficking. Court proceedings are on-going.

123. In another case, a 21-year old Nigerian woman was referred to the Garda National Protective Services Bureau by the Office of the Refugee Commissioner where she had applied for asylum. The woman had travelled to Ireland with a false passport in January 2016, accompanied by another woman known as "Madam", and had been kept in a house at an unknown location from where she had managed to escape. HTICU staff visited the woman at the RIA centre where she was accommodated and offered her assistance, but she was already getting medical and psychological support and did not want to be referred to NGOs for additional support. As she was in the asylum process prior to her allegations being known, the recovery and reflection period was not applied and she remained in the asylum process.

124. A third example relates to a Vietnamese woman who was found working in a cannabis grow-house in Co. Meath in November 2012 during a drug search operation by the Garda. She pleaded guilty to the offence of cultivation of cannabis and received a six-year sentence. Upon appeal the issue of THB was raised in December 2014 and the remainder of the sentence was suspended. MRCI contacted HTICU which immediately launched an investigation, in which the woman co-operated. The Administrative Immigration Arrangements were applied, the woman was provided with RIA accommodation and continued to receive support from the State and MRCI.

125. GRETA notes that while the above examples illustrate the pragmatic and humane approach followed by HTICU when possible trafficking victims come to their attention, a degree of formalisation of the identification process is needed to address the concerns raised in paragraphs 112-115. Being formally identified as a victim of trafficking, regardless of the person's contribution to the criminal investigation or the conviction of the perpetrators, is an important step in fulfilling the rights of trafficking victims.

126. GRETA once again urges the Irish authorities to take steps to ensure that victims of trafficking are identified proactively and without delay, including by:

- reviewing as a matter of priority the victim identification procedure and decision-making process, in the light of the case *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors.* and the recommendations made in GRETA's first report. The aim of the reviewed procedure should be to cover all victims, including EEA and Irish citizens, as well as asylum seekers, and to formalise the decision-making process by specifying the requirements for a "reasonable grounds" decision and the rights which flow from it;
- promoting multi-agency involvement in the identification of victims of trafficking by giving a formal role in the identification process to frontline actors such as NGOs, labour inspectors, social workers, health-care staff and other bodies which may come into contact with victims of trafficking;

- continuing to ensure that whenever there are reasonable grounds to believe that a person is a victim of THB on the basis of operational indicators, he/she is provided with all the assistance and protection measures provided for in the Convention, regardless of whether an investigation into trafficking is opened and whether the person co-operates in the investigation;
- ensuring that frontline staff are provided with regular training, guidance, toolkits and criteria for the identification and referral of victims of trafficking;
- pursuing a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by encouraging regular and co-ordinated multi-agency inspections in sectors most at risk;
- ensuring that victims of trafficking have early access to legal practitioners with specialised knowledge of human trafficking who can represent them;
- monitoring closely the relationship between asylum and THB with a view to ensuring that the right to seek and enjoy asylum does not impede identification as a victim of trafficking;
- improving the identification of victims of trafficking in detention centres, by continuing to give access to such centres to specialised NGOs and lawyers, and ensuring that following a positive reasonable grounds decision, presumed victims of trafficking are speedily removed from detention and offered assistance and protection as provided in the Convention.

b. Assistance measures (Article 12)

127. In its first evaluation report, GRETA urged the Irish authorities to review the policy of accommodating victims of trafficking in centres for asylum seekers and to consider setting up specialised shelters for such victims, with the involvement of NGOs. GRETA was also concerned that the practice of not assigning the formal status of a victim of trafficking to Irish and EEA nationals may result in depriving them from access to specialised assistance and urged the Irish authorities to enact statutory rights to assistance and protection for presumed victims of trafficking, as specified in Articles 10 and 12 of the Convention, regardless of the victims' nationality or immigration status.

128. The system for providing assistance to victims of trafficking remains as described in GRETA's first report.⁶² All presumed victims of human trafficking who are notified to An Garda Síochána are informed of the services available to them and can decide which services to avail of depending on their individual circumstances. At this stage, presumed victims are registered as entering the National Referral Mechanism. The roles of the different stakeholders in providing support to victims of trafficking are set out in the Statement of Roles and Responsibilities for State organisations, NGOs and international organisations (see paragraph 109). The Reception and Integration Agency (RIA) continues to be responsible for providing housing to victims who are in the asylum process and to foreign (including EEA) victims who require accommodation. The Health Service Executive (HSE) has an Anti-Human Trafficking Team, which has been expanded from two to five staff to work directly and actively with victims of trafficking across the country; this team assesses the victims' needs, draws up individual personal development plans and organises the provision of medical care, as well as arranges accommodation for Irish nationals, if needed. The Legal Aid Board provides legal services (see paragraph 181) and has produced a guide for potential victims of trafficking, which was updated in 2015. An Garda Síochána is responsible for witness protection (see paragraph 232). Appropriate translation and interpretation arrangements are available in both the HSE and An Garda Síochána. The Asylum Seekers and New Communities Unit assists victims of trafficking who are referred to them by HSE to search for jobs. As regards children, the responsible agency is TUSLA (see paragraph 147).

⁶² See paragraphs 171 and following of GRETA's first report.

129. As was the case during the first evaluation visit, there are no dedicated shelters for presumed victims of trafficking. Such persons are provided with full board accommodation and ancillary services through RIA. The primary function of RIA is to provide appropriate accommodation and support to asylum seekers while their application for asylum is being processed. RIA currently operates 34 direct provision accommodation centres across Ireland, with a capacity of around 4 700. The running of these centres has been tendered to companies. The centres are open in the sense that the residents are not detained, and all but one of them are mixed, accommodating families as well as single women and men.

130. In October 2014 the Irish authorities established a Working Group on the protection process, including direct provision and supports for asylum seekers, with the mandate to recommend to the Government what improvements should be made to the existing direct provision process and the various supports available. The final report produced by this Working Group in June 2015 (known as the McMahon Report) recommended that no person should remain in the system for five years or more, something which the International Protection Act is expected to achieve.⁶³ The Working Group met with a number of trafficking victims and the report notes that for them sharing a bedroom with other people is particularly challenging as it could exacerbate mental health difficulties. Female victims of trafficking reported sexual advances and inappropriate behaviour from other residents. Noting that the majority of unrelated adults are accommodated in multi-occupancy rooms, that most residents do not have access to cooking facilities and the conditions are generally cramped, the Working Group made a series of recommendations to address these failings. Further, the Working Group recommended that provision for access to the labour market be included in the International Protection Bill for applicants who are awaiting a first instance decision for nine months or more and who have co-operated in the protection process.

131. The range of services provided by RIA to possible victims of trafficking are the same as those for newly arrived asylum seekers, i.e. room and board along with a weekly allowance (currently €19.10 per week), and voluntary access to medical screening, which is managed by the HSE. Suspected victims who are in the asylum process remain in RIA accommodation while a determination is being made in relation to their claim for international protection, which may continue for a long time (in some cases, over five years). Presumed foreign victims of trafficking who are not in the asylum process are also provided with accommodation by RIA during the 60-day recovery and reflection period.

132. As the time of GRETA's second evaluation visit, there were a total of 50 presumed victims of trafficking (41 women and nine men) resident in RIA centres, originating from 17 different countries (including 13 EU nationals, from Romania, Lithuania and Portugal, and 19 Nigerians). They were accommodated in 15 different RIA centres, the majority of them being in Hatch Hill (14) and Baleskin (9). NGOs have access to these centres and provide victims with counselling, language classes and transportation to community welfare offices.

⁶³ The report is available at:

<http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

133. During the second visit, the GRETA delegation visited the RIA reception centres in Mosney (some 50 km north of Dublin) and Hatch Hill in central Dublin. The centre in Mosney is one of the largest in Ireland, with 800 places and some 620 residents on the day of the visit. It occupies a large estate formally used as a holiday site, with around 260 houses. The centre provides very good material conditions and a range of services and activities (e.g. English language, computer literacy, gardening, cooking and life-skills classes; kindergarten; recreation and sports facilities). The centre also includes an on-site medical facility. The doctor working at this facility was not specifically informed of who the victims of trafficking were, but his secretary was aware of there being four such victims. In their comments on the draft GRETA report, the Irish authorities have argued that in order to protect the confidentiality of the victim, notification to medical staff is done on a need-to-know basis.

134. Hatch Hill centre occupies a former Jesuit college in central Dublin. There were 120 residents on the day of the visit (for a capacity of 175), including 11 female and three male victims of trafficking. Residents could attend English language and computer classes outside the centre. One of the victims, a Romanian man, had spent over a year in RIA accommodation.

135. The concerns expressed by GRETA in the first report, namely that RIA reception centre, not being specialised for victims of trafficking, are not an appropriate environment for such victims, remain valid. The mixing of men and women can expose vulnerable women to sexual harassment, grooming and exploitation. There is a lack of privacy, victims sharing bedrooms with up to three other persons. Staff who are employed by private contractors as well as visiting medical staff are not sensitised to the situation and needs of victims of trafficking and are generally not aware of who the victims of trafficking are, which creates difficulties to apply a personalised approach. The food is centrally prepared and served for all residents and complaints were made that the menus were not culturally appropriate. Further, there are possibilities for traffickers to contact victims as the addresses of RIA centres are known, which may cause further distress to victims. Moreover, the dispersal policy of RIA results in victims of trafficking being moved away from NGOs providing them with comprehensive services and support.

136. In their comments on the draft GRETA report, the Irish authorities have argued that a managed system of nationwide accommodation provides more support and security for a victim than other accommodation options. As reception centres are sited in different locations around the country victims of human trafficking are placed in accommodation deemed most appropriate to their needs, following consultations between the RIA, An Garda Síochána and the HSE. According to the authorities, conditions in RIA reception centres have improved following the recommendations contained in the McMahon Report (see paragraph 131). The authorities have indicated that they would continue to study possible alternative solutions for victims of trafficking, but "a compelling argument that any proposed alternatives would be more effective would also have to be made". According to the authorities, the geographical spread, existing medical services and facilities, including single-sex units within the RIA estate, are an important part of the State's response to the needs of victims of trafficking.

137. The second National Action Plan contains a commitment to re-examine the full range of services to victims of trafficking, including accommodation. In this regard, GRETA was informed that initial discussions had already taken place with a view to exploring the possibility of designating a dedicated accommodation unit for victims of human trafficking.

138. As noted in the first GRETA report, pursuant to paragraph 4 of the Administrative Immigration Arrangements, “an EEA national who has been identified as a suspected victim of human trafficking will be treated no less favourably than a person from outside these area.” However, EEA nationals who are victims of human trafficking continue to experience difficulties in accessing social welfare and other entitlements which are conditional on habitual residency in Ireland, including women’s shelters, and therefore their options are limited to RIA centres or voluntary repatriation. In their comments on the draft GRETA report, the authorities have stated that the Department of Social Protection Regional Support Unit is advised by the HSE Anti-Human Trafficking Team of any possible victims of trafficking. According to the authorities, while there have previously been some inconsistencies in how the habitual residency condition requirement (HRC) is applied (in terms of documentation required), there is a lack of evidence that victims of trafficking have been adversely affected and the facts of individual cases normally lead deciding officers of the Department of Social Protection to find in favour of trafficking victims in relation to the HRC requirement. In cases where a non-EEA victim’s renewal of immigration permission has been delayed, the authorities have stated that the Department of Social Protection will not stop payments to the victim, as long as communication regarding the matter is maintained.

139. The HSE’s Women’s Health Service delivers holistic sexual health provision to victims of trafficking who have been sexually exploited, but it is centralised in Dublin. Access to hospital care is also available. However, mental health support is lacking. There is no dedicated statutory psychological assistance for victims of trafficking and the counselling services provided by NGOs, such as Ruhama, are not sufficient.

140. Victims of trafficking who are not in the asylum process and have a temporary residence permit have the right to access work and training opportunities.⁶⁴ However, victims of trafficking who are asylum seekers were excluded from the labour market and the new International Protection Act 2015 maintains this situation. In this context, the Irish authorities have informed GRETA of a Supreme Court decision (No. 31 & 56/2016) delivered on 30 May 2017 in which the Court found, “in principle” and when there is no statutory time limit for processing asylum applications, that the “absolute prohibition” on asylum seekers seeking employment in the 1996 Refugee Act - and continued in the International Protection Act 2015 - was contrary to the constitutional right to seek employment.⁶⁵ As this decision could have major implications for asylum seekers in Ireland, the Court has adjourned making any formal orders on this case for six months to allow the legislature consider how to address the situation. GRETA takes note of this decision which also has ramifications for victims of trafficking who are in the asylum process.

