

Identifying Victims of Trafficking in Human Beings in Asylum and Forced Return Procedures: Ireland

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April 2014

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European Migration Network



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The European Migration Network

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About this Report

This European Migration Network Focussed Study, compiled according to commonly agreed specifications, provides an overview of procedures in Ireland for the identification of victims of human trafficking within asylum and related forced return procedures. It also explores whether, and how, the detection and identification of (potential) victims of human trafficking results in onward referral to other procedures.

The report consists of information gathered primarily for an overview, EU-level Synthesis Report on the *Identification of victims of trafficking in human beings in international protection and forced return procedures*. The synthesis report and national reports are available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm.

The opinions presented in this report are those of the authors and do not represent the position of the Economic and Social Research Institute, the Irish Department of Justice and Equality or the European Commission, Directorate-General Home Affairs.

Following enactment of the *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)* in November 2013, investigation of an application for

subsidiary protection is now carried out by the Refugee Applications Commissioner, with an appeal available against a negative decision to the Refugee Appeals Tribunal. At the time of writing, new procedures were in development; for this reason, procedures regarding the identification of (potential) victims of trafficking in the subsidiary protection process are not covered in this report.

Table of Contents

List of Tables	v
Abbreviations, Irish Terms and Glossary	vi
Executive Summary	viii
Section 1 Introduction and Overview	1
1.1 Introduction	1
1.1.1 Methodology	2
1.2 Overview of System of Identification and Coordination	2
1.2.1 Residence Permits For Victims of Human Trafficking	3
1.2.2 Identification	4
1.2.3 Eligibility of Current and Rejected International Protection Applicants for Residence Permits	5
1.2.4 Cessation of Residence Permit	6
1.2.5 Conditionality of Residence Permit on Cooperation with the Authorities	7
1.3 National Referral Mechanism	8
Section 2 Identification within Asylum Procedures	9
2.1 Legislation and Policy	9
2.1.1 Mechanisms for Detecting and Identifying Victims in Asylum Procedures	9
2.1.2 Process of Detecting and Identifying Victims in Asylum Procedures	11
2.1.3 Different Protocols and/or Practices for Men And Women	12
2.1.4 Different Protocols and/or Practices for Children and Adults	12
2.2 Practices in Detecting and Identifying Victims in Asylum Procedures	14
2.2.1 Mechanisms for Detecting (Potential) Victims in Asylum Procedures	14
2.2.2 Use of Indicators	15
2.2.3 Next Steps Following Initial Detection	16
2.2.4 Potential for Alternative Assessment or Appeal	16
2.3 Detection, Identification and Referral in Dublin Procedures	17
2.3.1 Mechanisms for Detecting (Potential) Victims in ‘Dublin’ Procedures	17
2.3.2 Suspension of Dublin Transfer Following Detection	18
2.4 Referral of Victims Within Asylum Procedures	18
2.4.1 Statutory Assistance and Support	18
2.5 Transfer to an Alternative Permit or Status	21
2.6 Human Trafficking Victims in Subsidiary Protection Procedures	22
Section 3 Identification within Forced Return Procedures	24
3.1 Legislation And Policy	24
3.1.1 Mechanisms for Detecting and Identifying Victims in Forced Return Procedures	24

3.2	Practices in Detecting and Identifying Victims in Forced Return Procedures	26
3.2.1	Mechanisms for Detecting Victims in Forced Procedures	26
3.2.2	Different Protocols and/or Practices for Men and Women	26
3.2.3	Different Protocols and/or Practices for Children and Adults	27
3.2.4	Use of Indicators	27
3.2.5	Next Steps Following Initial Detection	27
3.3	Transfer to an Alternative Permit or Status	28
3.3.1	Use of Applicant’s Dossier /Evidence in the New Procedure	28
Section 4	Identification by Other Actors	30
4.1	Practices in Detecting and Identifying Victims in Reception Centres	30
4.1.1	Detection and Referral of Victims Residing in Reception Centres	30
4.1.2	Use of Indicators	30
4.1.3	Next Steps Following Initial Detection	31
4.2	Role of Other Actors	31
4.2.1	Detection and Referral of Victims	31
Section 5	Training	33
5.1	Guidance and Training	33
Section 6	Evaluation of Identification Measures	35
6.1	Asylum and Forced Return Procedures	35
6.2	Other Actors	38
Section 7	Conclusions	40
Annex:	Statistics	42
A.1	Statistics on the Scale and Scope of (Potential) Victims Detected and Identified in Procedures for International Protection and Forced Return	42
References		44

List of Tables

Table A.1	Alleged Victims of Human Trafficking Reported to An Garda Síochána in 2011, 2012	42
Table A.2	Available Statistics on Third-Country National Victims of Trafficking in Human Beings Identified in Procedures for International Protection and Forced Return	43

Abbreviations, Irish Terms and Glossary

AHTU	Anti-Human Trafficking Unit
Detection	The process of identifying possible situations of trafficking
ECHR	European Convention on Human Rights
EEA	European Economic Area
EMN	European Migration Network
EU	European Union
FÁS	Training and Employment Authority
FAFCE	Federation des Association Familiales Catholiques en Europe
Formal Identification	The identification of a persona as a victim of trafficking in human beings by the relevant authority (often law enforcement), according to the national system.
Garda Síochána	Police
GNIB	Garda National Immigration Bureau
GRETA	The Council of Europe Group of Experts on Action against Trafficking in Human Beings
HSE	Health Service Executive
HTICU	Human Trafficking Investigation and Coordination Unit
ICI	Immigrant Council of Ireland
Identification	The process of confirming and characterising any situations of trafficking for further implementation of support.
ILO	International Labour Organization
IOM	International Organization for Migration
INIS	Irish Naturalisation and Immigration Service
LAB	Legal Aid Board
NERA	National Employment Rights Agency
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
ORAC	Office of the Refugee Applications Commissioner
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency

Screening	The process of checking for a particular attribute or ability. In the migration context, a preliminary (often cursory) review to determine if a person is 'prima facie' eligible for the status applied.
Self Identification	The recognition by victims that they have been subject to the crime of trafficking in human beings specifically.
Self reporting	The reporting of exploitation / abuse by victims of trafficking in human beings <i>without</i> the recognition that the exploitation / abuse was a form of trafficking in human beings.
TCN	Third-country national
UNHCR	United Nations High Commissioner for Refugees
UNGIFT	United Nations Global Initiative to Fight Human Trafficking

Executive Summary

OVERVIEW

The aim of this report is to explore the interaction between procedures for asylum, procedures for forced return and procedures for victims of human trafficking. This report is part of an EU-wide EMN study¹ which examines whether, and how, (potential) victims of human trafficking are detected and identified in Member State procedures for international protection and the related forced return procedures. Procedures regarding the identification of (potential) victims in the subsidiary protection process in Ireland are not covered in this report. A transfer of responsibilities from the Irish Naturalisation and Immigration Service to the Refugee Applications Commissioner and Refugee Appeals Tribunal followed enactment of the *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)* in November 2013; new procedures were in development at the time of writing.

MAIN ISSUES

Ireland's legal and institutional framework for action against human trafficking has progressed significantly in recent years. However two broad issues remain regarding the identification of these victims. Firstly, in the wider identification context, no system exists for the formal identification of all victims of trafficking, irrespective of nationality and immigration status. Potential victims thus face differences in treatment, access to protection and assistance measures, depending on what part of the immigration system they fall under. Proactive screening is limited within the protection system, with reliance on self-reporting evident particularly at appeal and forced return stages. Secondly, (potential) victims of trafficking who are in the asylum process do not currently have simultaneous access to the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (AIA)*, which are often interpreted as analogous to official identification. As a result such persons are not formally identified as (potential) victims of trafficking, with implications for their access to certain targeted supports, as well as their accrual of legal residence in the state. In addition ambiguity exists over access to the AIA by persons making representations regarding 'leave to remain' in Ireland in particular, as well as in the case of EEA nationals.

This report focuses on the interplay between the immigration and protection systems in Ireland, for (potential) victims of human trafficking. Systems and procedures for the identification and onward referral of victims are also discussed.

¹ Available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/trafficking-human-beings/index_en.htm.

Ireland: Residence Permits and Protection Statuses

Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (AIA) were introduced in June 2008 to coincide with the enactment of the first specific anti-trafficking legislation: the Criminal Law (Human Trafficking) Act 2008. In Ireland, if a ‘foreign national’ is identified as a potential or suspected victim of trafficking, and does not otherwise have a ‘valid immigration permission’, he/she may avail of these specific administrative arrangements. A potential or suspected victim of trafficking who is already the holder of a ‘valid permission’ to be in the State (including applicants for protection) is deemed not to require any further immigration permission, and is considered ineligible for the AIA. A person awaiting a decision on his/her representations to remain in Ireland under Section 3 of the Immigration Act 1999 is not entitled to a permission under the AIA until those applications have been decided or withdrawn. This exclusion is not formally provided for in the AIA but rather based on ‘administrative practice’.

Two forms of residence permission are provided for under the AIA:

- An initial ‘recovery and reflection’ period of 60 days, the purpose of which is to allow the person time to recover from the alleged trafficking experience and to escape from any influence of the alleged perpetrators. The time is also intended to allow an alleged victim to take an ‘informed decision’ as to whether or not to assist the authorities in relation to an investigation or prosecution in respect of alleged trafficking.
- A renewable, six-month ‘temporary residence permission’ is granted in cases where the Minister is satisfied that ‘the person has severed all relations with the alleged perpetrators of the trafficking’ and ‘it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána² or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking’. The permission is renewable provided that renewed contact with the alleged perpetrators has not taken place, and where it is necessary for the purpose of an investigation or prosecution in relation to the trafficking.

Concurrent immigration permissions are not provided for in Irish law; applicants are required to withdraw from the asylum procedure should they wish to avail of permissions provided for under the AIA. Between 2008 and 2012, 16 third-country nationals³ were granted a reflection period and 22 were granted a residence permit, as victims of human trafficking under the AIA. Of this number, fifteen third-country nationals were offered a further longer term residence permission. Five former applicants for international protection have been granted a permission under the AIA: during 2010, two adult females were granted a

² Irish police.

³ Any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the Union right to freedom of movement, as defined in Article 2(5) of the Schengen Borders Code.

residence permission following an earlier international protection application; a further two adult and one minor females were granted such a status in 2012. It is not known whether the applicants withdrew their applications or had their cases rejected.⁴

NGOs such as the Immigrant Council of Ireland (ICI) have criticised the requirement of cooperation with authorities for the issuing of the temporary residence. It is argued that victims of trafficking may be too traumatised to cooperate with an investigation and it is suggested that the basis for granting temporary residence permits should be expanded in line with Article 14(1)(a) of the Council of Europe *Convention on Action against Trafficking in Human Beings*, which provides that residence permits may be issued where the competent authority considers that victim's stay is 'necessary owing to their personal situation'.⁵ Victims may also be involved in cases where the authorities do not, or cannot, proceed with an investigation or prosecution.

Ireland: Detection, Identification and Referral of Victims

The National Referral Mechanism (NRM) includes a Statement of Roles and Responsibilities in respect of the Garda National Immigration Bureau (GNIB), the Reception and Integration Agency (RIA), the Legal Aid Board (LAB), the Health Service Executive (HSE), the Office of the Refugee Applications Commissioner (ORAC), the Refugee Appeals Tribunal (RAT), the Irish Naturalisation and Immigration Service (INIS) and several non-governmental organisations among others. Developed as a 'tool for coordinating the identification and referral' of victims, the NRM covers 'all aspects of victim assistance from initial encounter to finding longer-term solutions including access to work or training, where applicable' (Anti-Human Trafficking Unit, March 2013)

On referral to An Garda Síochána, an assessment is made as to whether a person is a 'potential' victim of trafficking. An Garda Síochána will then conduct an interview to assess whether the person is a 'suspected' victim of trafficking.⁶ Identification as a suspected victim of human trafficking is determined by a member of An Garda Síochána not below the rank of Superintendent in the GNIB, with determination made by three senior members of the Human Trafficking Investigation and Coordination Unit (HTICU) of GNIB.

There are some established procedures for detecting and identifying victims in place at the first instance asylum stage within the Office of the Refugee Applications Commissioner. All suspicions of trafficking are reported by case workers to a designated official. Cases are automatically referred on, as per agreed procedures, to the central Human Trafficking Investigation and Coordination Unit (HTICU) within the GNIB as well as the Anti-Human Trafficking

⁴ Data received from the Anti-Human Trafficking Unit, Department of Justice and Equality (November 2013).

⁵ Comments received from the Immigrant Council of Ireland (November 2013).

⁶ Paragraph 3.2.4 of National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012.

Unit (AHTU) within the Department of Justice and Equality. The number of referrals from the Refugee Appeals Tribunal is very low and no specific formal referral mechanism exists.

All transfers under the 'Dublin Regulation'⁷ are suspended for the duration of the investigation into trafficking. If it is determined that the person was trafficked, the transfer is cancelled. If no evidence of trafficking is found, the 'Dublin Process' continues by way of report, determination and transfer.

While there is no specific identification system in Ireland for child victims of trafficking, social workers engaged with unaccompanied minors do use certain indicators, with care staff also trained to be aware of signs of abuse.

A protection applicant, identified as a victim of human trafficking, may be found to be in need of protection on that ground and may be granted either refugee status or subsidiary protection on that basis, where the other criteria for the recognition of those statuses are met. Separately, under general immigration law, where an applicant is identified as a victim of trafficking but is not found to meet the criteria for the grant of international protection as a refugee or for subsidiary protection, they may request permission to remain in the State from the Minister for Justice and Equality on humanitarian (as well as other) grounds, taking into account their circumstances as a victim of trafficking. The Minister may then grant a permission to reside for a specified period of time.

The Immigrant Council of Ireland (2011) is critical of the current system of identification of victims, and has called for identification procedures to be carried out in relation to all individuals who may be victims of human trafficking, including those seeking asylum. It describes a 'two-tiered' system whereby victims within the asylum process are 'precluded from the benefits of a formal identification by the authorised authorities' and from receiving 'any acknowledgement' recognising that they are potential or suspected victims. In addition it argues that wider rights for victims of trafficking within the asylum system are not the same as those outside the process, with reduced access to 'safe and appropriate accommodation, education, training, work and the possibility of acquiring longer-term status in the State'. The Department of Justice and Equality has stated that the AIA apply only to those who would not otherwise have a permission to be in the State and that a person who applies for asylum or subsidiary protection has the equivalent residence rights and access to the same support services as a person in a recovery and reflection period under the AIA.⁸

The Council of Europe GRETA report (2013) on Ireland's implementation of the Council of Europe *Convention on Action against Trafficking in Human Beings*

⁷ Regulation which lays down the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national. Council Regulation (EC) 343/2003.

⁸ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

recommends that Ireland promotes multi-agency involvement in victim identification by formalising the role and input of specialised NGOs and by involving other relevant actors. The need for a ‘specific identification mechanism’ for children was also noted. Regarding the applicability of the AIA to persons within the asylum system, GRETA concludes that ‘in practice the application of the Administrative Immigration Arrangements is limited to non-European Economic Area (EEA) citizens who are not asylum seekers’.⁹

INIS has stated that no proactive (rather than reliance on self-reporting) screening of rejected protection applicants takes place within the forced return procedure. However, any trafficking-related issue raised by individuals would generally have formed part of the consideration of *non-refoulement*¹⁰ prior to any return. Individuals may self-report or present with information not previously known when a forced return procedure is in process due to the emergence of new information or changed circumstances.

⁹ The Administrative Arrangements state that the process outlined ‘may also be applied in a like manner to nationals of the European Economic Area’ and that 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 that area’. This is clarified as via ‘certain administrative arrangements [which] may be put in place from time to time which will apply to persons from the European Economic Area.’

¹⁰ A core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. See Article 33 of Geneva Convention 1951. See EMN Glossary Version 2.0. Available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm.

Section 1

Introduction and Overview

1.1 INTRODUCTION

In Ireland during 2012, 48 alleged victims of human trafficking were reported to An Garda Síochána. Of this number, eight (17 per cent) persons were asylum seekers. Of the 57 alleged victims of human trafficking reported to An Garda Síochána in 2011, 32 persons (56 per cent) were asylum applicants and one (2 per cent) person (2 per cent) was granted protection from removal under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (AIA) (see Table A.1) (Department of Justice and Equality, 2012, 2013b). This report aims to explore this nexus which exists between procedures for asylum, procedures for forced return and procedures in place for victims of human trafficking.

This report is largely based on information from the Irish contribution to a European Migration Network study on 'Identification of victims of trafficking in human beings in international protection and forced return procedures in the different Member States', a synthesis report of which is available on the EMN website.¹¹

The EU-wide EMN study examines whether, and how, (potential) victims of trafficking are detected and identified in Member State procedures for international protection and forced return. In addition, it explores whether, and how, referral to other procedures takes place, and the extent to which this is organised. In this context, the EMN study explores the availability of residence permits as foreseen under *EU Directive 2004/81/EC*,¹² which Ireland does not participate in; this Irish report therefore investigates access to alternative national procedures for granting residence.

It is important to note that victims of human trafficking may apply for international protection on grounds other than being a victim, and victims who go unidentified and thus have no legal right to reside in the EU, may be forced to return.

¹¹ http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/trafficking-human-beings/index_en.htm.

¹² Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

Procedures regarding the identification of (potential) victims in the subsidiary protection process in Ireland are not discussed in detail in this report. A transfer of responsibilities from the Irish Naturalisation and Immigration Service to the Refugee Applications Commissioner and Refugee Appeals Tribunal followed enactment of the *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)* in November 2013; new procedures were in development at the time of writing.

Section 1 provides an introduction to the report and overview of the system of identification of victims of trafficking in Ireland.

The detection, identification and referral of victims in asylum procedures (including Dublin procedures) are discussed in Section 2. A brief overview of subsidiary protection procedures is also provided.

Section 3 examines detection, identification and referral of (potential) victims who have received a (final) negative decision on/abandoned their application for international protection, and are in the forced return procedure.

In Section 4 the situation of (potential) victims who are residing in reception centres is discussed as is detection, identification and referral by other actors.

The extent to which training and guidance is available to competent authorities is explored in section 5.

Relevant evaluations of methods for detection, identification and referral are in Section 6.

The study concludes in Section 7.

Limited available statistical data on (potential) victims detected and identified in procedures for international protection and forced return are supplied in the Annex.

1.1.1 Methodology

This Irish report draws heavily on interviews and correspondence with officials from the Reception and Integration Agency, the Office of the Refugee Applications Commissioner, the Refugee Appeals Tribunal, the Health Service Executive and NGOs, in particular the Immigrant Council of Ireland. Parliamentary questions, research and commentary from academics, NGOs and others were consulted and are referenced where relevant.

1.2 OVERVIEW OF SYSTEM OF IDENTIFICATION AND COORDINATION

No stand-alone, formal identification procedure for all victims of trafficking, irrespective of nationality and immigration status (ensuring access to protection and assistance measures), exists in Ireland. Eligibility for the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (AIA)* (often interpreted as analogous to identification) is confined to a 'foreign

national' considered to be a potential or suspected victim of trafficking by An Garda Síochána and without an otherwise 'valid immigration permission'. However, the Department of Justice and Equality has noted that a person is considered to be a potential victim of human trafficking once an allegation of having being trafficked is made to the Garda authorities. The case is then assessed by An Garda Síochána and the person continues to be considered a potential victim of trafficking until such time as there is compelling evidence to the contrary.¹³

There is an absence of a clear relationship between the AIA and other statutory procedures by which a suspected victim might otherwise obtain permission to reside in the State. Certain ambiguity exists over the position of identifying potential victims who submit representations regarding 'leave to remain' as victims of trafficking in particular, as well as in the case of EEA nationals.

1.2.1 Residence Permits For Victims of Human Trafficking

In June 2008, Ireland introduced specific anti-trafficking legislation in the form of the Criminal Law (Human Trafficking) Act 2008, subsequently amended by the Criminal Law (Human Trafficking) (Amendment) Act 2013.¹⁴ *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (AIA) were also introduced in June 2008 to coincide with the enactment of the Act, as interim arrangements and pending the enactment of the Immigration, Residence and Protection Bill 2008.¹⁵ An update took place in 2011.¹⁶

Under the AIA, a foreign national who is already the holder of a 'valid permission' to be in the State is deemed not to require any further immigration permission; such persons include persons within the international protection process, including applicants for subsidiary protection. Ireland does not participate in Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Ireland has 'opted in' to Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and

¹³ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

¹⁴ This gives effect to certain provisions of *Directive 2011/36/EU* on preventing and combating trafficking in human beings and protecting its victims, amends and extends the *Criminal Law (Human Trafficking) Act 2008* and the *Child Trafficking and Pornography Act 2008* by *inter alia* making it an aggravating factor for the purpose of sentencing if certain offences under the aforementioned Acts are carried out by public officials in the course of their duties. It also amends the *Criminal Evidence Act*.

¹⁵ Not enacted.

¹⁶ The 2011 amendments introduced a procedure to allow a person to make an application to change to a potentially longer term permission to remain in the State after three years of temporary residency permissions, or when the investigation/prosecution is complete (whichever is the shorter). Provisions were also introduced to allow victims of human trafficking, who have been refused asylum, to have the fact that they have been identified as a suspected victim of human trafficking to be taken into account in any consideration as to whether they may remain in the country under various immigration permissions.

combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

1.2.2 Identification

Identification of a potential or suspected victim of human trafficking is currently the sole responsibility of An Garda Síochána.