141. GRETA welcomes the low threshold for access to the National Referral Mechanism and the personal development plans drawn up for victims of THB by the HSE. However, GRETA remains convinced that RIA centres are not an appropriate environment for victims of trafficking on a number of accounts: they are not gender sensitive, victims of trafficking may get intimidated or ostracised by other residents, staff are not aware of the needs of victims of trafficking and it is difficult to apply a personalised approach. Further, GRETA remains concerned about the absence of a clear statutory basis on which presumed victims of trafficking can invoke protection and assistance.

⁶⁴ Anti-Human Trafficking Unit, Guide to Procedures for Victims of Human Trafficking in Ireland, Dublin, 2015, available at: <http://www.blueblindfold.gov.ie>

⁶⁵ *N.V.H. v. Minister for Justice and Equality & Ors.*, available at: <http://www.statewatch.org/news/2017/jul/ie-asylum-seekers-permission-to-work-supreme-court-judgment-30-5-17.pdf>

142. GRETA once again urges the Irish authorities to:

- review as a matter of priority the policy of accommodating presumed victims of trafficking in accommodation centres for asylum seekers, with a view to ensuring that the accommodation is gender-sensitive, appropriate and safe, and that victims are provided with specialised services. As a first step, the authorities should set up as a pilot a specialised shelter, with dedicated, trained personnel. In addition to better support and protection of the victims, this would also be in the interest of the investigation;
- enact statutory rights to assistance and protection for possible victims of trafficking, as specified in Articles 10 and 12 of the Convention, regardless of the victims' nationality or immigration status.

143. Further, GRETA considers that the Irish authorities should make further efforts to ensure that possible victims of trafficking are provided with adequate support from their identification through to their recovery. This should involve, in particular:

- adopting clear support service minimum standards for victims of trafficking and the provision of adequate funding to maintain them;
- improving access to psychological assistance for victims of trafficking;
- enabling victims of trafficking who are lawfully present in the country to have access to the labour market, vocational training and education, in line with Article 12(4) of the Convention;
- providing regular specialised training to all staff and relevant professionals responsible for the provision of assistance and protection to victims of trafficking.

c. Identification and assistance of child victims of THB (Articles 10 and 12)

144. In its first report, GRETA considered that the Irish authorities should set up a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists and ensures that the best interests of the child are the primary consideration.

145. Child victims may be encountered by An Garda Síochána, immigration officials, asylum officers, child protection officials or NGOs. All child victims of trafficking are notified to the Child and Family Support Agency (TUSLA), which was set up on 2014. GRETA notes that the majority of the 73 presumed child victims of THB identified in the period 2012-2016 were Irish children subjected to sexual exploitation in Ireland.

146. As part of the first National Action Plan, in July 2012 AHTU produced an information guide entitled "Services for Victims of Child Trafficking"⁶⁶ for service providers who may come into contact with victims of child trafficking. It sets out the procedures in place for supporting and protecting victims of child trafficking in accordance with the first National Action Plan.

⁶⁶ Available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XVHNX1421296-en/\\$File/Services%20for%20Victims%20of%20Child%20Trafficking.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/OACN-8XVHNX1421296-en/$File/Services%20for%20Victims%20of%20Child%20Trafficking.pdf)

147. TUSLA has responsibility for all children in need of protection, including victims of trafficking and unaccompanied children, pursuant to the Child Care Act 1991. TUSLA acts in the place of a parent for child victims of trafficking in relation to their status in Ireland and also in relation to their claim as trafficked victims. This involves receiving children into the care of the social work service and ensuring they have access to legal aid and support with any interviews they might need to attend. Initially children are provided with an emergency placement that ensures their immediate safety and needs are addressed, for example a child who has been sexually abused is referred to the relevant sexual assault service and for psychological assessment/trauma counselling. A more holistic assessment is done over a number of weeks and a longer-term placement option is identified. The options available are children's residential homes, foster care and supported lodgings. An individual care plan is formulated based on the child's needs and a social worker is allocated to serve as the child's legal guardian. Services in the case of a child victim of trafficking include assessment and treatment services for sexual assault, a full medical screening, psychological and counselling services. GRETA was informed that foster families are trained and assessed by TUSLA.

148. "Children First: National Guidance for the Protection and Welfare of Children" promotes the protection of children from abuse and neglect. It states what different bodies and the general public should do if they are concerned about a child's safety and welfare. The Guidance sets out definitions of abuse and signs for its recognition, as well as specific protocols for social workers, Gardaí and other front line staff in dealing with suspected abuse and neglect of children. The Guidance also emphasises the importance of multi-disciplinary, interagency working in the management of concerns about children's safety and welfare and the sharing of information in the best interests of children.

149. All unaccompanied children (aged 18 years and under) are placed in the care of TUSLA. GRETA was informed that some 100 unaccompanied children arrived in Ireland annually. As part of the relocation pledges made by Ireland, since January 2017, some 80 unaccompanied children were expected to arrive per month from Greece, following security screening by Irish officials. No relocation has taken place from Italy to date due to the Italian authorities' refusal to allow security vetting by receiving countries prior to relocation.

150. TUSLA has a specific social work service for separated children seeking asylum (SCCA) with two service streams: unaccompanied children and family reunification. The social work team for separated children acts *in loco parentis* and has responsibility for child protection risk assessment, which includes screening for any trafficking indicators, including a dimension on age, identity issues and exploration of any contacts in Ireland. The team also assesses the appropriateness of possible family reunification within Ireland, a voluntary return to the country of origin or a third country where the family may be. Children are provided accommodation in small-scale residential units (with not more than six children) or a fostering/supported lodgings placement. There are three short-term and one long-term residential units in Ireland. When appropriate, the social work team making representations on the child's behalf to support their application for protection or permission to remain in the country. Team representatives attend all interviews and any appeal hearings and any court appearances related to asylum or legal status in the country, even after the child turns 18.

151. During the second evaluation visit, GRETA visited a residential unit for separated children seeking asylum in Dublin. With a capacity of six, it was accommodating four children (two boys and two girls) aged 12-18. The GRETA delegation was impressed by the efforts made by TUSLA staff and the company running the unit, Mistycraft, to provide a safe, stimulating and home-like environment to the children, including follow-up after they leave the unit. There are always at least two staff members present in the unit, including at night. Children are allocated a social worker on arrival who, together with other staff, undertakes a multi-disciplinary assessment. An emergency care plan is drawn up upon arrival, followed for a more comprehensive individual care plan, which is periodically reviewed. All children have an absence management plan and all new arrivals are initially accompanied outside of the unit until a review takes place. Contacts with others (by phone or in-person) are strictly monitored until staff are satisfied as to the nature of the relationship. Children attend school in the community and participate in local sports, cultural and religious activities. After a stay of up to six months at the residential unit, many children are placed in foster care and the remainder move to supported lodgings.

152. GRETA was informed that thanks for the measures described above, the number of children going missing from residential care was very low. A Joint Protocol entitled "Children Missing from Care" has been established between An Garda Síochána and the Health Service Executive's Children and Family Services. It includes an absence management plan for each child and a universal reporting mechanism to be used to report all missing children to An Garda Síochána. The following measures are envisaged in the Joint Protocol: collaborative interviewing at ports or other appropriate location between social workers and Gardai; fingerprinting of persons presenting as underage at ports, for tracking missing children purposes; planned Garda surveillance of those at risk of going missing from the point of presentation at ports to the initial placement period in children's residential units; and joint training of TUSLA staff and Gardai/GNIB staff in relation to children at high risk of going missing.

153. The Irish authorities have indicated that the appointment of a legal guardian is not automatic as all unaccompanied children are allocated a dedicated social worker. Only unaccompanied children who are subject to a full care order are appointed a guardian. All children who are identified as victims of trafficking are subject to a full care order and are therefore appointed a legal guardian.

154. Where a person referred to An Garda Síochána as a potential victim of trafficking appears to be a person under 18 years of age, An Garda Síochána will refer the person to TUSLA to form an opinion as to his/her age. The same procedure is followed by staff of the Office of the Refugee Applications Commissioner (ORAC) and immigration officers. Where the age of a person is uncertain and they claim to be a child, TUSLA considers them as such initially and provides them with assistance, support and protection. GRETA was informed that the "Merton Compliant Age Assessment" was applied, according to which where age is not clear, and no reliable documentary evidence exists, the credibility of the applicant, his/her physical appearance and behaviour must be assessed. The assessment must include general background of the applicant, including ethnic and cultural considerations, family circumstances, education and history over the past few years. A medical report is not required. GRETA invites the Irish authorities to ensure full compliance with Article 10(3) of the Convention concerning age verification, taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child.⁶⁷

⁶⁷ [General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin](#), Committee on the Rights of the Child, Thirty-ninth session, 17 May - 3 June 2005.

155. The second National Action Plan to Prevent and Combat Human Trafficking contains specific measures in relation to child victims of trafficking, including a commitment to addressing the possibility of establishing a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking. The Plan also includes measures in relation to providing assistance to children, reviewing data collection systems, developing training, supporting access to education, ensuring best practice in age assessment procedures, providing effective protection for children in their dealings with the criminal justice system, and ensuring that the best interests of the child are the primary consideration.

156. GRETA considers that the Irish authorities should continue their efforts to improve the identification of and assistance to child victims of trafficking, in particular by:

- ensuring that the identification of child victims of trafficking takes into account the special circumstances of children, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of THB and children at risk;
- providing further training and tools to stakeholders and updating the guidance on the services for child victims of trafficking;
- ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of trafficking;
- providing adequate support and services which are adapted to the needs of child victims of trafficking, including appropriate accommodation, access to education and vocational training.

d. Protection of private life (Article 11)

157. The Office of the Data Protection Commissioner has produced Guidance on Data Sharing in the Public Sector to ensure that best practice guidelines are considered and applied as appropriate by public sector bodies. According to it, personal data must be obtained and processed "fairly and lawfully" and only the minimum amount of personal data should be shared. Enhanced access controls and security requirements should apply to personal data shared and received as part of an approved data sharing arrangement. Access to such data should be limited to a very small number of officials and public sector bodies should employ a "need to know" basis thereby ensuring that other organisations only have access to the data if they need it, and that only relevant staff within those organisations have access to the data. Arrangements in this respect should also address any necessary restrictions on onward sharing of data with third parties. Personal data provided as part of an approved data sharing arrangement should be securely destroyed when no longer required.

e. Recovery and reflection period (Article 13)

158. In its first evaluation report, GRETA urged the Irish authorities to ensure that all possible victims of trafficking, including EEA nationals, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. GRETA also recommended that officers performing identification are issued clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.

159. As explained in GRETA's first report, under section 5 of the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, persons who have been identified as presumed victims of trafficking may be granted a 60-day recovery and reflection period if they have no other valid permission to remain in Ireland. The purpose of this period is to allow the person time to recover and to escape the influence of the alleged perpetrators so that he/she can take an informed decision on whether they wish to co-operate with any investigation or prosecution arising in relation to the alleged trafficking. Further, the Administrative Immigration Arrangements provide that the Minister for Justice and Equality may grant a period longer than 60 days to suspected child victims, having regard to the arrangements in place for the care and welfare of the child. The recovery and reflection period may be terminated in circumstance where the Minister for Justice and Equality is satisfied that: a) the person has actively, voluntarily and on his or her own initiative renewed contact with the alleged people carrying out the trafficking; b) it is in the interest of national security or public policy to do so; or c) victim status is being falsely claimed.

160. The Irish authorities have stated that the recovery and reflection period only applies where a person has no other permission to remain in Ireland and that it is a fundamental principle of the immigration system that permission to remain in Ireland is binary: a person either has a permission or does not and it is not possible to have two permissions at the same time. According to the authorities, applicants for international protection already have permission to remain under the International Protection Act 2015, and having regard to the free movement rights of EEA nationals, such nationals do not require an immigration permission to facilitate a period of recovery and reflection. GRETA is concerned that this approach leaves many suspected victims of trafficking without the assistance and protection they are entitled to during the recovery and reflection period. GRETA notes that the recovery and reflection period provided for in Article 13 of the Convention should not be confused with the issue of the residence permit under Article 14 of the Convention. In GRETA's view, considering that after three months EU citizens can only stay legally in other EU countries provided they meet a number of requirements (e.g. economic activity, sufficient resources, being enrolled as a student), the possibility that they would be considered as being irregular cannot be excluded and they should logically be entitled to enjoy a recovery and reflection period.