On referral to An Garda Síochána¹⁷ an assessment is made as to whether the person is a ‘potential’ victim of trafficking. An Garda Síochána will then conduct an interview with the victim to assess if the person is a ‘suspected’ victim of trafficking. A ‘potential’ victim will not be removed from the State during this process¹⁸ (Legal Aid Board, 2012). Identification as a suspected victim of human trafficking is determined by a member of An Garda Síochána not below the rank of Superintendent in the Garda National Immigration Bureau (GNIB). A determination is made by three senior members of the Human Trafficking Investigation and Coordination Unit (HTICU) of GNIB in accordance with the IOM-recommended model and following two stages of assessment applying UN GIFT (United Nations Global Initiative to Fight Human Trafficking) indicators, as well as the EU-ILO Delphi Indicators (Council of Europe GRETA, 2013). In the experience of an NGO working in the area, investigations are frequently carried out by local Gardaí, with a report forwarded to the HTICU on which a ‘reasonable grounds decision’ is then made.¹⁹ The Department of Justice (2013a) has noted that any person in Ireland who claims to be a victim of crime is ‘treated as such until there is compelling evidence that they are not’. In addition, an investigation into the crime commences at the time of reporting. No appeal mechanism for the purpose of challenging findings of ‘no reasonable grounds’ is in place.

Two forms of permission are provided for, an initial ‘recovery and reflection’ period and a longer-term temporary residence permission:

1. Following initial identification as a suspected victim of trafficking, permission to remain lawfully in the State for a ‘recovery and reflection’ period of 60 days may be granted (Department of Justice and Equality, 2011). The purpose of this 60 day period is to allow the person time to recover from the alleged trafficking experience, to escape from any influence of the alleged perpetrators and to allow an alleged victim to take an ‘informed decision’ as to whether or not to assist Gardaí (or other relevant authorities) in any related investigation or prosecution.²⁰ A notice confirming that the person has been granted permission to be in the State for 60 days is issued by the

¹⁷ The Irish police.

¹⁸ A ‘potential’ victim of trafficking is designated by An Garda Síochána on consideration of the available information. A person is considered a ‘suspected’ victim of trafficking by An Garda Síochána following an interview with the victim in which an assessment is undertaken using identification procedures such as that of IOM and other ‘internationally used indicators of trafficking as a guide’.

¹⁹ Interview with the Immigrant Council of Ireland (November 2013).

²⁰ Section 5 of Department of Justice and Equality (2011).

Minister for Justice and Equality, with removal proceedings not to take place during its duration.²¹

2. A renewable, six-month temporary residence permission may be granted in cases where the Minister for Justice and Equality is satisfied that ‘the person has severed all relations with the alleged perpetrators of the trafficking’ and ‘it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking’.²² This permission may be granted during the recovery and reflection period, following the expiry of that period, or without a recovery and reflection period having previously been granted.

Neither of the immigration permissions under the AIA provides an entitlement to assert a right to reside following the expiry of the initial period, or a right to long-term or permanent residence in the case of a temporary residence permission.²³ A potential or suspected victim may apply for a ‘change of status’ under national immigration legislation, under Section 4(7) of the *Immigration Act 2004*, after three years temporary residence or at the end of the investigation/prosecution, whichever is the lesser period.²⁴

Special provisions are in place in the case of minors, with the potential for the granting of a recovery and reflection period for more than 60 days. Consideration is given to the care arrangements in place for a child e.g. whether they are in the care of the Health Service Executive (HSE).

1.2.3 Eligibility of Current and Rejected International Protection Applicants for Residence Permits

Irish legislation does not provide for permissions issued under the AIA to run concurrently with any other immigration permission. The published *Immigration, Residence and Protection Bill 2010* did allow for the concurrent running of the initial ‘recovery and reflection’ period alongside other permissions, but this legislation remained pending at time of writing.

If an individual is identified by An Garda Síochána as a victim of trafficking during the international protection process, and wishes to avail of an immigration permission on that basis, they are required to first withdraw any application for international protection (or, in the event that participation in that process has been unsuccessful, any application for permission to remain under Section 3 of

²¹ Sections 6 and 7 of Department of Justice and Equality (2011).

²² Section 12 of Department of Justice and Equality (2011).

²³ Sections 9 and 17 of Department of Justice and Equality (2011).

²⁴ Section 21 of Department of Justice and Equality (2011). Regard shall be given to matters including any considerations related to renewed contact with the alleged perpetrators (paragraph 13); family/domestic circumstances; employment record of the applicant; and character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions) (Section 22 of Department of Justice and Equality (2011)).

the 1999 Act). This requirement stems from the non-applicability of the AIA to persons who are not considered to need an immigration permission to remain in Ireland.²⁵

In the case of a person who has received a negative decision regarding an application for asylum, they may 'seek' to have their status as a suspected victim of trafficking taken into account in any proposal to deport from Ireland. All persons who are identified by the GNIB as a suspected victim of trafficking, and receive a negative decision on their international protection application, will be automatically granted a six-month temporary residence permission.²⁶ In such cases a temporary residence permission will automatically issue pending consideration of any other forms of relevant immigration permission.²⁷

The Anti-Human Trafficking Unit has reported that between 2008 and 2012, 16 third-country nationals²⁸ were granted a reflection period and 22 granted a residence permit under the AIA. Of the latter number, fifteen third-country nationals were subsequently offered a longer term residence permission. The Department of Justice and Equality has reported that any applicant who withdrew/stopped or had their application for EU harmonised international protection rejected and was considered to be a suspected victim, was subsequently granted a temporary residence permit as a victim of human trafficking.²⁹ During 2010, two adult females were granted a residence permission following an earlier international protection application; a further two adult and one minor females were granted such a status after in 2012. It is not known whether the applicants withdrew their applications or had their cases rejected.³⁰

1.2.4 Cessation of Residence Permit

Provisions for the cessation of permission for both the 'recovery and reflection' period and the temporary residence permission are contained in the AIA. Both permissions may be terminated in cases where the Minister for Justice and Equality is satisfied that the person has 'actively, voluntarily and on his or her own initiative renewed contact with the alleged perpetrators of the trafficking' or in the interests of national security or public policy. Provisions for false or unfounded allegations also exist. In the case of the six-month temporary residence permission, the Minister can also revoke a permission once any investigation or prosecution has been finalised or terminated or in cases whereby

²⁵ Comments received from official of the General Immigration Unit, Department of Justice and Equality (October 2013).

²⁶ Interview with officials of the Department of Justice and Equality (September 2013).

²⁷ European Commission website, Together Against Trafficking in Human Beings, 'Ireland'. Available at <http://ec.europa.eu/anti-trafficking/index.action?breadcrumbReset=true>.

²⁸ Any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the Union right to freedom of movement, as defined in Article 2(5) of the Schengen Borders Code. See EMN Glossary 2.0, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm.

²⁹ Anti-Human Trafficking Unit, Department of Justice and Equality (February 2014).

³⁰ Data received from Anti-Human Trafficking Unit, Department of Justice and Equality (November 2013).

the suspected victim no longer wishes to cooperate with an investigation or prosecution.

1.2.5 Conditionality of Residence Permit on Cooperation with the Authorities

The stated purpose of the 60 day ‘recovery and reflection’ period is to provide time for reflection for an alleged victim to take an ‘informed decision’ as to whether or not to assist An Garda Síochána or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking (Department of Justice and Equality, 2011). Cooperation with authorities (the GNIB and others) is required in the case of the renewable six-month temporary residence permission.

Criticism of this requirement for cooperation by victims by NGOs such as the Immigrant Council of Ireland (ICI) has centred on how provisions do not consider the needs of victims of trafficking who may be too traumatised to cooperate with an investigation, or individuals involved in cases where the authorities do not or cannot proceed with an investigation or prosecution (Immigrant Council of Ireland 2009).

The *Review of the National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 -2012* acknowledges that issues have been raised by NGOs relating to cooperation by victims, particularly those within the international protection system (Department of Justice and Equality (2013a). It is noted in the Review that NGOs have called for a review of the requirement for cooperation with an investigation and/or prosecution in the issuance of a temporary residence permission, and that they would like to see it ‘extended to allow for humanitarian considerations to be taken into account as provided for in Article 14(1)(a) of the Council of Europe Convention.’ In addition, the Review acknowledges that there exists a ‘substantial number of individuals’ who are participating in criminal investigations by providing statements and ‘exposing themselves to the associated risks – including prosecution- without any confirmation or proof that they are identified as suspected victims of trafficking in the State’ (Department of Justice and Equality, 2013a). The GRETA report on Ireland echoes this concern and urges the authorities to grant a renewable residence permit to all victims, ‘particularly when they are unable to cooperate with the authorities’. GRETA also recommends that officers involved in identification measures should be issued with clear instructions regarding not making the recovery and reflection period conditional upon cooperation and that the status should be offered prior to formal statements being made to investigators (Council of Europe GRETA, 2013).

1.3 NATIONAL REFERRAL MECHANISM

A National Referral Mechanism (NRM) is in place in Ireland via a ‘Statement of Roles and responsibilities’³¹ between the Garda National Immigration Bureau (GNIB), the Office of the Refugee Applications Commissioner (ORAC), the Refugee Appeals Tribunal (RAT), the Reception and Integration Agency (RIA), the Legal Aid Board (LAB), the Health Service Executive (HSE), FÁS, National Employment Rights Agency (NERA), the Irish Naturalisation and Immigration Service (INIS) and several non-governmental organisations. It was developed as a ‘tool for coordinating the identification and referral’ of victims (Council of Europe GRETA, 2013). The NRM covers ‘all aspects of victim assistance from the initial encounter to finding longer term solutions including access to work or training, where applicable’ (Department of Justice and Equality, 2013a).

³¹ Available at www.blueblindfold.gov.ie.

Section 2

Identification within Asylum Procedures

Victims of trafficking who are in the asylum process do not have simultaneous access to the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (AIA), resulting in reduced access to accommodation, education, training and work supports, targeted to their needs. Periods of time spent in Ireland in the international protection procedure do not count as ‘reckonable’ legal residence in the State for the purpose of applying for a longer-term status.

Proactive screening (as opposed to self-reporting) for victims of trafficking is not generally in evidence within asylum procedures in Ireland. There is greater emphasis on screening at the early stages of a protection application, with increased reliance on self-reporting towards the later stages.³² At first instance, some procedures are in place with staff said to be trained to observe particular signs during interview.

Section 2 looks at identification of human trafficking victims within asylum procedures in Ireland. An overview of legislation and policy is provided (Section 2.1), with an analysis of practices in detecting and identifying victims in asylum procedures. (Section 2.2) The identification and referral of human trafficking victims in Dublin Regulation procedures are explored in Section 2.3. Onward referral is discussed in Section 2.4. A brief discussion of the related identification and referral of victims in the subsidiary protection process is outlined in Section 2.6.

2.1 LEGISLATION AND POLICY

2.1.1 *Mechanisms for Detecting and Identifying Victims in Asylum Procedures*

No single application procedure for international protection exists in Ireland.

- Under the Refugee Act 1996 (as amended) an application for asylum is made to the Minister for Justice and Equality and is investigated on his behalf by the Refugee Applications Commissioner, with an appeal to the

³² Research indicates that many women who are trafficked do not necessarily self-identify as trafficked (perhaps using terms such as kidnap or held captive) and that it can take up to six months for a woman who is trafficked to disclose the full details of her situation. Kelleher Associates, O'Connor, M. and Pillinger, J. (2009).

Refugee Appeals Tribunal in the event that the Commissioner makes a negative recommendation on the application.

- If an application for asylum is refused, the unsuccessful applicant is eligible to apply to the Minister for Justice and Equality for subsidiary protection. Under the *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)* an application for subsidiary protection is investigated by the Refugee Applications Commissioner, with an appeal against any negative decision to the Refugee Appeals Tribunal.³³

Persons may be considered to be potential victims of trafficking during the assessment of their claim for international protection by the competent authorities on a case-by-case basis, and dependent upon whether the claim contains a human trafficking aspect or indicator. International protection statuses may be granted to persons for the reason of being a victim of trafficking in the form of refugee status or subsidiary protection status where the requisite criteria for the recognition of those statuses are met. If a person has been identified by GNIB as a victim of trafficking it may be a significant factor in the investigation of their asylum or subsidiary protection application.³⁴

2.1.1.1 Office of the Refugee Applications Commissioner

At first instance application stage, some established procedures for detecting and identifying victims are in place.³⁵ A training module for all relevant frontline staff (reception, case processing, presenting staff) of the Office of the Refugee Applications Commissioner (ORAC) has been developed in order to assist staff members in understanding the basic concepts, three phases of trafficking (prevention, protection and prosecution) as well as causes and consequences. Ireland's counter-trafficking strategy is also covered. Training is provided by in-house trainers who have been trained on trafficking issues by the International Organization for Migration (IOM) and the AHTU. Training requirements are reviewed regularly and training is scheduled as required. The training addresses how to apply ORAC procedures when dealing with an applicant who identifies themselves as being trafficked, applicable Irish and EU legislation and UNHCR position papers and studies.³⁶

All applicants are informed at initial interview that all information suggesting that they may be victims of trafficking will be referred to the GNIB.³⁷ While this does not suspend an asylum claim, a person may decide to leave the asylum process.³⁸ All suspicions of trafficking are reported by case workers via a notification form

³³ As of November 2013.

³⁴ Comments received from the Office of the Refugee Applications Commissioner (April 2014).

³⁵ Revised in 2010. See Council of Europe GRETA (2013).

³⁶ Interview with officials of the Office of the Refugee Applications Commissioner (August, September 2013).

³⁷ Council of Europe GRETA (2013). Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland. Available at www.coe.int.

³⁸ *Ibid.* The report also notes that they had been informed that four such applicants had decided to withdraw their asylum claim.

sent to a designated official.³⁹ An IT system captures all such referrals, with cases automatically referred on, as per agreed procedures, to the central Human Trafficking Investigation and Coordination Unit (HTICU) within the GNIB as well as the Anti-Human Trafficking Unit (AHTU) within the Department of Justice and Equality. The HTICU will then decide whether to pursue an investigation but may wish to interview the original ORAC caseworker.

2.1.1.2 Refugee Appeals Tribunal

In the case of the Refugee Appeals Tribunal, an awareness-raising session has taken place for Members on the topic of human trafficking, involving the AHTU, GNIB and IOM. The Tribunal has remarked that the likelihood of a victim of trafficking presenting at appeal, rather than first instance stage, is reduced. Where a Member of the Tribunal suspects, based on expertise, that there are indications of trafficking, a referral is made to a senior member of staff or to the Chair. Such cases are then referred, via the Chairperson of the Tribunal, to the central HTICU within the GNIB or, in the case of unaccompanied minors, to the HSE.⁴⁰ The number of such referrals from the Refugee Appeals Tribunal is very low and no formal mechanism, specific to human trafficking, exists.

2.1.2 Process of Detecting and Identifying Victims in Asylum Procedures

No specific process regarding the detection and identification of victims in the procedure for asylum is outlined in legislation. As noted earlier, a

Statement of roles and responsibilities for State Organisations, Non-Governmental Organisations and International Organisations in Ireland engaged in cooperation regarding the prevention, protection of victims and prosecution of trafficking in human beings

is in operation and contains clearly defined roles for actors including the GNIB, the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA) as well as the international protection determining bodies.

2.1.2.1 Office of the Refugee Applications Commissioner

The primary responsibility of ORAC towards potential victims of trafficking relates to their notification to GNIB of 'any trafficking related claims made by applicants for refugee status'. ORAC has responsibility for attending the relevant Working Group meetings chaired by the AHTU and for 'engaging in general communication with other stakeholders as appropriate and necessary for the purposes of the discharge of their functions.' Similarly, ORAC has the responsibility for notifying GNIB of 'any trafficking related claims made by those appealing an asylum

³⁹ Some 20 possible cases were notified by ORAC to GNIB and the Anti-Human Trafficking Unit of the Department of Justice and Equality during 2010, with seven cases during 2011. See Council of Europe GRETA (2013).

⁴⁰ Interviews with official of the Refugee Appeals Tribunal (August, September, October 2013).

determination’ as well as for engaging in general communication with other stakeholders as appropriate and necessary for the purposes of the discharge of their functions (Anti-Human Trafficking Unit, 2013).

2.1.2.2 Reception and Integration Agency

In respect of the responsibilities of the Reception and Integration Agency (RIA), units such as the Operations Unit, Health Unit, Child and Family Services Unit, as well as the Education Officer, monitor cases with possible indicators of trafficking. The Child and Family Unit is managed by a child welfare specialist seconded from the HSE. All RIA centres display posters and disseminate leaflets in respect of the ‘Blue Blindfold’ campaign.

A designated centre for accommodation for suspected victims of trafficking is in Dublin (Balseskin). RIA has reported that the senior manager at this centre has received training through IOM, on behalf of the AHTU. The centre manager trains/briefs on-site staff in understanding trafficking and the potential indicators. The on-site Health Centre is staffed by the HSE, and provides medical screening and other medical supports (including psychological outreach support) to residents. In cases where a suspected victim of trafficking is placed at the centre, the HSE staff support and monitor them. This centre is also the designated initial reception centre for newly-arrived asylum seekers; HSE staff check for possible indicators of trafficking among this group also.⁴¹

2.1.3 Different Protocols and/or Practices for Men And Women

Relevant standards in relation to the assessment of claims for international protection by women may be taken into account in assessing such claims.⁴² Regulation 9 of the *EC (Eligibility for Protection) Regulations 2006* makes clear that acts of persecution can include acts of physical or mental violence, including acts of sexual violence, and acts of a gender or child-specific nature.

Requests may be made for female interviewers, decision-makers and interpreters and this is generally facilitated where possible.

2.1.4 Different Protocols and/or Practices for Children and Adults

While specific protocols are in place with regard to the role of the Health Service Executive (HSE) in cases concerning children, it must be noted that the Council of Europe GRETA (2013) report on Ireland stressed a need for a ‘specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking’ and would involve ‘child specialists’ as well as

⁴¹ Comments received from the Reception and Integration Agency (October 2013).

⁴² E.g. UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR Guidelines on gender-related persecution within the context of Article 1(A)2 of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, UNHCR Guidelines on membership of a particular social group within the context of Article 1(A)2 of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees among others.

ensuring that the ‘best interests of the child are the primary consideration’. The GRETA report did welcome activities with regard to unaccompanied minors which have ‘limited to an important extent their disappearance’.⁴³ A protocol between the Health Service Executive (HSE) and the HTICU of the GNIB for unaccompanied minors who arrive at initial ports of entry has been agreed.

In the case of ORAC, general child-specific procedures (for dealing with children and unaccompanied minors/separated children) are in place. In September 2012, *Children First Guidelines* by the Department of Children and Youth Affairs (2011) were issued to ORAC staff outlining best practice in relation to the recording and reporting to the relevant statutory authorities of cases of potential or actual child abuse or neglect. The procedures for dealing with unaccompanied minors at Reception in ORAC were revised in 2011. Specific procedures for caseworkers are in place and take into account any specific factors and circumstances relevant to vulnerable applicants.⁴⁴ ORAC has stated that their procedures and training needs in relation to dealing with vulnerable groups such as minors/separated children, are monitored on an ongoing basis and revised as necessary.⁴⁵

The ‘Statement of Roles and responsibilities’ clearly defines the role of the Health Service Executive (HSE) in relation to potential and suspected child victims of trafficking. The *Services for Victims of Child Trafficking* guide developed through the AHTU Child Trafficking Working Group in July 2012 also defines the HSE role. In regard to potential and suspected minor victims, the HSE has responsibility, under the Child Care Acts, to make all necessary provision for any unaccompanied children including those identified as potential or suspected victims of trafficking. Immediate referral to the Social Work Team for Separated Children Seeking Asylum takes place for all potential or suspected unaccompanied minor victims. A social worker is allocated to each unaccompanied minor. For those still in the international protection process upon turning 18 years of age, transfer from the care of the HSE to RIA accommodation will take place, except in the case of persons deemed as exceptionally vulnerable by a professionally qualified social worker in the HSE social work services or where it is not appropriate for school term time. A monthly meeting between a HSE Social Worker Team and RIA staff takes place to discuss such placements. Appropriate links to local support services are made as part of the transfer to RIA accommodation. Other services provided by the HSE to potential or suspected child victims include an assessment in relation to immigration status and linkage to the asylum process, and advice regarding available options. Initial counselling and debriefing is also provided by a HSE psychologist. The HSE also has responsibility for attending the relevant working group meetings chaired by the AHTU and for engaging in general

⁴³ As outlined in paragraph 132 of the GRETA report on Ireland.

⁴⁴ ORAC has stated that these procedures were developed in line with international best practice, including the UNHCR’s *Separated Children in Europe Programme - A Statement of Good Practice* and the EU Children First Programme (October 2013).