161. According to information provided by the Irish authorities, in 2015, five persons were granted a recovery and reflection period. As regards 2012-2014, it is not clear if any recovery and reflection periods were granted as the authorities' reply to GRETA's questionnaire refers to "persons granted protection under the Administrative Arrangements", which can refer to either a recovery and reflection period or a temporary residence permit, but the numbers were low (8 in 2014, 2 in 2013 and none in 2012) as the other alleged victims already had some form of immigration status. It is clear that the recovery and reflection period continues to be applied very rarely: rather than being an entitlement as provided for under the Convention, it is used as a form of regularising a person's stay in the country.

162. According to NGOs and lawyers met by GRETA, victims of trafficking are sometimes interviewed repeatedly by Garda officers before they can satisfy the test of "reasonable grounds", providing detailed witness statements before being granted a recovery and reflection period. In their comments on the draft GRETA report, the Irish authorities have stated that while such occurrences may have arisen at a very early stage following the enactment of the Criminal Law (Human Trafficking) Act 2008, 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.

163. The Irish authorities have indicated that the place and role of the recovery and reflection period is being considered in the context of the review of the overall identification process. GRETA would like to be kept informed of new developments in this respect.

164. Noting that domestic law much be brought into compliance with international obligations, GRETA once again urges the Irish authorities to ensure, in compliance with Article 13 of the Convention, that all possible foreign victims of trafficking, including EEA nationals, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.

f. Residence permits (Article 14)

165. The legal provisions regulating the issuing of residence permits to victims of THB remain the same as at the time of the first evaluation.⁶⁸ Under the Administrative Immigration Arrangements, victims of trafficking can be granted a six-month renewable residence permission, where the trafficked person wishes to assist An Garda Síochána or other relevant authorities in any investigation or prosecution in relation to the alleged trafficking. The notion of "assisting" An Garda Síochána is not defined in the Administrative Immigration Arrangements, but the Irish authorities have stated that in practice it is given a broad understanding and does not require the giving of formal witness statements for prosecutions.

166. The Administrative Immigration Arrangements were amended in 2011 to include a procedure to allow a person to make an application to change to a longer term permission to remain in Ireland after three years of temporary residency permissions or when the investigations/prosecution is complete (whichever is the shorter). Further, provision is made for victims of human trafficking who have been refused asylum to allow them to have the fact that they have been identified as presumed victims to be taken into account in any consideration as to whether they may remain in the country under various immigration permissions. In such cases, temporary residence permission under the Administrative Immigration Arrangements will automatically be issued pending consideration of any other forms of immigration permission of which the person may wish to avail.

167. In the case of children, pursuant to paragraph 15 of the Administrative Immigration Arrangements, a temporary residence permission is granted having regard to the arrangements in place for the care and welfare of the child.

168. The Irish authorities acknowledge that the Administrative Immigration Arrangements, which were adopted in 2008, focus on non-EEA nationals. Since then, the number of EU nationals arriving in Ireland has increased, including victims of trafficking, and there is an acknowledged need to review the Administrative Immigration Arrangements.

169. According to the Irish authorities, in 2015, six people were granted six-monthly temporary residence permissions. As noted in paragraph 161, as regards 2012-2014, the authorities' reply to GRETA's questionnaire refers to "persons granted protection under the Administrative Arrangements", which can refer to either recovery and reflection period or a temporary residence permit, but the numbers were low (8 in 2014, 2 in 2013 and none in 2012).

⁶⁸ See paragraphs 200-204 of GRETA's first report.

170. There have been a number of victims of THB granted refugee status on the basis of fear of persecution by gang members/traffickers in the country of origin or compelling reasons arising from past persecution connected with trafficking. By way of example, in March 2016 the Refugee Appeals Tribunal decided to give refugees status to a Nigerian woman who made a claim of protection in 2007 on the basis that, if returned to Nigeria, she would face persecution based upon her membership of a particular social group, namely Nigerian women who are trafficked into Ireland and forced into prostitution in order to repay money to the traffickers, as well as to her dependent daughter who was born in Ireland.⁶⁹ In its decision, the Tribunal referred to the UNHCR Guidelines on International Protection No. 7 relating to victims of trafficking and persons at risk of being trafficked. In another recent case, the Refugee Appeals Tribunal recommended to the Minister of Justice and Equality to declare as a refugee an Albanian woman who had been trafficked for the purpose of sexual exploitation. Further, in October 2016 the Refugee Applications Commissioner decided to recommend for subsidiary protection a Nigerian woman who was a victim of trafficking for the purpose of sexual exploitation on the grounds that she would face “a real risk of suffering serious harm if returned to Nigeria”.

171. However, GRETA was informed that the possibility of granting a person refugee status based on “compelling reasons arising out of previous persecution or serious harm”, which used to be provided for in section 5(2) of the EC (Eligibility for Protection) Regulations 2006, has not been replicated in the International Protection Act 2015 which repealed these Regulations. This provision was particularly relevant for victims of trafficking who might not be able to establish future risk in the country of origin. The Irish authorities have stated that the International Protection Act 2015 was drafted to conform with the wording of the EU Qualification Directive and that previous persecution or serious harm were being taken into account in determining the grounds for international protection in line with UNHCR Guidelines. GRETA considers that the Irish authorities should continue ensuring that victims of trafficking can benefit from international protection on grounds of “compelling reasons arising out of previous persecution or serious harm”.

172. GRETA recalls that Article 14 of the Convention allows Parties to choose between granting a residence permit in exchange for co-operation with the authorities or on account of the victim’s needs, or indeed to adopt both simultaneously. There are situations in which victims might be afraid to co-operate in the investigation because of threats from the traffickers. Granting a residence permit on account of the personal situation of the victim takes in a range of situations, such as the victim’s safety, state of health and family situation, and tallies with the human-rights based approach to combating THB. GRETA invites the Irish authorities to grant temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim’s co-operation in the investigation or criminal proceedings.

173. Further, GRETA considers that the Irish authorities should ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit, without prejudice for the right to seek and enjoy asylum

⁶⁹ Refugee Appeals Tribunal Decision No. 1707072-ASAP-15 of 31 March 2016.

g. Compensation and legal remedies (Article 15)

174. The legal framework for compensation of victims of THB in Ireland has remained unchanged since GRETA's first evaluation visit.⁷⁰ There are a number of avenues for victims of trafficking to seek compensation, including civil and criminal compensation from the perpetrators and compensation from the Criminal Injuries Compensation Tribunal. However, in 2012-2016, no victim of trafficking received compensation, either from the perpetrator of the State, for the offence of human trafficking in Ireland.

175. It is to be recalled that pursuant to section 6 of the Criminal Justice Act 1993, on conviction of a person for an offence the court may order the offender to pay compensation to the injured party. Such compensation is paid in respect of any personal injury or loss resulting from the offence, or any other offence taken into consideration by the court in determining the sentence, to any person who has suffered such injury or loss. GRETA notes that the absence of convictions for THB in Ireland (see paragraph 219) precludes victims from accessing compensation.

176. Suspected victims of trafficking may also take a civil action to obtain damages. These can be taken under a variety of legislative or common law rules which may relate to an employment situation or personal injuries, e.g. sexual assault, false imprisonment, kidnapping and other offences. The amount of compensation is dependent on the court in which the case is heard.

177. Further, persons who have been trafficked for the purpose of labour exploitation can seek legal redress and compensation through a number of State bodies which deal specifically with work-related rights and entitlements. These include the Employment Appeals Tribunal (EAT), the Labour Relations Commission (LRC), the Labour Court and the Equality Tribunal. There are no fees charged for claims taken to the aforementioned employment rights bodies, nor is it necessary to be legally represented at hearings. While NGOs such as MRCI have supported victims in accessing labour courts for monies owed to them under the employment legislation, this is separate to achieving compensation for the crime of human trafficking. According to information provided by the Irish authorities, in November 2014, three Filipina domestic workers were awarded €80,000 each by the EAT on the basis of an unfair dismissals claim they took against the United Arab Emirates Ambassador to Ireland and his wife.⁷¹

178. Further, victims of human trafficking can be granted compensation from the State through the Criminal Injuries Compensation Tribunal which administers a scheme called the Scheme of Compensation for Personal Injuries Criminally Inflicted, funded by the Department of Justice and Equality. The scheme pays compensation for expenses and losses (out of pocket expenses and bills, e.g. for medical treatment) suffered as a direct result of a violent crime or while assisting or trying to assist in preventing a crime or saving a life. The crime has to be committed on Irish territory (land, ship or plane). There is a time limit of three months between the crime and making a claim to the tribunal; however, this time limit may be extended if the victim can provide a reasonable explanation for the delay. A report from An Garda Síochána is required in order to progress the application for compensation and the victim should be willing to co-operate in the investigation. The type and extent of injury the victim received is important in determining the amount of compensation awarded. No compensation is paid if the loss is a very small amount or where the victim and the perpetrator were living together as members of the same household, which may be the case in situations of human trafficking. Further, no compensation is paid for pain and suffering experienced by the victim. No legal representation is necessary when applying for compensation and normally applicants do not need to come before the tribunal in person.

⁷⁰ See paragraphs 208-212 of GRETA's first report on Ireland.

⁷¹ [Calderon & Ors v. Nasser Rashed Lootah and Metad Alghubaisi, UD1219/2013, UD1220/2013, UD1221/2013](#), Employment Appeals Tribunal. The women alleged that they had worked 15 hours per day, seven days per week for €170 per month (roughly €2 per hour) and that they were constantly on call, their passports were taken and they never had a day off.

179. GRETA is concerned that the limited scope of application of the above-described State compensation scheme undermines the availability of financial redress for victims of trafficking. In the absence of an early identification decision, the time-limit of three months makes it practically impossible to apply for compensation. Further, in the majority of cases, victims of trafficking for the purpose of sexual exploitation do not have verifiable expenses or employment losses to present to the Criminal Injuries Compensation Tribunal (or any of the employment tribunals).

180. There is no dedicated compensation fund for victims of THB which could use assets seized and confiscated from perpetrators. The Criminal Justice Act 1994 provides for conviction based confiscation for sentenced persons, forfeiture of instrumentalities of crime and seizure of property to prevent removal from the State. In addition, the Proceeds of Crime Acts 1996 and 2005 enable seizure and disposal of property obtained through criminal conduct without the necessity of a criminal conviction (see also paragraph 213).

181. As noted previously, the Legal Aid Board is responsible for providing free legal advice to presumed victims of trafficking in relation to their status in Ireland, seeking redress through the employment protection legislation, information on what is involved in the criminal trial as a victim/witness, information on compensation, information on voluntary return, and criminal matters related to the trafficking offence. There is no means test involved prior to accessing the available legal services. The Legal Aid Board has issued a leaflet "Potential Victims of Human Trafficking",⁷² updated in August 2015, which contains information, *inter alia*, on the right to compensation.

182. GRETA once again urges the Irish authorities to take measures to ensure that avenues for compensation are easily accessible to trafficked people, and in particular to:

- encourage prosecutors to request compensation orders in all relevant cases;
- make the State compensation scheme effectively accessible to victims of trafficking, which would require a review of the current conditions for eligibility;
- enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation;
- include victim compensation into training programmes for law enforcement officials, prosecutors and judges;
- make full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking.

183. Further, GRETA invites the Irish authorities to develop a system for recording claims for compensation to the State-funded scheme by victims of trafficking, as well as compensation awarded to victims of trafficking.

⁷² Available at: [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/LASN-AD7LWR1773426-en/\\$File/Legal%20Aid%20Board%20Information%20Note%20Human%20Trafficking%20August%202015.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/LASN-AD7LWR1773426-en/$File/Legal%20Aid%20Board%20Information%20Note%20Human%20Trafficking%20August%202015.pdf)

h. Repatriation and return of victims (Article 16)

184. Pursuant to the Administrative Immigration Arrangements, "the Minister [for Justice] will make arrangements to facilitate a person in returning to his or her country of origin at the end of any period of residence granted under the Administrative Arrangements or before that period expires if the person so wishes. Assistance in this regard can also be arranged through the offices of the IOM."

185. Under section 3 of the Immigration Act 1999, in determining whether to make a deportation order in relation to a person, the Minister shall have regard to, inter alia, humanitarian issues and/or any representations duly made by or on behalf of the person.