⁴⁵ Comments received from the Office of the Refugee Applications Commissioner (October 2013).

communication with other stakeholders as appropriate and necessary for the purpose of the discharge of their functions.⁴⁶

2.2 PRACTICES IN DETECTING AND IDENTIFYING VICTIMS IN ASYLUM PROCEDURES

2.2.1 Mechanisms for Detecting (Potential) Victims in Asylum Procedures

As noted earlier, victims of trafficking are not formally detected within the procedures for assessing the need for asylum. Rather this is carried out by the Garda National Immigration Bureau (GNIB) in accordance with the AIA. As referenced earlier, all suspicions or allegations of trafficking are automatically referred to the GNIB at any stage of the asylum procedure.⁴⁷

Persons may be considered (informally) as victims of trafficking during the assessment of their claim for asylum by the competent authorities on a case by case basis. All decision-making authorities have stressed that each case is considered on its own merit and indications of trafficking are followed up by referral to GNIB.⁴⁸ This will also depend on the claim for asylum which is being put forward by a person (self-reporting) or on behalf of such a person (e.g. by a legal representative) and whether it includes a human trafficking aspect.

Information may be put before the decision-maker for consideration as part of the claim where a person has been identified as a victim of trafficking by the GNIB.⁴⁹ An applicant who is identified as a victim of trafficking may be found to be in need of protection on that ground and may be granted refugee status⁵⁰ on that basis and where the other criteria for the recognition of those statuses are met. If the first instance decision is positive and was made on the basis of information which did not include the trafficking ground, the Minister for Justice and Equality is obliged to grant the applicant a declaration of refugee status.⁵¹ There is no mechanism by which the applicant can bring that information to the attention of the Minister and thus enlarge the basis upon which they have obtained the declaration. If the first instance decision is negative, the trafficking ground can be introduced as part of an appeal. This delay may possibly have adverse credibility

⁴⁶ Anti-Human Trafficking Unit, Department of Justice (March 2013). Statement of roles and responsibilities for State Organisations, Non-Governmental Organisations and International Organisations in Ireland engaged in cooperation regarding the prevention, protection of victims and prosecution of trafficking in human beings'. Available at www.blueblindfold.gov.ie.

⁴⁷ Interview with officials of the Office of the Refugee Applications Commissioner, Refugee Appeals Tribunal (September 2013); interview with official of the Repatriation Unit, Department of Justice and Equality (August 2013).

⁴⁸ Interview with officials of the Office of the Refugee Applications Commissioner, Refugee Appeals Tribunal (September 2013).

⁴⁹ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

⁵⁰ Or subsidiary protection.

⁵¹ Or subsidiary protection.

implications for the applicant⁵² or be wholly irrelevant to the assessment of credibility.⁵³ If the identification of the applicant as a victim of trafficking is capable of providing new information which makes it more likely that they would be declared a refugee, and that they were, through no fault of their own, incapable of presenting those elements or findings for the purposes of their previous application for a declaration (perhaps because their will was overborne by the trafficker), then they may have good grounds for applying for re-admission to the asylum process under Section 17(7) of the *Refugee Act 1996*. All information and evidence gathered during the asylum procedures including, among others, interview details, may be submitted by the applicant to the GNIB. ORAC may be requested by the GNIB to provide access to an applicant's file and/or may wish to interview the caseworker concerned. The Refugee Appeals Tribunal will grant access to a person's file upon receipt of a written request from a senior member of the Gardaí.

All applicants may continue to be informally screened at all stages of the asylum process. Self-reporting, or reporting as a potential victim by another actor (such a legal representative) may take place at all stages. Of note is the fact that, in the case of first instance (ORAC) asylum applications, where new information comes to light regarding suspicions of trafficking (usually from a legal representative or other authorities), a further interview would take place if relevant to the protection claim.⁵⁴

2.2.1.1 Office of the Refugee Applications Commissioner

As referenced earlier, case officers within ORAC have been provided with support material for indicators of trafficking. While no formal, proactive screening of applicants takes place, staff are said to be trained to observe particular signs during interview.⁵⁵

2.2.1.2 Refugee Appeals Tribunal

Similarly within the Refugee Appeals Tribunal (RAT), Members do not engage in proactive screening but rely on individual Members' expertise and training regarding spotting indicative signs. The Refugee Appeals Tribunal has noted that it does not have an investigative role in relation to human trafficking and focuses instead on awareness-raising among its Members.⁵⁶

2.2.2 Use of Indicators

Training has been provided to staff of first instance (ORAC) and appeal stage (Refugee Appeals Tribunal) asylum decision-makers by an inter-disciplinary group

⁵² Comments received from the Office of the Refugee Applications Commissioner (September 2013).

⁵³ Comments received from UNHCR Ireland (October 2013).

⁵⁴ Interview with officials of the Office of the Refugee Applications Commissioner (August 2013).

⁵⁵ *Ibid.*

⁵⁶ Interview with official of the Refugee Appeals Tribunal (October 2013).

of specialised actors including IOM and the Anti-Human Trafficking Unit of the Department. A standardised ‘checklist’ for case workers in ORAC (including staff dealing with ‘Dublin Regulation’ cases) has been developed by the Office in conjunction with UNHCR and international best practice.⁵⁷ Guidelines are used by ORAC caseworkers when drafting their ‘Section 13’ report to ensure that all elements have been addressed at interview and assessed in the report.⁵⁸

A set of child trafficking indicators, based on international practice, is in use by the Health Service Executive (HSE).⁵⁹

2.2.3 Next Steps Following Initial Detection

2.2.3.1 Office of the Refugee Applications Commissioner

At first instance (ORAC) stage, all suspicions of trafficking are referred to a designated staff member. In practice within ORAC, given low numbers of suspected cases, all such suspicions are automatically referred to the Garda National Immigration Bureau (the police) and notified to the AHTU.⁶⁰

2.2.3.2 Refugee Appeals Tribunal

At appeal (Refugee Appeals Tribunal) stage, suspicions are reported to a senior staff member/Tribunal Chair.

The Refugee Appeals Tribunal refers ‘genuine’ suspicions to the GNIB and, where relevant the HSE, but has no formal reporting relationship to AHTU.⁶¹

2.2.4 Potential for Alternative Assessment or Appeal

There is no appeal mechanism against any decision made by GNIB that there are ‘no reasonable grounds’ for concluding that the person was a victim of an offence under the relevant sections of the 1998 or 2008 Acts.

If an applicant considers that an allegation of human trafficking was relevant to their international protection claim and was not properly assessed in the course of the determination process, they may be able, depending on the procedure, to avail of an appeal and/or seek a judicial review of the decision in the Irish High Court.

⁵⁷ Interview and correspondence with officials of the Office of the Refugee Applications Commissioner for the purpose of this study (August 2013).

⁵⁸ *Ibid.*

⁵⁹ Interview with staff of the Health Service Executive (August 2013).

⁶⁰ Interview with officials of the Office of the Refugee Applications Commissioner, Refugee Appeals Tribunal (September 2013).

⁶¹ Interview with officials of the Refugee Appeals Tribunal (September 2013).

2.3 DETECTION, IDENTIFICATION AND REFERRAL IN DUBLIN PROCEDURES

2.3.1 Mechanisms for Detecting (Potential) Victims in ‘Dublin’ Procedures

The Dublin Regulation⁶² lays down the criteria and mechanisms for determining which Member State is responsible for examining an application for asylum lodged in a Member State⁶³ by a third-country national. When an application for declaration as a refugee is made to the Office of the Refugee Applications Commissioner (ORAC), the case may be examined under the Dublin Regulation. Written representations may be made to the Commissioner, with all relevant matters taken into account when deciding whether an applicant will be transferred to another State.

All ORAC measures for detecting victims of human trafficking apply to the Dublin cases which fall under the remit of the Office. As outlined earlier, at initial ORAC interview stage all applicants are informed that any information suggesting they may be a victim of trafficking will be referred to the GNIB. This information also becomes available to the Dublin Unit within ORAC should the applicant’s file be referred. As with all ORAC protocols, the Dublin Unit reports any further information regarding suspected trafficking to the GNIB.⁶⁴

As with the case of all ORAC detections or suspicions of trafficking, a designated officer will automatically refer all cases to the GNIB for further follow up. The Anti-Human Trafficking Unit of the Department of Justice and Equality will also be notified.⁶⁵

If in the course of investigating a case under the Dublin Regulation it emerges that a person may be trafficked, the consideration of that person’s case may be suspended without reference to Articles 3(2)⁶⁶ or 15⁶⁷ of the Dublin Regulation.⁶⁸ If the person has been allowed to remain in Ireland as a result of the trafficking investigation, ORAC has stated that they may not proceed further with the Dublin Regulation investigation.⁶⁹

⁶² Council Regulation (EC) 343/2003.

⁶³ EU Member States plus Iceland, Norway and Switzerland.

⁶⁴ Comments received from the Office of the Refugee Applications Commissioner (November 2013).

⁶⁵ Interview with the Office of the Refugee Applications Commissioner (August, September 2013).

⁶⁶ Article 3(2) states that ‘each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation.’

⁶⁷ Article 15(1) states that, ‘Any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. In this case that Member State shall, at the request of another Member State, examine the application for asylum of the person concerned. The persons concerned must consent.’ Article 15(3) refers specifically to Unaccompanied Minors and states, ‘If the asylum seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States shall if possible unite the minor with his or her relative or relatives, unless this is not in the best interests of the minor’.

⁶⁸ Council Regulation 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

⁶⁹ Comments received from the Office of the Refugee Applications Commissioner (October 2013).

2.3.2 *Suspension of Dublin Transfer*⁷⁰ *Following Detection*

All transfers under the ‘Dublin Regulation’ are suspended when the possibility of trafficking becomes apparent and for the duration of a police investigation. If it is determined as result of a GNIB investigation that the person was trafficked, the ‘Dublin process’ is stopped. If no evidence of trafficking is found, the ‘Dublin Process’ continues by way of report, determination and transfer. If during the period of this suspension, the time limits laid down in the Regulation are passed, no determination can be made.⁷¹

In addition, a person may apply to the Refugee Applications Commissioner not to transfer he or she to another Member State under the Regulation setting out the reasons on which they are making the application including where relevant that they are a (potential) victim of trafficking. The Commissioner must take these and all other relevant matters into account in deciding whether or not to transfer the person and come to a reasoned decision. If the Commissioner decides that the person should be transferred the person can appeal that decision to the Refugee Appeals Tribunal. Regulation 6(2)(b) of the *Refugee Act 1996* (Section 22) Order 2003 provides that the appeal is, of itself, not suspensive of the transfer.⁷² The Tribunal must also take into account all relevant material provided to it including the person’s submissions. However, the Tribunal may only affirm or set aside the decision of the Commissioner having regard to whether or not the Member State responsible for examination of the application has been properly established in accordance with the criteria set out in Chapter III of the Council Regulation. The Minister for Justice and Equality is notified of the determination of the Commissioner (and where relevant the Tribunal) and is responsible for arranging the transfer of the person to the Member State responsible.

2.4 REFERRAL OF VICTIMS WITHIN ASYLUM PROCEDURES

2.4.1 *Statutory Assistance and Support*

As discussed in Section 1.2.2, both immigration permissions (a recovery and reflection period and a temporary residence permission) provided for under the AIA are only available to persons without an existing permission, where a foreign national is identified as a suspected victim of trafficking, and where the Minister for Justice and Equality is ‘required to consider that person’s immigration status in the State’.

The *National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012* outlines the provision of services to all victims of trafficking that have

⁷⁰ Transfer in accordance with *Council Regulation 343/2003* i.e. the competent authority has decided that another Member State is responsible for examining the application for international protection.

⁷¹ Comments received from the Office of the Refugee Applications Commissioner (October 2013).

⁷² Article 27(3) of Regulation (EU) No. 604/2013 (the ‘Dublin III Regulation’) has given greater scope for suspensive effect in respect of appeals against transfer orders.

been referred to the police (GNIB) and determined as either a 'potential' or 'suspected' victim of trafficking.⁷³ Applicants for asylum who are potential victims of trafficking are entitled to accommodation and health services; free legal services; and interpretation services. However, while in the asylum procedure they do not have the possibility to work and have limited range of educational opportunities.

Submissions made to the *Review of the National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* contain criticism of the ability of persons within the asylum procedure⁷⁴ to avail fully of the AIA (Department of Justice and Equality, 2013a). In particular, it is highlighted that unlike holders of the temporary residence permit, asylum applicants may not accrue reckonable residence for the purposes of further applications for residence and citizenship. Also highlighted in various submissions by NGOs is the lack of permission for persons in the asylum process to work. Once a person leaves the asylum procedure system, they are automatically granted temporary residence under the AIA, provided the individual is cooperating with the authorities concerned.⁷⁵

The *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012* responded to issues regarding variances of services by noting that

access to all services e.g. RIA accommodation, access to medical services, legal services, etc. and a guarantee that they will not be removed from the State during the identification process is available to all potential victims of human trafficking from their initial contact with An Garda Síochána. Contact can be made through an NGO and this is happening in practice. This is true for potential victims who have an existing permission to stay in Ireland and for those awaiting a determination on whether or not they are suspected victims of human trafficking under the Administrative Immigration Arrangements

(Department of Justice and Equality, 2013a).

Calls have been made to place the rights to support and protection for victims of trafficking on a statutory footing.

Of note is the right of victims to legal advice. Except where victims are in the asylum process - in which case it is likely that they will have obtained legal advice and assistance - victims do not have access to independent legal advice before making initial contact with the GNIB; only the GNIB may make a referral to the

⁷³ See www.blueblindfold.gov.ie.

⁷⁴ Reference was made in submissions to persons in the international protection procedure (refugee status and subsidiary protection status).

⁷⁵ Comments received from Anti-Human Trafficking Unit, Department of Justice and Equality (October 2013).

Legal Aid Board. No formal appeals mechanism is in place in cases where there is a finding of ‘no reasonable grounds’.⁷⁶

2.4.1.1 Assistance Measures

Currently the only formal referral mechanism for victims to service provision is through the AIA; however Irish authorities have noted that the AIA ‘serve a specific purpose’ with ‘provision of services to victims...outside their scope.’ All potential victims who are notified to GNIB are informed of the services and supports available to them (by RIA, the HSE and the Legal Aid Board), with these entities notified in turn of the person’s details (Council of Europe GRETA, 2013). Wider assistance by both statutory and non-statutory entities is provided for within mainstreamed services.⁷⁷

It is important to note that victims of human trafficking who are asylum seekers cannot access vocational training and work as there is a statutory prohibition under the *Refugee Act 1996*.⁷⁸ Should an asylum applicant wish to avail of specific permissions under the AIA, they have to withdraw from the asylum process.

During 2012 two NGOs received funding from the Anti-Human Trafficking Unit within the Department of Justice and Equality: Ruhama received €195,000 to assist victims of sexual exploitation, and Migrant Rights Centre of Ireland (MRCI) received €5,000 to assist victims of labour exploitation. (Council of Europe GRETA, 2013).

2.4.1.2 Reception and Integration Agency

The Reception and Integration Agency (RIA)⁷⁹ has responsibilities with regard to assisting persons in the asylum system as well as those requiring accommodation as a potential or suspected victim of trafficking. These include:

- To provide full-board accommodation and ancillary services to asylum seekers in RIA accommodation centres in accordance with the Government policy of direct provision and dispersal while their applications for asylum are processed, including those whose asylum claim is based on human trafficking and until a final resolution of their case, including through the subsidiary protection and ‘leave to remain’ processes;
- To accommodate suspected victims of human trafficking who are in need of accommodation and who are not in the international protection system, pending a determination of their case and during the 60 day recovery and reflection period;

⁷⁶ Comments received from the Immigrant Council of Ireland (November 2013).

⁷⁷ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (October 2013).

⁷⁸ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

⁷⁹ RIA is a functional unit of Irish Naturalisation and Immigration Service (INIS) of the Department of Justice and Equality. See www.ria.gov.ie.

- To coordinate the provision of services (e.g. health, education and social welfare) by the appropriate service providers (HSE, Department of Education and Skills and Department of Social Protection) to asylum seekers and suspected victims of trafficking during the recovery and reflection period in RIA accommodation; and
- To facilitate the voluntary return home of destitute nationals from certain EU Member States.

The Asylum Seeker and New Communities Unit of the Department of Social Protection (DSP) assists victims who receive a temporary residence permission under the AIA and thus leave the RIA direct provision system and avail of mainstream support.⁸⁰

2.5 TRANSFER TO AN ALTERNATIVE PERMIT OR STATUS

Three possible alternative permissions exist for persons in the asylum process: a transfer to a permission under the AIA; an application for ‘leave to remain’ in Ireland; and finally an application for a residence permission under Section 4(7) of the Immigration Act 2004.

It must be noted however that if the identification of a victim of trafficking relates to a person who has already unsuccessfully applied for asylum, and is capable of providing new information which makes it significantly more likely that they would be declared to be a refugee, and that they were, through no fault of their own, incapable of presenting those elements or findings for the purposes of their previous application for a declaration, then they may have good grounds for applying for re-admission to the asylum process under Section 17(7) of the *Refugee Act 1996*.

2.5.1 Residence Permission as a Victim of Human Trafficking

As discussed above, a person who is identified as a potential victim of trafficking may avail of the AIA which include the possibility of a 60 day ‘recovery and reflection’ period and a temporary residence permission.

A person could apply to the Minister for renewal or variation of a residence permission under Section 4(7) of the *Immigration Act 2004*.

2.5.2 ‘Leave to Remain’ Procedures

Where an applicant is identified as a victim of trafficking by the GNIB but is not declared a refugee or granted subsidiary protection status, they may ask the Minister for Justice and Equality not to deport them from Ireland on humanitarian grounds, taking their circumstances as a victim of trafficking into consideration.

⁸⁰ <http://www.blueblindfold.gov.ie>.

The Minister must then take those representations into account when exercising his/her discretion as to whether or not to make a deportation order against the person. If the Minister decides not to deport the person, he/she may grant a permission to reside for a specified period of time.⁸¹

2.5.3 Organisation of Referral

Referral to the GNIB for consideration under the AIA may take place either by the asylum applicant self-reporting or assisted by another person, entity or legal representative.

There is no referral mechanism for asylum on the grounds of being a victim of trafficking. The onus, excluding minors, is always on the applicant to apply for a residence permission or for asylum. In such a procedure, the applicant is an active participant and the Courts have generally interpreted this as meaning that the obligation is on the applicant to put forth all relevant grounds on why they require protection or residence.⁸²

2.5.4 Use of Applicant's Asylum /Evidence in the New Procedure

As referenced earlier, all information and evidence gathered in the procedures for asylum, including interview details, may be submitted by the applicant to the GNIB for the purposes of identification as a victim of trafficking under the AIA. In cases where officials assessing an asylum claim detect trafficking indicators and refer on to GNIB, they may then ask the asylum authorities in turn for access to material and/or an interview with the caseworker(s) involved with the case.

Section 8(b) of the Data Protection Act 1988 provides for the disclosure of information which is 'required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders...' In addition Section (d) refers to instances where the data are 'required urgently to prevent injury or other damage to the health of a person.'

2.6 HUMAN TRAFFICKING VICTIMS IN SUBSIDIARY PROTECTION PROCEDURES

As referenced earlier, new procedures regarding the identification of (potential) victims in the subsidiary protection process in Ireland were in development at the time of writing of this report and therefore they are not discussed in detail here.⁸³

An application for subsidiary protection status is considered only if an application for asylum is refused. Similarly to asylum claims, applications for subsidiary protection are investigated by the Refugee Applications Commissioner with an

⁸¹ Which is generally renewable.

⁸² For example, *Smith v. Minister for Justice* [2013] IESC 4.

⁸³ This follows a transfer of responsibilities from the Irish Naturalisation and Immigration Service to the Refugee Applications Commissioner and Refugee Appeals Tribunal followed enactment of the *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)* in November 2013.

appeal against any negative decision to the Refugee Appeals Tribunal. Persons may be considered to be potential victims of trafficking during the assessment of their claim for international protection (refugee and subsidiary protection status) on a case-by-case basis. International protection statuses may be granted to persons for the reason of being a victim of trafficking in the form of refugee status or subsidiary protection status where the requisite criteria for the recognition of those statuses are met. If a person has been identified by GNIB as a victim of trafficking it may be a significant factor in the investigation of their asylum or subsidiary protection application. There is nothing to prevent an applicant from introducing a trafficking ground at subsidiary protection stage.⁸⁴

In general, all measures related to onward referral to services for asylum applicants will also apply to subsidiary protection applicants.

⁸⁴ Comments received from the Office of the Refugee Applications Commissioner (April 2014).

Section 3

Identification within Forced Return Procedures⁸⁵

Proactive screening for victims' of trafficking is not generally found within forced return procedures in Ireland. A reliance on self-reporting was evident at forced return stages.

Section 3 looks at the identification of human trafficking victims within forced procedures in Ireland. An overview of legislation and policy is provided (Section 3.1), with an analysis of the process of detecting and identifying victims in forced procedures (Section 3.2).

3.1 LEGISLATION AND POLICY

3.1.1 *Mechanisms for Detecting and Identifying Victims in Forced Return Procedures*

Established mechanisms for detecting and identifying victims of human trafficking in forced return procedures are not in evidence.

If an applicant is refused refugee status, they will be informed that the Minister for Justice and Equality proposes to make a deportation order and they are then invited to apply for subsidiary protection. The assessment of an applicant's entitlement to subsidiary protection is carried out in accordance with the procedures set out in the *Qualification Directive* and Irish law transposing that Directive. The applicant may also apply for leave to remain, in which case they are invited to make representations to the Minister, including on 'humanitarian grounds', as to why he should exercise his discretion not to make a deportation order against them. The two applications are considered separately, one after the other.