186. IOM Ireland provide an assisted voluntary return (AVR) programme for those who wish to return home but do not have the means, including the necessary documentation, to do so. IOM performs a security assessment and assists with obtaining appropriate travel documents if required, as well as covering the financial costs of the travel to the country of origin. In addition, a small reintegration grant (€600 for a single person or €1000 for a family group) is available to all returnees to help cover the costs of an income generating activity, such as education, professional training and/or business set-up. GRETA was informed that 26 victims of trafficking were returned under the AVR in 2016 (until 30 November), 17 in 2015 (most of whom were Romanian men), 12 in 2014 and three in 2013.

187. According to information provided by the Irish authorities, Ireland does not generally return unaccompanied children unless they have been reunited with their family in Ireland and the whole family is subject to deportation orders. When deciding on whether or not to make a deportation order in relation to a person, the Minister has regard to a number of factors, including the age of the person. A child who has been received into the care of the State as an unaccompanied child victim of trafficking would not subsequently be made subject to a deportation order. However, having investigated and assessed the child's circumstances in his/her country of origin, and only if reassured that it is in the best interests of the child and guarantees his/her safety, the social work service may decide to repatriate a child. In these circumstances an investigation will be carried out by the HSE in collaboration with the Garda National Immigration Bureau and IOM. The victim's legal representative will provide advice on this option. A social worker would accompany the child and deliver it into the protection of the social work service in the country of origin. The social work service can also use the IOM network to check up on a repatriated child.

188. GRETA considers that the Irish authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, the authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return.

3. Substantive criminal law

a. Criminalisation of THB (Article 18)

189. As noted in paragraph 14, since GRETA's first evaluation, the definition of THB provided in the Criminal Law (Human Trafficking) Act 2008 has been amended through the Criminal Law (Human Trafficking) (Amendment) Act 2013 by broadening the scope of the definition of "exploitation" to include exploitation consisting of forcing a person to engage in an activity that constitutes an offence and that is engaged in for financial gain. The amendments also expanded the definition of "labour exploitation" to include forcing a person to beg. "Beg" has the same meaning as in section 1(2) of the Criminal Justice (Public Order) Act 2011.⁷³ Further, the term "forced labour" was defined as "work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily", in line with the definition set out in the International Labour Organization (ILO) Convention No. 29 of 1930 on Forced or Compulsory Labour.

190. The Criminal Law (Human Trafficking) Act 2008 provides for penalties of up to life imprisonment and, at the discretion of the court, an unlimited fine for trafficking of human beings, for all forms of exploitation covered by the Act.

191. As regards the aggravating circumstance, section 2 of the Criminal Law (Human Trafficking) (Amendment) Act 2013 provides that trafficking offences committed by a public official during the performance of his/her duties is determined as an aggravating factor and attracts a sentence that is greater than what would have been imposed in the absence of such a factor (except where the sentence imposed was life imprisonment or where the court considers that there are exceptional circumstance justifying its not doing so). No public officials have been investigated, prosecuted or convicted for involvement in trafficking or trafficking related activities.

192. The other aggravating circumstances for trafficking in human beings envisaged in the Convention are not enshrined in the Irish legislation. Trafficking of children is not considered an aggravating circumstance, but carries the same penalties of up to life imprisonment and unlimited fine. The determination of the penalty in any individual case is largely a matter for the trial judge, taking case law, including appealed cases, into account. This allows the courts to take all the circumstances of the offence and all the relevant aggravating and mitigating factors into account. The gravity of the offence, the facts surrounding the commission of the offence, the criminal record of the accused and the impact on the victim are among the critical factors taken into account before a sentence is imposed.

193. The Irish authorities have stated that trafficking for forced marriage may be an offence under the Criminal Law (Human Trafficking) Act 2008 once all the necessary elements for the offence of human trafficking are present. There is no registration system for monitoring judicial investigations or court cases prosecuting forced marriage and the statistics collected by AHTU and published in the annual reports on human trafficking do not refer to cases of trafficking for forced marriage.

⁷³

[Criminal Justice \(Public Order\) Act 2011](#)

194. The legislative framework in relation to trafficking does not contain a definition of a “vulnerable person” or “abuse of a position of vulnerability”. This leaves the courts with the discretion to determine what constitutes “vulnerability” in individual cases. Judges are free to take a range of various factors into account when deciding on cases, being guided by the definition of “vulnerable person” contained in other laws. The Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 defines a “vulnerable person” as a person who “(i) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or (ii) has an intellectual disability which is of such a nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person, or a person who is suffering from an enduring physical impairment or injury which is of such nature or degree as to severely restrict the capacity of the person to guard himself or herself against serious exploitation or abuse, whether physical or sexual, by another person or to report such exploitation or abuse to the Garda Síochána, or both”. GRETA notes that this interpretation of abuse of a position of vulnerability is more restrictive than that of the Convention and draws attention to paragraph 83 of the Explanatory Report of the Convention, according to which “by abuse of a position of vulnerability is meant abuse of any situation in which the person involved has no real and acceptable alternative to submitting to the abuse. The vulnerability may be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim’s administrative status, economic dependence or fragile health. In short, the situation can be any state of hardship in which a human being is impelled to accept being exploited. Persons abusing such a situation flagrantly infringe human rights and violate human dignity and integrity, which no one can validly renounce.” GRETA considers that the Irish authorities should ensure that the interpretation of the abuse of a position of vulnerability is in full conformity with the Convention.⁷⁴

b. Criminalisation of the use of services of a victim (Article 19)

195. Section 5 of the Criminal Law (Human Trafficking) Act 2008 establishes as a criminal offence to solicit or importune a trafficking victim for the purposes of sexual exploitation with the knowledge that the person is a trafficking victim. The penalty on summary conviction is a fine not exceeding €5,000 or a term of imprisonment not exceeding 12 months, or both. In the event of a conviction on indictment, the penalty is an unlimited fine or a term of imprisonment not exceeding five years or both. As far as GRETA is aware, there have been not convictions under this provision.

196. As noted in paragraph 93, the Criminal Law (Sexual Offences) Act 2017 provides for the creation of offences of purchasing sexual services in the context of prostitution and trafficking. The stated purpose of these new offences is to discourage demand which fosters sexual exploitation, by criminalising the buyers of sexual services.

197. GRETA recalls that pursuant to Article 19 of the Convention, Parties must consider making it a criminal offence to knowingly use the services of a victim of trafficking. This provision targets the client whether of a victim of trafficking for sexual exploitation or of a victim of forced labour or services, slavery or practices similar to slavery, servitude or organ removal. GRETA invites the Irish authorities to consider establishing as a criminal offence the use of services from victims of trafficking which are the object of exploitation other than sexual exploitation, with the knowledge that the person is a victim of human trafficking.

⁷⁴ See also UNODC [Guidance Note](#) on “abuse of a position of vulnerability” as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized.

c. Corporate liability (Article 22)

198. As indicated in the first evaluation report, section 6 of the Criminal Law (Human Trafficking) Act 2008 states that: “where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.” The maximum penalty is life imprisonment and, at the discretion of the court, a fine.

199. The Irish authorities have indicated that as part of recent investigations into human trafficking for the purpose of labour exploitation, An Garda Síochána has interviewed corporate office holders connected to recruitment processes and those involved with procurement of services to establish the level of awareness, if any, of exploitative practices taking place within supply chains. While prosecutions are on-going, these do not concern corporate entities. GRETA invites the Irish authorities to keep under review the application of the legal provisions concerning corporate liability for THB with a view to ensuring that the sanctions or measures are effective, proportionate and dissuasive.

d. Non-punishment of victims of THB (Article 26)

200. In its first report, GRETA urged the Irish authorities to ensure compliance with Article 26 of the Convention through the adoption of a provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, or by further developing relevant guidance. GRETA noted that public prosecutors should be encouraged to be proactive in establishing if an accused is a potential victim of trafficking and to consider trafficking in human beings as a serious violation of human rights. While the identification procedure is on-going, potential victims of trafficking should not be punished for immigration-related offences.

201. There is still no specific provision in Irish law on the non-punishment of victims of trafficking. The Office of the Director of Public Prosecutions (DPP) has issued guidelines for prosecutors, which were updated in October 2016.⁷⁵ The relevant paragraph in the latest version of the Guidelines (paragraph 4.7) is identical to the one in force at the time of GRETA's first visit. It states that in assessing whether the public interest lies in commencing or continuing with a prosecution, a prosecutor should exercise particular care where there is information to suggest that the suspect is a victim of crime. Using as an example a case where it is suggested that the suspect is a victim of human trafficking, the Guidelines state that such a person may be suspected of a range of offences, from breaches of immigration law to offences relating to prostitution, and that in a case where there is credible information that a suspect is also a victim of crime, the prosecutor should consider whether the public interest is served by a prosecution of the suspect.

202. GRETA notes that the DPP's discretion whether to prosecute or not and is not open to court scrutiny. Experience shows that if victims are prosecuted before they are identified as victims of trafficking (as demonstrated in the case of *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors.*⁷⁶), they hold a criminal record which cannot be expunged following formal identification.

⁷⁵ [http://www.dppireland.ie/filestore/documents/Guidelines_for_Prosecutors_\(Revised_Oct07\)_ENGLISH1.pdf](http://www.dppireland.ie/filestore/documents/Guidelines_for_Prosecutors_(Revised_Oct07)_ENGLISH1.pdf)

⁷⁶ *P. v. Chief Superintendent Garda National Immigration Bureau, the Director of Public Prosecutions, Ireland and the Attorney General*, 2013/795, available at: <http://www.mrci.ie/wp-content/uploads/2015/04/2015-04-15-P-v-Ireland-Judgment.pdf>

203. GRETA refers to research by MRCI on trafficking for forced labour in cannabis production,⁷⁷ according to which in 2013 the Irish Penal Reform Trust found that there were 80 persons of Asian origin in custody for drug related offences; 50 persons were in custody for cannabis cultivation, of whom 35 had been sentenced. According to this report, 75% of the Chinese and Vietnamese nationals incarcerated for cannabis cultivation make claims of exploitation, such as not being paid, their passports being take away, and being forced to sleep on mattresses on the floor of the cannabis grow-houses. It is estimated that 24 potential victims of THB went to prison with an average sentence of three years. The MRCI has begun a programme of outreach to prisons in co-operation with legal firms to detect potential victims of trafficking and provide expert advice.

204. GRETA notes that the High Court decision in *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors.* is relevant to the application of Article 26 of the Convention. The High Court found that: "there is a necessity for rules or protocols, if not legislation, establishing what is to be done in circumstances where the person claiming to be a victim is also suspected of criminal activity."⁷⁸

205. As stressed by GRETA in its 2nd General Report, the criminalisation of victims of human trafficking not only contravenes the State's obligation to provide services and assistance to victims, but also discourages victims from coming forward and co-operating with law enforcement agencies, thereby also interfering with the State's obligation to investigate and prosecute those responsible for human trafficking. GRETA considers that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of treating them differently depending on the prosecutor in charge of the case.

206. The second National Action Plan notes the need to develop a greater understanding of trafficking for forced criminal activities and announces the development of guidelines to assist the authorities in addressing the complex issues raised by such cases, in particular cannabis cultivation.

207. GRETA urges the Irish authorities to take further measures to ensure compliance with Article 26 of the Convention, including by:

- adopting a specific legal provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, and/or developing detailed, updated guidance for police officers and prosecutors on the aims and scope of the non-punishment provision;
- encouraging prosecutors to consider THB as a serious violation of human rights when assessing the public interest of prosecuting identified victims of trafficking;
- including the non-punishment provision in the training of police officers, prosecutors, judges and lawyers.

208. Further, GRETA considers that the Irish authorities should closely monitor and research the emergence of trafficking for the purpose of exploitation of criminal activity.

⁷⁷ Available at: <http://www.mrci.ie/resources/publications/trafficking-for-forced-labour-in-cannabis-cultivation-the-case-of-ireland/>

⁷⁸ Paragraph 191 of *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors.*

4. Investigation, prosecution and procedural law

a. Measures related to ensuring effective investigations (Articles 1, 27 and 29)

209. As noted in paragraph 20, the Human Trafficking Investigation and Co-ordination Unit (HTICU) has since 2015 been part of the Garda National Protective Services Bureau (GNPSB), rather than the Garda National Immigration Bureau. The role of HTICU is to provide advice, support and where necessary operational assistance to investigations undertaken at district level as well as conducting investigations into human trafficking. It also deals with policy issues with regard to human trafficking and interacts on behalf of An Garda Síochána with the Anti-Human Trafficking Unit of the Department of Justice and Equality. Provision of training on a national basis is another function the HTICU fulfils, as well as international liaison and representation with organisations such as Europol and Interpol. The HTICU is currently staffed by one detective inspector, four detective sergeants, five detective Gardaí and two clerical officers. Operation Quest which deals specifically with organised prostitution and human trafficking is staffed by one detective sergeant and four detective Gardaí. Both units work together tackling human trafficking within GNPSB.

210. An Garda Síochána is currently in the process of establishing Protective Services Units in Garda Divisions throughout the country, which are expected to provide a high level of expertise in dealing with victims. These units will work closely with the GNPSB and in human trafficking cases, with the HTICU.

211. The Office of the Director of Public Prosecutions (DPP) is a fully independent service, both from the Government and the investigation services of An Garda Síochána. Following investigation and recommendation by the Gardaí, the DPP uses prosecutorial discretion to decide whether to prosecute. The DPP cannot commence prosecution unless there are reasonable prospects for conviction. Within the Directing Division of the DPP, which decides whether to prosecute cases referred to them by An Garda Síochána, there is a unit, staffed by seven officials, dealing with cases of human trafficking, people smuggling, corruption and other related offences.

212. In order to effectively tackle crime and criminality, it is sometimes necessary for An Garda Síochána to employ covert methods of intelligence gathering. This is particularly so in relation to the management and handling of Covert Human Intelligence Sources (CHIS), a term embracing three distinct but related categories of person who provide information to the police, i.e. casual contacts, informants and agents. Authority to recruit, handle and manage these CHIS can only be given by the Assistant Commissioner at Crime and Security at Garda Headquarters and the CHIS are strictly managed in accordance with a Code of Practice within An Garda Síochána. The handling of informants under CHIS is overseen by a High Court Judge. Further, pursuant to the Criminal Justice Surveillance Act 2009, members of An Garda Síochána are authorised to carry out surveillance for serious offences, including human trafficking.

213. The Criminal Assets Bureau (CAB) enjoys extensive powers to target criminal assets and ask the court to freeze them prior to conviction. The Bureau's statutory remit is to carry out investigations into the suspected proceeds of criminal conduct. CAB identifies assets of persons which derive, or are suspected to derive, directly or indirectly from criminal conduct and takes appropriate action to deprive or deny those persons of the assets and the proceeds of their criminal conduct. The legal basis for this action is the Proceeds of Crime Act 1996, as amended by the 2005 Act (which allows CAB to target assets from crimes committed abroad), and Social Welfare and Revenue legislation. All seized assets go to the central Exchequer. There have been on average some €6 million of confiscations per year. GRETA was informed that CAB had been active in a number of cases of investigations into brothel keeping, prostitution and possibly human trafficking. An Garda Síochána have also built partnerships with private monies transfer companies with a view to combating the financial flows emanating from human trafficking. In 2015 two members of the HTICU were trained in financial investigative techniques.

214. In relation to the investigation and prevention of crimes of trafficking and child pornography/exploitation, a dedicated unit at the Garda National Protective Services Bureau, the Paedophile Investigation Unit, has the national remit to investigate/prevent crimes on this nature that occur on the Internet. This Unit carries out proactive investigations and lends its expertise to investigations which include trafficking in children and adults, travelling sex offenders and extortion cases. The Unit actively deals with Internet service providers to block websites that distribute child pornography and utilises the Interpol Worst of List to establish a base of blocked sites.

215. To date Ireland has not participated in any Joint Investigation Teams (JITs), but has used mutual legal assistance and Eurojust, Europol and Interpol channels to co-operate in investigating human trafficking offences with other countries (see also paragraphs 239-240). GRETA was informed that there was a legislative problem preventing Ireland from participating in JITs, but this issue was under consideration. GRETA notes that JITs are a potentially useful instrument for investigating transnational human trafficking cases and are increasingly used by a number of European countries.

216. A representative from the HTICU sits on an Organised Crime Task Force (OCTF) Immigration and Human Trafficking Sub-Group which meets in Belfast, Northern Ireland, on a quarterly basis. This allows for regular analysing and sharing of information between the Police Service of Northern Ireland and An Garda Síochána. Further, Ireland has joined the current EU Cycle 2014-2017 EMPACT Group for Human Trafficking.

217. GRETA was provided with information about Operation Vantage, which was set up in August 2015 to investigate cases of sham marriages. The Garda National Immigration Bureau (GNIB) had identified women from EU countries travelling to Ireland for a day in order to get married to third-country nationals before departing from Ireland. Internet and social media (Facebook) were used to attract the women. GNIB officials interviewed a number of women (including 47 Latvian women) who declared that they were entering into marriage for financial gain and had been paid upfront; none of them reportedly complained. One vulnerable young woman from the Czech Republic was identified as a possible victim and was placed in NGO accommodation, before being repatriated with the assistance of IOM. A total of 63 persons were arrested and one of the facilitators was prosecuted, received a two-year suspected sentence and a deportation order.

218. The number of investigations initiated by An Garda Síochána relating to allegations of trafficking in human beings was 37 in 2012, 56 in 2013, 79 in 2014, 91 in 2015 and 90 in 2016. These investigations concerned cases of possible human trafficking for different purposes of exploitation: sexual exploitation, labour exploitation (including in domestic work, fisheries, pop-up car washes, recycling plants), forced criminality (cannabis growing) and exploitative sham marriages.

219. However, the number of prosecutions into THB cases is still very low compared to the number of investigations. According to information provided by the AHTU, in 2012 there were 11 prosecutions in THB cases, in 2013 - 16, in 2014 - 14, and in 2015 - 17. In 13 of the 14 cases in 2014, the DPP directed that charges be brought under offences relating to sexual offences against children (including child pornography, sexual assault and sexual indecency). One defendant was charged for the prostitution of children. All the victims and defendants in those cases were Irish. Until 2016, no prosecutions have been initiated in relation to trafficking for the purpose of labour exploitation. At the time of GRETA's visit in December 2016, the DPP was considering prosecution in a case of possible human trafficking for the purpose of labour exploitation/forced labour and in another case concerning exploitative sham marriages. In 2016 police investigations resulted for the first time in charges directed by the DPP for trafficking for sexual exploitation of adults. Charges have been directed against six persons, three of whom are already before the courts. Further, in early 2017, the DPP directed for the first time charges for trafficking for labour exploitation.

220. In the period 2012-2015, all convictions under the Criminal Law (Human Trafficking) Act 2008 were under section 3 (“trafficking, taking, etc. child for purpose of sexual exploitation”) on charges of sexual assault, pornography, restricting the liberty and sexually exploiting a child by the accused, which are not strictly speaking trafficking offences but rather sexual offences. Strikingly, there have been no convictions for human trafficking for the purpose of sexual exploitation of adults. Further, despite the amendments brought to the legislation on forced labour, there have been no convictions for trafficking for the purpose of labour exploitation, despite the increasing number of identified suspected cases.

221. According to Gardaí officers and public prosecutors met during the evaluation visit, the limited number of prosecutions and convictions for human trafficking is linked to the nature of the criminal justice system in Ireland. The Office of the DPP prosecutes in circumstances where there is a *prima facie* case, i.e. a body of evidence on which a jury properly instructed in the relevant law could conclude beyond a reasonable doubt that the accused was guilty, and where it is in the public interest to prosecute. The Guidelines for Prosecutors outline a number of relevant factors that must be considered in assessing whether or not the public interest requires prosecution. Representatives of the DPP met by GRETA referred to a number of problematic issues when considering investigation files submitted by An Garda Síochána in possible human trafficking cases, such as witness credibility, conflicting accounts of victims, and absence of evidence of force, coercion, threats of fraud. They noted that in some cases the difficulty to prosecute is evident where the suspected victims is unlikely or unwilling to give evidence or where there is an absence of independent corroborative evidence of the offence. Further, there can be issues in relation to the vague account given by the victim in relation to identifying suspects. Some files submitted disclose other offences, such as organising/directing prostitution, brothel keeping or breaches of the employment legislation and prosecutions are directed in respect of such offences rather than human trafficking offences.

222. The case of *Lin v. Governor of Cloverhill Prison & Ors.*⁷⁹ highlights some issues in regard to possible victims. The suspect was cultivating cannabis in a grow-house. While there appeared to the Gardaí to be some indicators pointing towards the possibility of him being trafficked, he had not cooperated in providing any information to establish that. He pleaded guilty and was sentenced to a term of imprisonment. The High Court judge who subsequently considered this case concluded that while Mr Lin was exploited in the sense that his incarceration in the grow-house amounted to conditions of servitude, the judge was not satisfied that the evidence established that he had been trafficked into Ireland. In particular, the judge was “unpersuaded by his account of the manner in which he came to be in Ireland and key details in terms of identify, method of travel and dates of arrival have not been independently confirmed.” Moreover, the fact that Mr Lin was at liberty and could travel extensively throughout the country was seen by the judge as “a critical objective factor which negatives the suggestion that he was trafficked, even if this factor alone is not always dispositive of a trafficking claim”.

223. According to lawyers and NGOs, the DPP appears reluctant to charge traffickers with offences under the Criminal Law (Human Trafficking) Act 2008, preferring to charge lesser offences.⁸⁰ As a result, the witnesses can claim no protection under section 11 of the Criminal Law (Human Trafficking) Act 2008.

⁷⁹ *Lin v. Governor of Cloverhill Prison & Ors.*, High Court Record Number 2013 1550 SS, Date of delivery: 23 April 2014.

⁸⁰ The Guardian, *Irish trawler owners charged with trafficking and employment offences*, 12 October 2016, <https://www.theguardian.com/global-development/2016/oct/12/irish-trawler-owners-charged-trafficking-offences>
The Journal, *Mother accused of forcing woman to have sex with men is acquitted over ‘conflict in the evidence’*, 31 January 2017, available at: <http://www.thejournal.ie/joy-imasogie-court-case-verdict-3215165-Jan2017/>

224. GRETA refers to a recent judicial decision to dismiss all charges against two trawler owners in Co. Cork who had employed two Filipino fishermen without work permits.⁸¹ The trawler owners did not face charges of trafficking in human beings and were cleared of all other charges, i.e. under the Illegal Immigrants (Trafficking) Act 2000 and the Employment Permits Act 2003. It would appear that no successful prosecutions have been brought against boat owners following inspections of vessels by the WRC since the introduction of the Atypical Working Scheme for Seafishers in February 2016.

225. The length of the time it takes for a criminal case to reach the stage of court proceedings is also a matter of concern. GRETA was informed by the HTICU that a case relating to facts dating back to 2012 was being prosecuted by DPP at the end of 2016. Another case which was appearing before court in January 2017 related to events in 2008.

226. GRETA is concerned by the inadequate criminal justice response to human trafficking in Ireland and notes that failure to convict traffickers and the absence of effective sentences engenders a feeling of impunity and undermines efforts to support victims to testify. Human trafficking cases require significant investment to ensure that there is no overreliance on vulnerable victims and that those benefiting from the exploitation are identified and sanctioned, including through following the money flows and online activity and engaging in transnational co-operation. GRETA stresses the need for improvement of the knowledge and sensitivity of relevant professionals, in particular prosecutors and judges, about the seriousness of human trafficking, the severe impact of exploitation on the victims and the need to respect their human rights, including the right to redress and protection.

227. In their comments on the draft GRETA report, the Irish authorities have stated that training of frontline personnel on the indicators of human trafficking will continue under the second National Action Plan with the extension of this training to frontline staff in social services, emergency services and other relevant agencies. The recently published Judicial Appointments Commission Bill 2017 will provide for the establishment of a Judicial Studies Committee to facilitate the continuing education and training of judges with regard to their judicial functions. A Sentencing Information Committee will also be established to collate information on sentences imposed by the courts and to periodically disseminate information to judges and other relevant professionals.

228. GRETA once again urges the Irish authorities to take measures to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:

- encouraging the Office of the Director of Public Prosecutions to further develop their specialism in THB with a view to successfully prosecuting more traffickers;
- ensuring that units investigating THB offences are properly resourced;
- continuing to improve the knowledge of investigators, prosecutors and judges about the seriousness of THB, the severe impact of exploitation on the victims and the need to respect their human rights;
- reviewing the legislation and the investigation/prosecution procedure with a view to identifying and addressing gaps (e.g. in relation to trafficking for the purpose of labour exploitation/forced labour and the setting up JITs);
- strengthening efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation.