The applicant has the opportunity during these procedures to set out their personal circumstances including if they are, or were, a victim of trafficking or at risk of being (re)trafficked. This must be taken into account and assessed first, in the Minister's determination, made on foot of the Refugee Application Commissioner's investigation, as to whether or not the person is eligible for subsidiary protection (assuming the applicant has applied for it) and, secondly, in the subsequent, separate determination of the Minister as to whether or not to

⁸⁵ In this context, 'forced return procedures' relates to the forced return of rejected applicants for international protection only rather than other persons subject to forced return measures (e.g. irregular migrants).

make a deportation order against the person or grant them leave to remain temporarily in the State.

The consideration of the applicant's representations as to why they should not be deported is carried out in accordance with general Irish immigration law, and having regard to Ireland's obligations under the *European Convention on Human Rights*, the *Criminal Justice (United Nations Convention Against Torture) Act 2000 (as amended)* and the prohibition on *refoulement*⁸⁶ under Section 5 of the *Refugee Act 1996*. As indicated above, an application for 'leave to remain' is usually made on humanitarian grounds and the Minister has a wide discretion as to whether or not to accede to it. If, however, the applicant can show that deporting them to their country of origin would breach the prohibition on *refoulement* contained in Section 5 of the *Refugee Act 1996*, the Minister has no discretion and must not deport.

If, having carried out these assessments, the Minister refuses the applicant subsidiary protection and ultimately decides to make a deportation order against them, the Minister will then issue a deportation order, requiring the person to leave the State by a specified date. All the assessments including any issues related to trafficking concerns will have concluded at this stage and no further assessments are made.⁸⁷ The subsequent implementation of the deportation order is an operational matter for the GNIB and, where the person fails to leave the State by the date specified, they are expected to comply with the requirements and directions of the GNIB to facilitate their removal from the State.

The finality of these decisions is without prejudice to situations where the decisions in question might be set aside by way of judicial review in the courts or where the applicant, relying on a trafficking ground, makes an application for permission to re-enter the asylum system under Section 17(7) of the *Refugee Act 1996* or for revocation of the deportation order pursuant to Section 3(11) of the *Immigration Act 1999*. Under Section 3(11), the Minister has the power to amend or revoke an existing deportation order. A person in respect of whom a deportation order exists may request the Minister to amend or revoke the order if new facts or circumstances, including trafficking issues pertaining to the individual, arise or come to light after the making of it which potentially indicate that the person should not be deported. The Minister is legally obliged to consider those matters and come to a decision as to whether or not to amend or revoke the deportation order. This procedure is reliant upon an individual (or a person acting on their behalf, such as a legal representative or an NGO) self-reporting any trafficking concerns.⁸⁸

⁸⁶ A core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. See Article 33 of Geneva Convention 1951. See EMN Glossary Version 2.0. Available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm.

⁸⁷ Interview with Repatriation Unit, Department of Justice and Equality (August 2013).

⁸⁸ *Ibid.*

3.2 PRACTICES IN DETECTING AND IDENTIFYING VICTIMS IN FORCED RETURN PROCEDURES

3.2.1 *Mechanisms for Detecting Victims in Forced Procedures*

No proactive screening of rejected applicants takes place within the forced return procedure. Individuals may self-report or present with information not previously known due to the emergence of new information or changed circumstances. In addition, cross-referencing of identified victims (as per the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (AIA) with suspected or self-reported applicants takes place.⁸⁹

At the stage where considerations under Section 3 of the *Immigration Act 1999* are being considered, a victim of trafficking may self-report. In circumstances where allegations of trafficking have not been made previously, the individual may continue to make representations on this basis.

At the stage where a deportation order is being implemented and forced return is to take place, all the assessments in relation to the personal circumstances of the person have been completed and there are no standard procedures to detect victims (or potential) victims of trafficking at that stage. If the officer in the removal process forms an opinion that a deportee may be a victim of trafficking and could be vulnerable to re-trafficking they may report their suspicions to a senior officer to ensure *non-refoulement*.⁹⁰ As referred to, under Section 3(11) of the *Immigration Act 1999* a person may request the Minister for Justice and Equality to revoke or amend an existing deportation order where new facts or circumstances arise or come to light including in relation to trafficking which may indicate that the person should not be deported.

3.2.2 *Different Protocols and/or Practices for Men and Women*

Protocols and/or practices are not tailored for men and women. However, the particular and individual circumstances of women are taken into account as part of the overall assessments of claims by women and those with particular vulnerabilities which may include gender-related aspects or where there are particular cultural or societal issues involving discrimination and/or violence against women in the country to which the woman may be returned.

In carrying out those assessments relevant Irish, European Union (EU), *European Convention on Human Rights* (ECHR) and international standards in relation to women may also be taken into account.

⁸⁹ Interview with Repatriation Unit of the Department of Justice and Equality (October 2013).

⁹⁰ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

3.2.3 Different Protocols and/or Practices for Children and Adults

The particular and individual circumstances of children are taken into account as part of the overall assessments referred to above. However, there are exceptional protections that are unique to children.

Where a child is an unaccompanied minor they are taken into the care of the Health Service Executive (HSE) which is responsible for their care and welfare under general Irish law relating to children in care (*Child Care Act 1991*). While no legislative prohibition to deportation of unaccompanied minors under 18 years is in effect, in practice no such deportations have taken place to date. (Joyce and Quinn 2009). Where children are in the care of their parents or legal guardians their individual circumstances are considered as well as their circumstances in the context of their family situation. In carrying out those assessments relevant Irish, EU, ECHR and international standards in relation to children may also be taken into account including the principle that the best interests of the child is a primary consideration. However, there is some legal uncertainty as to whether this is the position in Irish law when it comes to the making of deportation orders, for example the decision of MacEochaidh J. granting leave in *Dos Santos v. Minister for Justice* [2013] where an applicant alleged that the ‘best interests’ of the children had not been treated as a primary consideration.⁹¹

3.2.4 Use of Indicators

No standard set of indicators is applied to assess whether a rejected applicant is a (potential) victim and no other mechanisms are used.

3.2.5 Next Steps Following Initial Detection

There are no standard procedures for what steps may be taken if the competent authority detects that a rejected applicant may be a victim of trafficking.

It is unclear however if, in those circumstances, the GNIB would or could initiate an investigation of the facts and background circumstances relating to that person and whether or not they were a victim of trafficking and follow the procedures in the AIA.. The existence of a deportation order may have the effect that the GNIB would consider that the Minister’s decision is final and their only role is to enforce that order and carry out the deportation. If an applicant is legally represented, it would be possible to seek an injunction enjoining deportation from the Irish High Court.

⁹¹ *Dos Santos v. Minister for Justice* [2013] IEHC 237.

3.3 TRANSFER TO AN ALTERNATIVE PERMIT OR STATUS

If an individual considers that the decision is flawed, they may seek to quash it by way of judicial review in the Irish High Court, or they can also make an application to revoke it, in the case of a decision to make a deportation order.

A number of other mechanisms may be open to an applicant or their legal representative in these circumstances. For instance, it would be possible to seek an injunction enjoining deportation from the Irish High Court. An application could also be made to amend or revoke the deportation order pursuant to Section 3(11) of the *Immigration Act 1999*. As set out above, if the Minister is requested to revoke the deportation order against the person including on the basis that they are a victim or potential victim of trafficking, he must consider that information and make a decision whether or not to accede to the request, taking all of that information into account. Unless the Minister gives an undertaking not to enforce the order pending the determination of the application, or is otherwise enjoined from enforcing it by a court, the deportation order may be enforced and the person deported pending the making of a decision by the Minister on the revocation application. It is open to the Minister to request the GNIB to investigate the circumstances and whether or not that person is a victim or potential victim of trafficking.

The Department of Justice and Equality have indicated that where such an allegation of trafficking has been made, no steps will be taken to 'return' that person, to their country of origin or, as the case may be, to another Dublin Regulation State, until such time as it has been thoroughly investigated and has been found to lack credibility or substance.⁹²

An alert is present on the police system to prevent the removal of a victim of trafficking and there is also an undertaking by the Commissioner of An Garda Síochána and the Minister that a potential victim of trafficking will not be removed before a determination is made. This applies in incidences whereby a rank not lower than a superintendent in the Garda National Immigration Bureau (GNIB) would have reasonable grounds for believing that an individual was a victim of trafficking.⁹³

3.3.1 Use of Applicant's Dossier /Evidence in the New Procedure

Information on an applicant's personal circumstances and background to their situation is available to the GNIB.

An applicant may make representations in relation to those issues with the GNIB and the Minister, and may refer the Minister to the GNIB file. The GNIB will have all of that information available to them in relation to the potential application to

⁹² Comments received from the Department of Justice and Equality (February 2014).

⁹³ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

the applicant of the AIA. However, where a deportation order has already been made GNIB may decide that the AIA are no longer applicable. The applicant may request the Minister to revoke any existing deportation order against them on the basis that they are a victim or potential victim of trafficking, however a superintendent (or higher rank) in the GNIB would have to have reasonable grounds for believing that the person is be a victim of trafficking.⁹⁴

⁹⁴ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

Section 4

Identification by Other Actors

Staff in asylum reception centres receive some training in identifying potential victims of human trafficking; all suspicions are referred to the GNIB. Many NGOs are active in the area, providing assistance to applicants and rejected applicants for international protection. As discussed earlier in this report, calls have been made to widen those involved in the identification process to include bodies such as NGOs.

Section 4 looks at the identification of human trafficking victims by other organisations and individuals outside the asylum and forced return procedures e.g. in asylum accommodation centres (Section 4.1) or by legal representatives and others (Section 4.2).

4.1 PRACTICES IN DETECTING AND IDENTIFYING VICTIMS IN RECEPTION CENTRES

4.1.1 *Detection and Referral of Victims Residing in Reception Centres*

Reception centre and support staff receive training in both recognising indicators of human trafficking and in which steps to take in the event of a suspicion of trafficking. In the case of unaccompanied minors, child care workers in placements undertake constant risk assessment. Any suspicions are reported to the minor's social worker who would make a determination as to whether a trafficking-related issue is present.⁹⁵

Both victims and other actors in contact with the victims may report suspicions or allegations of trafficking.

4.1.2 *Use of Indicators*

The Anti-Human Trafficking Unit guidelines, *Guide to Procedures for Victims of Trafficking in Ireland*, are provided in IOM/ Anti-Human Trafficking Unit training materials to a wide range of stakeholders.⁹⁶

RIA stated that any child welfare and protection concerns are dealt with in accordance with its *Child Protection Policy* and referred to HSE social work teams

⁹⁵ Interview with staff member of the Health Service Executive (October 2013).