⁸¹ Irish Times, *Judge dismisses charges over illegal Cork trawler workers*, 8 March 2017, available at: <http://www.irishtimes.com/news/ireland/irish-news/judge-dismisses-charges-over-illegal-cork-trawler-workers-1.3002669>).

b. Protection of witnesses and victims (Articles 28 and 30)

229. As explained in GRETA's first evaluation report,⁸² there are a number of protection measures in place in Ireland designed to protect victims and witnesses during the criminal justice process. The risk or perceived risk to a suspected victim of trafficking is assessed and suitable protection measures are put in place. A Crime Prevention Officer from An Garda Síochána is available to provide presumed victims with advice as regards their personal safety and to discuss their concerns.

230. Section 10 of the Criminal Law (Human Trafficking) Act 2008 provides for exclusion of members of the public from court proceedings to protect witnesses and victims willing to testify. This measure is intended to protect trafficked persons, who can be very vulnerable and traumatised, from the traffickers and their criminal associates who may wish to harm the victims or prevent them from giving evidence. Similarly, section 11 provides for a guarantee of anonymity of alleged victims of trafficking unless the judge fully or partially waives anonymity in the interests of justice. Any person who, contrary to a court direction, publishes or broadcasts any information likely to enable an alleged victim to be identified is liable upon conviction on indictment to a fine, or imprisonment for a term of up to 10 years, or both. Section 12 allows an alleged victim of trafficking to give evidence through a live television link, with the leave of the court in the case of adults, from either within the State or abroad. However, GRETA notes that section 11 only applies where the offence charged is under the Criminal Law (Human Trafficking) 2008 Act. The same is true of the provisions for giving evidence by video link in sections 12 and 13 of the Criminal Evidence Act 1992. Thus in practice witness protection is not ensured if the case is prosecuted on lesser charges (e.g. organising prostitution).

231. The Criminal Law (Human Trafficking) (Amendment) Act 2013 contains provisions to better facilitate children giving evidence in criminal prosecutions by increasing from 14 to 18 years the upper age threshold for out-of-court video recording of a complainant's evidence and by making provision for video recording the evidence of a child (other than an accused) who is under the age of 18 years.

232. Further, section 41 of the Criminal Justice Act 1999 creates offences which are aimed at protecting victims of crime, those who report crime, witnesses who give testimony concerning criminal offences and families of victims and witnesses from retaliation and intimidation. An Garda Síochána provides measures to protect people who fall into these categories.

233. Since 1997, An Garda Síochána has operated a Witness Security Programme in response to attempts by criminal and other groups to prevent the normal functioning of the criminal justice system, including threats of violence and systematic intimidation of witnesses.

234. An Garda Síochána has in place a comprehensive policy on the investigation of sexual crime, crimes against children and child welfare, which was updated in 2013. A countrywide network of dedicated interview suites has been established in six strategically chosen locations throughout Ireland which are used by the Garda authorities to record interviews with such victims. The facilities are designed to help put child victims of sexual and violent abuse at ease and address the trauma they have gone through in a more relaxed atmosphere.

235. GRETA considers that the Irish authorities should make full use of the available measures to protect victims and witnesses of THB and to prevent intimidation during the investigation and during and after the court proceedings.

⁸² See paragraphs 251-256 of GRETA's first report on Ireland.

c. Jurisdiction (Article 31)

236. The Criminal Law (Human Trafficking) Act 2008 contains provisions relating to the jurisdiction of offences. Section 7 provides for extra-territorial jurisdiction where an Irish citizen or person ordinarily resident in the State commits a trafficking offence outside the State. Extra-territorial jurisdiction also applies where a person commits an offence against an Irish citizen in a place other than in the State.

237. Further, the Sexual Offences (Jurisdiction) Act 1996 allows for the prosecution of an Irish citizen, or a person ordinarily resident in the State, who commits an act in another country which is a sexual offence against a child in that other country and if done within the State, would constitute a sexual offence against a child in the State. The penalties are a maximum of five years' imprisonment on conviction on indictment.

5. International co-operation and co-operation with civil society

a. International co-operation (Article 32)

238. Ireland's international police and judicial co-operation in proceedings concerning offences related to THB is based on multilateral and bilateral agreements. Moreover, co-operation with EU member States is effected on the basis of relevant EU law. Ireland's law enforcement bodies use all established forms and channels for international exchange of information, including Eurojust, Europol and Interpol. However, Ireland recently opted out of Directive 2014/41/EU regarding the European Investigation Order in criminal matters, which will be an important investigative tool for EU Member States in the fight against transnational crime, including THB.

239. Ireland has co-operated in a number of human trafficking related investigations with an international dimension. By way of example, in June 2014, a pan-European operation to combat trafficking in human beings from West Africa, co-ordinated by Europol, was carried out by law enforcement agencies in 14 European countries, including Ireland. During the course of searches in Ireland evidence of human trafficking, including of the movement of money believed to be the proceeds of crime, was found. Two persons of Nigerian origin were arrested in relation to the suspected trafficking of seven Nigerians into Ireland, all of whom were considered victims of trafficking. A further operation targeting a criminal group involved in organised prostitution, brothel-keeping and other associated criminal activity was carried out by An Garda Síochána in December 2014 in close co-operation with Europol as part of an initiative against mobile organised crime groups active in Europe.

240. In 2015, Ireland participated in eight THB-related investigations with an international dimension. By way of example, Operation Grof was an investigation into human trafficking for sexual exploitation in which Ireland worked in close co-operation with the Czech authorities and Europol. One possible victim of human trafficking was rescued in Ireland and five suspects were identified. Investigations are continuing led by a specialist unit targeting sham marriages (Operation Vantage). Further, following a request from the Slovak authorities concerning a 17-year old girl who had been trafficked into Ireland after her brother had sold her for €300 in order for her to be married to an older man, the girl was rescued and received support from TUSLA. Three suspects were arrested in this case. Moreover, An Garda Síochána have co-operated with the Romanian authorities on successful investigations into trafficking of Romanian nationals for the purpose of forced labour (pop-up car washes).

241. Irish Aid, which is the international development branch of the Department of Foreign Affairs and Trade, has been funding a programme through the ILO based around the ILO's Decent Work Agenda. One of the four main themes of this programme is combating forced labour, which also covers human trafficking of vulnerable women and children. Irish Aid also finances a number of NGOs and religious organisations working in different countries, for a total of €18 million per year.

242. GRETA commends the efforts made by the Irish authorities in the area of international co-operation and invites them to continue these efforts, including through exploring further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims and developing co-operation with labour inspectorates abroad.

b. Co-operation with civil society (Article 35)

243. As noted in paragraph 24, Ireland has put in place a Roundtable Forum and interdisciplinary working groups which involve representatives of NGOs and are in the process of being reinvigorated. The consultation around the second National Action Plan involved a series of civil society actors whose views were reflected in the final draft.

244. Partnership and co-operation between NGOs and State actors, in particular the HSE Anti-Human Trafficking Team and HTICU, is part of everyday work, for example in the delivery of care and case management services to victims, support when victims are recovered from a dangerous situation, or court accompaniment and support through the criminal justice system. Positive relationships and trust have been developed with HTICU and HSE over the years. NGOs also provide anonymised data to the human trafficking data collection by the AHTU. Additionally, there have been opportunities for NGOs to collaborate with State agencies on research and awareness raising projects (see paragraphs 51 and 57). NGOs also deliver training to State agencies (see paragraphs 32 and 42).

245. The Ministry of Justice and Equality has concluded service level agreements with Ruhama (which supports women affected by prostitution and other commercial forms of sexual exploitation) and the Migrants Rights Centre of Ireland, which stipulate the conditions under which these NGOs receive funding. Under the 2014-2015 Dormant Accounts Funding Scheme, €43,000 was allocated to Doras Luimní to employ a support project worker to work with migrant women affected by forced prostitution and trafficking in the mid-west region of Ireland, €16,225 to Ruhama for two new innovative training programmes to support women victims of trafficking for sexual exploitation, and €40,000 to the MCRI for prevention of trafficking for labour exploitation, addressing the knowledge gap in relation to trafficking for forced begging, and supporting ex-prisoners who are victims of trafficking. In November 2016, a total of €200,000 under the Dormant Accounts Actin Plan was disbursed to five NGOs working with victims of trafficking (Ruhama, MCRI, ICI, Doras Luimní and Sexual Violence Centre Cork). The authorities have stated that in 2017, €310,000 will be provided to Ruhama to support victims of trafficking, which equates to an increase of 13% on the level of funding in 2016. MCRI will receive €50,000, representing an increase of 21% on 2016 levels. Additionally, AHTU remains committed to exploring other opportunities for funding programmes to combat THB or provide support to victims.

246. GRETA welcomes the partnerships established with NGOs and the increased funding provided for projects run by civil society. GRETA stresses the importance of involving NGOs as equal partners in the planning, implementation and assessment of anti-trafficking measures. The involvement of specialised NGOs in the victim identification process and as support providers with a view to ensuring the provision of appropriate assistance to victims of trafficking is also envisaged by the Convention. In order to make progress on anti-trafficking work and identify new trends, NGOs need to be resourced to carry out their activities. While welcoming the possibility for NGOs to apply for funding of anti-trafficking measures from the Dormant Account Fund, GRETA stresses that the annual basis of this finding does not enable continuity of work.

247. GRETA considers that the Irish authorities should continue building strategic partnerships with NGOs and trade unions, in particular through involving them in the working groups, the process of reviewing the identification process and the provision of assistance to victims of trafficking, and the implementation and assessment of the second National Action Plan. Further, GRETA invites the Irish authorities to continue their efforts to provide funding for anti-trafficking activities of NGOs.

IV. Conclusions

248. Since the adoption of GRETA's first report on Ireland in 2013, progress has been made in a number of areas.

249. The Irish authorities have continued to develop the legal framework for combating trafficking in human beings, in accordance with GRETA's recommendations. The broadened scope of the definition of trafficking in human beings to cover the exploitation of criminal activities and force begging corresponds to the need to address new trends in human trafficking. Further, the Criminal Law (Sexual Offence) Act 2017 has criminalised the purchase of sexual services, including from trafficked persons. The International Protection Act 2015, which reforms the system for examining applications for international protection, aims to provide applicants, including victims of trafficking, with a final decision in a more timely fashion.

250. The institutional framework for action against trafficking in human beings in Ireland has also evolved. The setting up of the Garda National Protective Services Bureau in 2015 and the inclusion in it of the Human Trafficking Investigation and Co-ordination Unit is a welcome development, which has resulted in separating the identification of victims of trafficking from immigration control, as recommended by GRETA in its first report.

251. Further, GRETA welcomes the adoption of the second National Action Plan to Prevent and Combat Human Trafficking, in consultation with civil society actors, and its comprehensive and far-reaching scope.

252. The Irish authorities have continued to develop the data collection and analysis system and reports summarising and analysing the available data are issued annually by the Anti-Human Trafficking Unit of the Department of Justice and Equality. A variety of institutions in Ireland have carried out research on the issue of THB, including in the areas suggested in GRETA's first evaluation report.

253. Efforts have been made to provide training to relevant professionals and to expand the categories of staff targeted. The training is often carried out in co-operation with NGOs and, whenever possible, a multi-stakeholder approach is promoted.

254. GRETA commends the efforts made in Ireland to raise public awareness of human trafficking, to discourage demand and to assess the impact of public campaigns and other measures. As recommended in GRETA's first report, various steps have been taken to prevent trafficking for the purpose of labour exploitation, including through ratifying relevant international treaties, adopting new legislation, reforming the labour inspection process and introducing schemes for regulating the employment of non-EEA nationals. The introduction of guidelines for the employment of private domestic workers in diplomatic households and the engagement with the business sector are other positive developments.

255. Some improvement has also been made in the area of protection of victims' rights. GRETA welcomes the partnerships established with NGOs and the increased funding for projects run by civil society.

256. GRETA also commends the efforts made in the area of international co-operation, both when it comes to police co-operation and supporting international development projects which target forced labour and human trafficking of vulnerable women and children.

257. However, despite the progress achieved, some issues give rise to concern. In this report, GRETA requests that the Irish authorities take further action in a number of areas. The position of the recommendations in the text of the report is shown in parentheses.

Issues for immediate action

- GRETA once again urges the Irish authorities to take steps to ensure that victims of trafficking are identified proactively and without delay, including by:
 - reviewing as a matter of priority the victim identification procedure and decision-making process, in the light of the case *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors.* and the recommendations made in GRETA's first report. The aim of the reviewed procedure should be to cover all victims, including EEA and Irish citizens, as well as asylum seekers, and to formalise the decision-making process by specifying the requirements for a "reasonable grounds" decision and the rights which flow from it;
 - promoting multi-agency involvement in the identification of victims of trafficking by giving a formal role in the identification process to frontline actors such as NGOs, labour inspectors, social workers, health-care staff and other bodies which may come into contact with victims of trafficking;
 - ensuring that whenever there are reasonable grounds to believe that a person is a victim of THB on the basis of operational indicators, he/she is provided with all the assistance and protection measures provided for in the Convention, regardless of whether an investigation into trafficking is opened and whether the person co-operates in the investigation;
 - ensuring that frontline staff are provided with regular training, guidance, toolkits and criteria for the identification and referral of victims of trafficking;
 - pursuing a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by encouraging regular and co-ordinated multi-agency inspections in sectors most at risk;
 - ensuring that victims of trafficking have early access to legal practitioners with specialised knowledge of human trafficking who can represent them;
 - monitoring closely the relationship between asylum and THB with a view to ensuring that the right to seek and enjoy asylum does not impede identification as a victim of trafficking;
 - improving the identification of victims of trafficking in detention centres, by giving access to such centres to specialised NGOs and lawyers, and ensuring that following a positive reasonable grounds decision, presumed victims of trafficking are speedily removed from detention and offered assistance and protection as provided in the Convention (paragraph 126).
- GRETA once again urges the Irish authorities to:
 - review as a matter of priority the policy of accommodating presumed victims of trafficking in accommodation centres for asylum seekers, with a view to ensuring that the accommodation is gender-sensitive, appropriate and safe, and that victims are provided with specialised services. As a first step, the authorities should set up as a pilot a specialised shelter, with dedicated, trained personnel. In addition to better support and protection of the victims, this would also be in the interest of the investigation;
 - enact statutory rights to assistance and protection for possible victims of trafficking, as specified in Articles 10 and 12 of the Convention, regardless of the victims' nationality or immigration status (paragraph 142).

- Noting that domestic law much be brought into compliance with international obligations, GRETA once again urges the Irish authorities to ensure, in compliance with Article 13 of the Convention, that all possible foreign victims of trafficking, including EEA nationals, are offered a recovery and reflection period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Officers performing identification should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators (paragraph 164).
- GRETA once again urges the Irish authorities to take measures to ensure that avenues for compensation are easily accessible to trafficked people, and in particular to:
 - encourage prosecutors to request compensation orders in all relevant cases;
 - make the State compensation scheme effectively accessible to victims of trafficking, which would require a review of the current conditions for eligibility;
 - enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation;
 - include victim compensation into training programmes for law enforcement officials, prosecutors and judges;
 - make full use of the existing legislation on the freezing and forfeiture of assets to secure compensation to victims of trafficking (paragraph 182).
- GRETA urges the Irish authorities to take further measures to ensure compliance with Article 26 of the Convention, including by:
 - adopting a specific legal provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so, and/or developing detailed, updated guidance for police officers and prosecutors on the aims and scope of the non-punishment provision;
 - encouraging prosecutors to consider THB as a serious violation of human rights when assessing the public interest of prosecuting identified victims of trafficking;
 - including the non-punishment provision in the training of police officers, prosecutors, judges and lawyers (paragraph 207).
- GRETA once again urges the Irish authorities to take measures to ensure that THB offences are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions, in particular by:
 - encouraging the Office of the Director of Public Prosecutions to further develop their specialism in THB with a view to successfully prosecuting more traffickers;
 - ensuring that units investigating THB offences are properly resourced;
 - continuing to improve the knowledge of investigators, prosecutors and judges about the seriousness of THB, the severe impact of exploitation on the victims and the need to respect their human rights;
 - reviewing the legislation and the investigation/prosecution procedure with a view to identifying and addressing gaps (e.g. in relation to trafficking for the purpose of labour exploitation/forced labour and the setting up JITs);
 - strengthening efforts to investigate and prosecute cases of trafficking for the purpose of labour exploitation (paragraph 228).

Further conclusions:

- GRETA considers that the Irish authorities should take steps to strengthen the work of the Roundtable Forum, ensure that the working groups are enabled to make progress on the implementation of the new National Action Plan, and expand the range of relevant stakeholders involved in them (paragraph 26).
- GRETA considers that the Irish authorities should examine the possibility of establishing an independent National Rapporteur or designating another mechanism as an independent organisational entity with a view to ensuring an effective monitoring of the anti-trafficking activities of State institutions and making recommendations to persons and institutions concerned (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report) (paragraph 31).
- GRETA considers that the investment made in training relevant professionals on human trafficking should continue, in particular as regards prosecutors and judges, with a view to increasing the number of prosecutions and convictions in cases of human trafficking, as well as providing training to social workers, health-care staff, staff of direct provision centres for asylum seekers and teachers (paragraph 44).
- GRETA invites the Irish authorities to continue developing the data collection and analysis system with a view to ensuring that it provides a comprehensive picture of the human trafficking situation in Ireland (paragraph 47).
- GRETA considers that the Irish authorities should continue to conduct and support research on THB-related issues as an evidence base for future policy measures. Areas where research is needed in order to shed more light on the extent and nature of the problem of THB include trafficking in children (paragraph 54).
- GRETA invites the Irish authorities to continue their efforts in this area, in the light of research and the impact assessment of previous measures, focusing on new trends, e.g. trafficking for the purpose of force begging, forced criminality and exploitative sham marriages (paragraph 61).
- GRETA considers that the Irish authorities should make further efforts to prevent trafficking for the purpose of labour exploitation, in particular by:
 - continuing to sensitise relevant officials, in particular labour inspectors, police officers, prosecutors and judges, about human trafficking for the purpose of labour exploitation and the rights of victims;
 - ensuring that on-going training is provided to labour inspectors to enable proactive identification of human trafficking cases, and that labour inspections are properly resourced, frequent and targeted at sectors which show a high potential for human trafficking, focusing on the rights of the workers rather than on their immigration status;
 - reviewing the regulatory systems concerning migrants working as au pairs and home care workers and ensuring that inspections can take place in private households with a view to preventing abuse of domestic workers, including au pairs, and detecting cases of human trafficking;
 - reviewing the application of the Atypical Working Scheme in the fisheries industry with a view to ensuring that it contains sufficient safeguards against trafficking and exploitation of fishermen;
 - strengthening the monitoring of recruitment and temporary work agencies and reviewing the legislative framework for any loopholes that may limit protection or preventive measures;

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- working closely with the private sector and trade unions, in line with the Guiding Principles on Business and Human Rights, and requiring businesses to report publicly on measures to reduce human trafficking or forced labour in their supply chains;
 - conducting a comprehensive human rights-led revision of the State's procurement practices (paragraph 79).
- GRETA considers that the Irish authorities should continue and strengthen their efforts in the area of prevention of child trafficking, using the results of research on new trends, sensitising and training child protection professionals across the country, and paying increased attention to migrant children, especially unaccompanied and separated children (paragraph 85).
 - GRETA encourages the Irish authorities to ratify the Council of Europe Convention against Trafficking in Human Organs as this would contribute to the prevention of trafficking for the purpose of organ removal (paragraph 90).
 - GRETA considers that medical professionals involved in organ transplantations and other relevant professionals should be sensitised about THB for the purpose of organ removal through training and the provision of guidance (paragraph 91).
 - GRETA considers that the Irish authorities should strengthen the comprehensive approach envisaged in Article 6 of the Convention, by adopting legislative, administrative, educational, social and cultural measures to discourage demand that fosters all forms of exploitation that leads to trafficking, in partnership with civil society, trade unions and the private sector (paragraph 98).
 - GRETA considers that the Irish authorities should continue to improve the detection of trafficking victims during border controls, in particular by:
 - reinforcing training for staff carrying out identity checks so that they are more effective in detecting signs pointing to a possible victim of trafficking and their referral to assistance;
 - further developing awareness within transport companies of the detection of victims, using indicators of THB, and how to refer them to assistance (paragraph 105).
 - GRETA invites the Irish authorities to ensure full compliance with Article 10(3) of the Convention concerning age verification, taking into account the Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child (paragraph 154).
 - GRETA considers that the Irish authorities should continue their efforts to improve the identification of and assistance to child victims of trafficking, in particular by:
 - ensuring that the identification of child victims of trafficking takes into account the special circumstances of children, involves child specialists and ensures that the best interests of the child are the primary consideration in all proceedings relating to child victims of THB and children at risk;
 - providing further training and tools to stakeholders and updating the guidance on the services for child victims of trafficking;
 - ensuring that relevant actors take a proactive approach and increase their outreach work to identify child victims of trafficking;
 - providing adequate support and services which are adapted to the needs of child victims of trafficking, including appropriate accommodation, access to education and vocational training (paragraph 156).

- GRETA considers that the Irish authorities should continue ensuring that victims of trafficking can benefit from international protection on grounds of “compelling reasons arising out of previous persecution or serious harm” (paragraph 171).
- GRETA invites the Irish authorities to grant temporary residence permits to victims of THB on the basis of their personal situation, in addition to the residence permit on the basis of the victim’s co-operation in the investigation or criminal proceedings (paragraph 172).
- GRETA considers that the Irish authorities should ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit, without prejudice for the right to seek and enjoy asylum (paragraph 173).
- GRETA invites the Irish authorities to develop a system for recording claims for compensation to the State-funded scheme by victims of trafficking, as well as compensation awarded to victims of trafficking (paragraph 183).
- GRETA considers that the Irish authorities should continue to take steps to ensure that the return of victims of THB is conducted with due regard to their rights, safety and dignity, including the right to *non-refoulement* (Article 40(4) of the Convention), and in the case of children, by fully respecting the principle of the best interests of the child. In this context, the authorities should continue to develop co-operation with countries of origin of victims in order to ensure comprehensive risk and security assessment (Article 16(7) of the Convention) and safe return of the victims, as well as their effective reintegration on return (paragraph 188).
- GRETA considers that the Irish authorities should ensure that the interpretation of the abuse of a position of vulnerability is in full conformity with the Convention (paragraph 194).
- GRETA invites the Irish authorities to consider establishing as a criminal offence the use of services from victims of trafficking which are the object of exploitation other than sexual exploitation, with the knowledge that the person is a victim of human trafficking (paragraph 197).
- GRETA invites the Irish authorities to keep under review the application of the legal provisions concerning corporate liability for THB with a view to ensuring that the sanctions or measures are effective, proportionate and dissuasive (paragraph 199).
- GRETA considers that the Irish authorities should closely monitor and research the emergence of trafficking for the purpose of exploitation of criminal activity (paragraph 208).
- GRETA considers that the Irish authorities should make full use of the available measures to protect victims and witnesses of THB and to prevent intimidation during the investigation and during and after the court proceedings (paragraph 235).
- GRETA invites the Irish authorities to continue the efforts made in the area of international co-operation, including through exploring further possibilities for co-operation with governmental and non-governmental actors in the main countries of origin of trafficking victims and developing co-operation with labour inspectorates abroad (paragraph 242).
- GRETA considers that the Irish authorities should continue building strategic partnerships with NGOs and trade unions, in particular through involving them in the working groups, the process of reviewing the identification process and the provision of assistance to victims of trafficking, and the implementation and assessment of the second National Action Plan. Further, GRETA invites the Irish authorities to continue their efforts to provide funding for anti-trafficking activities of NGOs (paragraph 247).

Appendix

List of public bodies, intergovernmental and non-governmental organisations and other civil society actors with which GRETA held consultations

Public bodies

- Ms Frances Fitzgerald, Deputy Prime Minister and Minister for Justice and Equality
- Department of Justice and Equality
 - Anti-Human Trafficking Unit (AHTU)
 - Irish Naturalisation and Immigration Service (INIS)
 - Reception and Integration Agency (RIA)
 - Office of the Refugee Applications Commissioner (ORAC)
 - Criminal Law Reform Division
 - Victims of Crime Office
- An Garda Síochána
 - Garda National Protective Services Bureau
 - Human Trafficking Investigation and Co-ordination Unit (HTICU)
 - Garda National Immigration Bureau
 - Criminal Assets Bureau
- Department of Foreign Affairs and Trade
 - Consular Services Division
 - Training Unit
 - Irish Aid
 - Protocol Division
- Department of Children and Youth Affairs
- Child and Family Agency (TUSLA)
 - Separated Children Seeking Asylum Team
- Department of Social Protection
 - Asylum Seekers and New Communities Unit
 - Regional Support Unit
- Office of the Director of Public Prosecutions
- Department of Health
 - Blood and Organs Policy Division
- Health Service Executive
 - Anti-Human Trafficking Team
 - National Office for Social Inclusion

- Transplant Coordinator, Beaumont Hospital
- Health Products Regulatory Authority
- Workplace Relations Commission
- Legal Aid Board
- Irish Human Rights and Equality Commission

Intergovernmental organisations

- International Organization for Migration (IOM)
- United Nations High Commissioner for Refugees (UNHCR)

NGOs and other civil society actors

- AkiDwa
- APT Ireland
- Cois Tine
- Doras Luimni
- Invisible Traffick
- Immigrant Council of Ireland (ICI)
- Irish Congress of Trade Unions (ICTU)
- International Transport Workers' Federation Ireland
- Migrants Rights Centre Ireland (MRCI)
- Ruhama
- Sex Workers Alliance Ireland (SWAI)
- Sexual Violence Centre Cork
- Soroptomist Ireland
- Tearfund Ireland

Government's comments

The following comments do not form part of GRETA's analysis concerning the situation in Ireland

GRETA engaged in a dialogue with the Irish authorities on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Irish authorities on 27 July 2017 and invited them to submit any final comments. The comments of the Irish authorities, submitted on 12 September 2017, are reproduced hereafter.

AN ROINN DLÍ agus CIRT agus
COMHIONANNAIS
94 Faiche Stiabhna
Baile Átha Cliath 2
Teileafón/Telephone: (01) 602 8399
Ríomhphoist/e-mail: info@justice.ie



DEPARTMENT OF JUSTICE and
EQUALITY
94 St. Stephen's Green
Dublin 2
D02 FD70
Facsimile/Fax: (01) 661 5461

Ms Petya Nestorova
Executive Secretary
Council of Europe Group of Experts against Trafficking in Human Beings

12th September 2017

Dear Ms Nestorova,

The Irish authorities wish to acknowledge receipt of the final report drawn up by the Group of Experts on Action against Trafficking in Human Beings (GRETA) on the implementation by Ireland of the Council of Europe Convention on Action against Trafficking in Human Beings. Ireland thanks in particular, Ms Rita Superman, Mr Jan van Dijk and Ms Petya Nestorova who carried out the country visit.

The Report is in keeping with the process of constructive dialogue within which Ireland engages both NGOs and international monitoring bodies. Ireland particularly welcomes the comprehensive nature of the GRETA evaluation process as a useful learning experience, and welcomes the opportunity the Report offers to consider further improvements in anti-trafficking policy. The Recommendations themselves cover a very broad range of policy and procedures and have implications for a range of State agencies.

The clarifications and comment from the Irish authorities below do not seek to address each individual recommendation, but rather concentrate on those Issues for Immediate Action which the Report identifies, as well as some assertions contained in the Report which in our view, would benefit from clarification at this stage.

The Further Conclusions of GRETA will be considered in full, and where appropriate, will be incorporated as Ireland's efforts to combat human trafficking continue to evolve in response to the crime. We look forward to continued cooperation with GRETA as part of this response.

Yours sincerely,

Paul Gunning
Anti-Human Trafficking Unit
Department of Justice and Equality

Ireland's Response to GRETA Final Report

Legislative and institutional Framework

The development of Ireland's legal framework is an integral part of efforts to combat trafficking in human beings and various important legislative enactments have been recognised by GRETA. The development of the legal framework has taken place in tandem with institutional reform and cultural change.

The Irish authorities are pleased that GRETA recognises the strong working relationships with NGOs working in the area of human trafficking, and the cooperative approach to training, research and public-awareness which flows from these relationships.

With regard to paragraph 25 Ireland wishes to clarify that while the 5 working groups which existed during the term of the previous National Action Plan have not been reconstituted, consultation between State actors, NGOs and others involved in trafficking is regular and sustained, and covers all issues related to trafficking.

Ireland also welcomes recognition of the institutional changes underway within An Garda Síochána based around the establishment of the Garda National Protective Services Bureau, of which the Human Trafficking Investigation and Coordination Unit is a part.

Ireland as a 'Country of Origin'

While GRETA has made the observation that Ireland *'has also increasingly become a country of origin'* for trafficked persons, referring to the 73 Irish citizens, presumed victims of trafficking, from 2012-2016, it is important that these figures are considered in their correct context, particularly for the purposes of comparisons with other countries.

GRETA recognises that the *'majority of the Irish victims were children subjected to sexual abuse/child pornography within Ireland'* as criminalised under section 3(2) of the Criminal Law (Human Trafficking) Act 2008. GRETA further states (paragraph 220) that offences under section 3 are *'not strictly speaking trafficking offences but rather sexual offences'*. Whereas Ireland considers these crimes as heinous and they are included in Ireland's data collection strategy, this is done in full recognition that such offences may not be classed as trafficking in other jurisdictions. Annual reports go into further detail on this particular subject. It follows that the reference to Ireland as *becoming 'a country of origin'* for trafficked persons, which uses, as its basis, data on the offences described above, is somewhat misleading.

Furthermore, Ireland wishes to clarify that no Irish victims of trafficking featured in other countries' systems. Nor is there any suggestion that where Ireland is the *'country of origin'* that victims are moved elsewhere for further exploitation.

Ireland will endeavour to make further information available on the exact nature of these crimes, through Annual Reports, so as to foster a greater understanding of the nature of human trafficking, and of the crime of child sexual exploitation, and where there is a convergence between the two.

In relation to paragraph 82 of the Report, we also take this opportunity to notify GRETA that the functions of the National Education Welfare Board have transferred to the Educational Welfare Service of Tusla.

Identification of Victims of Trafficking

The issue of identification featured prominently in the evaluation process during which Ireland emphasised the fundamentally humane, victim-centred approach, which is in operation here and which we believe has served victims well heretofore. Ireland notes GRETA's view that *'a degree of formalisation of the identification process is needed'*, and is of the view that such formalisation should not increase the stigma attached to suspected victims. While work on a comprehensive review of identification procedures is ongoing, Ireland wishes to further clarify a number of misconceptions about existing processes.

Ireland considers the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking to be just one element of systems in place to deal with suspected victims of trafficking. The existence of Immigration Arrangements in no way precludes the identification of victims of trafficking who do not require an immigration permission. Nor do they force international protection applicants to *'choose between identification as a victim of trafficking and international protection'*. In fact, Annual Reports produced by Ireland have always included statistics on all suspected victims of trafficking, identified as such and accessing a range of services through the National Referral Mechanism. These include those who are in the asylum process, those who are EEA nationals, and non-EEA nationals to whom the Administrative Immigration Arrangements apply.

Ireland notes that in the opinion of GRETA that *'there have been no changes to the victim identification system'* since *P. v The Chief Superintendent of the Garda National Immigration Bureau & Ors.*. However, immediate steps were taken in the wake of that judgement relating to the manner in which identifications are performed where the potential victim is suspected of involvement in a criminal offence. There have been further, general improvements in the identification process for all victims of trafficking since then, such as in the timescale for decisions, victim interviewing techniques, liaison and communication with NGOs, and the further development of expertise both within the Garda National Protective Services Bureau and throughout the force.

At paragraph 114, GRETA is critical of the prominent role given to An Garda Síochana in the identification process. This criticism underplays both the substantial role of NGOs in making referrals to An Garda Síochana and the reliance of An Garda Síochana on these referrals. Cooperation between NGOs and State agencies in relation to training and the funding of projects is noted positively elsewhere in the Report, but this cooperative approach also applies in process of identification. At the same time, Ireland sees no compelling reason to deviate from the current practice whereby An Garda Síochana acts as Competent Authority for identification purposes. This reflects the need both for consistency and capacity at the point of entry to the National Referral Mechanism.

In our view, the current review of the victim identification process can be best characterised by bringing an added formality to an approach which already serves the vast majority of victims very well and is broadly in compliance with Ireland's obligations under the Convention.

The specific recommendations at paragraph 164 regarding compliance with Articles 12 and 13 of the Convention are being considered as part of the review of the identification process.

With regard to paragraph 119, the Legal Aid Board wish to challenge the statement that they are narrowly interpreting their remit. The Board wishes to clarify that it is carrying out its functions as authorised, in respect of victims of trafficking.

Assistance measures

GRETA observes (paragraph 129) that there are no dedicated shelters for victims of human trafficking and that they are provided with full board accommodation and ancillary services through the Reception and Integration Agency. Ireland emphasises once more that the nature and size of the RIA estate allows it to accommodate all potential victims of trafficking without delay, from the first point of contact with the Authorities, a solution which would be difficult to replicate in any other system. Ireland will further review accommodation measures for victims of trafficking in light of recent changes to the International Protection Process and their effect on the numbers availing of RIA facilities, and any changes to the identification process arising from the current review.

Included at paragraph 142 of the Report is a call on the Irish authorities to *“enact statutory rights to assistance and protection...as specified in Articles 10 and 12 of the Convention”*. Our clear reading of both Articles 10 and 12 is that they afford latitude to States in deciding whether to meet obligations through legislation or by other means. Ireland has chosen to do so by non-legislative measures, an approach which is in accordance with administrative norms in Ireland. Ireland disputes the assertion that in doing so we are failing to comply with the Convention.

Compensation

Ireland notes the recommendations, at paragraph 182, in relation to compensation. These recommendations have been brought to the attention both of An Garda Síochana and the Office of the Director for Public Prosecutions. At paragraph 175, GRETA has noted that the absence of convictions for trafficking in human beings in Ireland precludes victims of trafficking from accessing compensation. It is important to clarify that this preclusion applies only in the case of court-ordered compensation following conviction in the criminal courts, which is but one of a number of compensatory avenues open to victims of trafficking.

Article 15(4) of the Convention notes that the means of guaranteeing compensation are left to the (States) Parties, and suggests setting up a compensation fund or programmes for social assistance to and social integration of victims. The model chosen by Ireland allows for a range of such programmes for suspected victims to be provided by NGOs, and considers this a worthwhile approach, which provides guarantees both in terms of quality assurance, governance and accountability with regard to public funds.

Non-punishment provision

At paragraph 207, GRETA has urged Ireland to take further measures to ensure compliance with the Non-punishment provision (Article 26) of the Convention. Detailed, updated guidance for An Garda Síochana has been prepared concerning the relationship between investigation of human trafficking and

any criminal investigation of individual potential victims of trafficking. This guidance has been incorporated into Garda procedures on an interim basis prior to finalisation. Together with relevant provisions in the Guidelines for Prosecutors, referred to at paragraph 201, Ireland believes that this will ensure compliance with this provision.

Investigation and prosecution

At paragraph 220, GRETA refers to the lack of prosecutions for sexual exploitation of adults and for labour exploitation. Ireland has provided detailed information concerning current investigations and prosecutions which have yet to be finalised, and which for obvious reasons cannot be publicised.

The lack of prosecutions is contrasted with the number of investigations initiated by An Garda Síochana. Again, it is important to take account of the very low threshold which applies to identification of suspected victims of trafficking, and which thus accounts for a substantial majority of investigations initiated. This sets the investigation and prosecution of trafficking apart from other criminal offences. There is a substantial gap between the burden of proof required to identify a suspected victim of trafficking, and the standard of criminal proof necessary for a successful prosecution. While some of the difficulties with prosecutions are referred to at paragraph 221, the most fundamental reason for the low number of prosecutions is insufficient information in relation to any suspect.

At paragraph 223, GRETA has stated that *"witnesses can claim no protection under section 11 of the Criminal Law (Human Trafficking) Act 2008"*, where lesser charges have been preferred. However, victim anonymity, the protection dealt with by section 11 of the Act, can be dealt with at the discretion of the court, even where 'lesser' charges have been preferred. This protection has been requested and granted in accordance with the spirit of the Act, where 'lesser charges' have been preferred.

Independence of Judiciary and Prosecutors

The GRETA Report contains extensive recommendations in relation to the training and/or sensitisation of judges and prosecutors. Whereas some of these envisage an 'ongoing' requirement, both the content and tone of some of the recommendations at paragraph 228 is suggestive of a failure, be it on the part of investigators, prosecutors or judges, to fully appreciate the seriousness of the crime of human trafficking and the nature of its effect on victims. Ireland rejects this assertion as unfounded.

The work of the Office of the Director of Public Prosecutions and the nature of their specialism in trafficking is detailed at paragraph 211. Paragraph 227 deals with the Judiciary. While respecting the independence of both bodies, the recommendations of GRETA will be conveyed to both.

Anti-Human Trafficking Unit
Department of Justice and Equality
September 2017