⁹⁶ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (October 2013). <http://www.victimsofcrimeoffice.ie/en/vco/Humantraffickingguidelines.pdf/Files/Humantraffickingguidelines.pdf>.

locally.⁹⁷ The Health Service Executive (HSE) has responsibility for unaccompanied minors and applies the *'Children First Guidelines'*.⁹⁸ All potential child victims of trafficking are referred to An Garda Síochána.⁹⁹

EU-IOM and UNGIFT indicators are used in training of staff in the identification of victims of human trafficking.¹⁰⁰ The Anti-Human Trafficking Unit has stated that reports, referrals or information received from NGOs are included in the assessment.¹⁰¹

4.1.3 Next Steps Following Initial Detection

RIA reports all suspected indicators of trafficking to the GNIB, and where children are involved, to the local HSE social work team. Correspondence from third parties (e.g. NGOs or legal representatives), in respect of trafficking concerns regarding residents, are also notified to the GNIB.

In the case of a referral from a reception centre, a manager may contact the GNIB if any suspicion arises. The (potential) victim is also provided information on his/her rights and possibilities, and can initiate procedures on his/her own (where applicable with the help of a legal representative).¹⁰²

4.2 ROLE OF OTHER ACTORS

4.2.1 Detection and Referral of Victims

Many NGOs are active in the area and provide assistance to applicants and rejected applicants for international protection. The *Annual Report of Trafficking in Human Beings in Ireland for 2012* of the Anti-Human Trafficking Unit of the Department of Justice and Equality notes that during the year, some 28 referrals of trafficking were made by NGOs, with ten of these cases relating to asylum seekers. (Department of Justice and Equality (2013b)). In some cases, NGOs were 'first responders' to the victims. In addition, GNIB also refers (potential) victims to NGOs for assistance.

The Immigrant Council of Ireland (ICI) has noted that while they are not in a position to 'formally' identify victim as part of the National Referral Mechanism, the same indicators are used both for their internal assessment and any representations made to the GNIB and/or the Irish Naturalisation and Immigration Service (INIS).¹⁰³ The ICI has noted that in their experience, referral varies

⁹⁷ Comments received from the Reception and Integration Agency (October 2013).

⁹⁸ *Ibid.* See <http://www.hse.ie/eng/services/list/4/ChildrenandFamilyServices/childrenfirst>.

⁹⁹ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

¹⁰⁰ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (October 2013).

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ European Commission-ILO 'Delphi Indicators'. Comments received from the Immigrant Council of Ireland (November 2013).

significantly. In general, following a referral from the ICI, contact would be made directly with the 'potential' victim for the purpose of an initial meeting. Such meetings can take place in a local Garda station or at the offices of the GNIB, and have also taken place (on request from the victim) in the offices of the ICI.¹⁰⁴

The Migrant Rights Centre Ireland (MRCI), engaged in identification of trafficking for forced labour, has noted that they referred 22 cases (one pending) to the GNIB and uncovered approximately 200 cases of slavery between 2007 and late 2013. In a presentation delivered in late 2013 on the topic of identification of victims of forced labour, cited cases highlighted the absence of legal assistance for victims prior to giving statements to the police. It was acknowledged in all cases that adequate time to recover and reflect, as well as a secure immigration status and opportunity for accompaniment by a representative, were beneficial for the process of the investigation.¹⁰⁵

The ICI has highlighted delays in cases referred by them (as legal representatives outside the National Referral Mechanism) to the GNIB. The ICI has reported incidences of being advised to contact local Garda stations to report a trafficking case rather than centralised referral via the HTICU of the GNIB). Subsequent lengthy delays in confirmation of a trafficking status and investigations were also reported.¹⁰⁶

The Reception and Integration Agency (RIA) has stated that any reference to possible trafficking, based on correspondence received from an NGO or other source, is referred to GNIB as a matter of course, with the HSE notified in cases involving children.¹⁰⁷ The Anti-Human Trafficking Unit of the Department of Justice has stated that Investigation Officers in each Garda Division have received in-depth professional training in the investigation of trafficking and identification of victims.¹⁰⁸

¹⁰⁴ European Commission-ILO 'Delphi Indicators'. Comments received from the Immigrant Council of Ireland (November 2013).

¹⁰⁵ Presentation delivered by Pablo Rojas Coppari (MRCI) at Migrant Rights Centre Ireland Conference on 'Identifying Human Trafficking for Forced Labour: National & International Perspectives', (2 December 2013). See www.mrci.ie.

¹⁰⁶ Interview with Immigrant Council of Ireland (September 2013).

¹⁰⁷ Comments received from the Reception and Integration Agency (October 2013).

¹⁰⁸ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

Section 5

Training

A comprehensive training programme is in place for members of An Garda Síochána, with some training of other officials in place, although not on a standardised basis.

Section 5 looks at guidance and training provided to all persons involved with victims of trafficking throughout the asylum and forced return procedures e.g. police, asylum decision-makers and caseworkers, forced return officials.

5.1 GUIDANCE AND TRAINING

A comprehensive training programme, *Tackling Trafficking in Human Beings, Prevention, Protection, Prosecution and Partnership*, has been developed by An Garda Síochána with the assistance of the International Organization for Migration (IOM) in order to assist members of An Garda Síochána in the identification of potential victims of human trafficking. Both State and non-governmental organisations are involved in delivery of the training, which approximately 700 members Gardaí have completed to date. A further 3,500 members of An Garda Síochána have received awareness raising training on the issue of human trafficking. In addition, a 'step-by-step' guide on what to do when encountering a situation of potential human trafficking, is available via an on-line computer portal, to all Garda personnel. In addition IOM has developed a 'Train the Trainer' course on human trafficking which was rolled out to trainers in large public sector organisations. On the basis of feedback received by IOM on the delivery of this training, shorter 'Train the Trainer' course modules of one hour and three hour durations were subsequently developed.¹⁰⁹ The Anti-Human Trafficking Unit of the Department of Justice and Equality has noted that, with the exception of material used in the case of An Garda Síochána, all training materials are available on www.blueblindfold.gov.ie.¹¹⁰

The Council of Europe GRETA report on Ireland (2013) outlined a variety of training courses provided by agencies, and welcomed the involvement of inter/non-governmental organisations and the use of a 'multi-disciplinary approach'. However, GRETA noted that concern had been expressed that certain persons (law enforcement officers, labour inspectors) were 'not sufficiently

¹⁰⁹ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (October 2013).

¹¹⁰ Comments received from the Anti-Human Trafficking Unit of the Department of Justice and Equality (November 2013).

proactive in detecting human trafficking cases' and recommended that future training programmes should be designed to address such needs. (Council of Europe GRETA, 2013)

The Refugee Appeals Tribunal has held one half-day training course for its Members, designed to raise awareness of human trafficking. This course involved representatives of the AHTU, IOM and GNIB. A similar course will be held in the near future, following the recruitment of new Members.¹¹¹

¹¹¹ Interview with official of the Refugee Appeals Tribunal (October 2013).

Section 6

Evaluation of Identification Measures

An examination of the issues related to identification took place in the context of the *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009 – 2012*.

Calls have been made to widen those involved in the identification process to include bodies such as NGOs, and to place the rights to support and protection for victims of trafficking on a statutory footing. GRETA Council of Europe (2013) has invited Irish authorities to consider placing human trafficking identification under different structures to that of immigration control.

Section 6 looks at evaluations of methods used to identify victims of human trafficking in the asylum and forced return procedures (Section 6.1). Section 6.2 looks at the role of other actors.

6.1 ASYLUM AND FORCED RETURN PROCEDURES

Many NGOs made submissions on various elements of the system for victims of trafficking in Ireland in the context of the *Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009 – 2012*; points raised were addressed by the State (Department of Justice and Equality, 2013a). In its submission, the Migrant Rights Centre Ireland (MRCI) expressed concern regarding referring victims to the National Referral Mechanism and questioned whether immigration officials should be involved in both the identification and investigation processes (Department of Justice and Equality, 2013a). Greater NGO involvement in the identification process was also called for. The State responded that...

While a multi-disciplinary group with NGO involvement might support a low threshold of proof for potential victims and could limit the number of times a victim needs to describe his/her experiences at an early stage in their recovery, it adds an additional layer of bureaucracy to the process and delays the development of any relationship of trust between the investigating Garda and the potential victim.

(Department of Justice and Equality, 2013a).

The Immigrant Council of Ireland (ICI) published a paper in 2011 *Asylum seeking victims of human trafficking in Ireland: Legal and Practical Challenges* which viewed the current system of identification of victims of trafficking as discriminating against those within the asylum system. It called for identification

procedures to be carried out in relation to all individuals who may be victims of human trafficking, including those seeking asylum, with the resulting outcome communicated to the individual. The report described a ‘two-tiered’ system whereby victims within the asylum process are ‘precluded from the benefits of a formal identification by the authorised authorities’ and from receiving ‘any acknowledgement’ recognising that they are potential or suspected victims including cases whereby they are cooperating in investigations.

The overall ‘uncertainty’ regarding designation of a ‘potential’ or ‘suspected’ victim was noted with this raising ‘valid questions as to who is actually identified’ as a suspected victim, including in the recording of official data. The issue is also raised of the records of persons within the asylum process who are ‘informally’ referred to as a ‘potential’ victim or ‘formally’ identified as a ‘suspected’ victim. The report does note that the published *Immigration, Residence and Protection Bill 2010* (article 7(b)) did allow for the concurrent running of the initial ‘recovery and reflection’ period alongside other permissions.

The report also states that wider rights for victims of trafficking within the asylum system are not the same as those outside the process, with access to ‘less safe and appropriate accommodation, education, training, work and the possibility of acquiring longer-term status in the State’.

The ICI report rebuts the argument that an immigration permission under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (AIA) is only necessary for a person outside of the asylum process and notes that Section 4(1) of the *Immigration Act 2004* does not include the granting of permission to remain in the State to asylum seekers and thus they ‘cannot be regarded as having permission to remain’ in Ireland.¹¹² The ICI has also observed an inconsistency with social welfare legislation which specifically excludes an ‘asylum seeker’s permission’ from qualifying as residence. Section 15(7) of the *Social Welfare and Pensions (No.2) Act 2009* specifically lists asylum seekers and persons who have applied for subsidiary protection as persons who ‘shall not be regarded as being habitually resident in the State’.¹¹³

The first report on Ireland by the Council of Europe GRETA was published in September 2013 and invited the Irish authorities to conduct an independent evaluation of the implementation of the National Action Plan and to consider the establishment of an independent National Rapporteur or other mechanism to monitor anti-trafficking activities. Overall, the report notes that it is vital for the State to ‘ensure that an effective system for proactive identification of victims of trafficking is put in place, irrespective of their nationality and immigration status’ with the ‘onus of identification’ lying on authorities.

¹¹² The Anti-Human Trafficking Unit of the Department has stated that they view permission for asylum seekers to remain in the State as granted under Section 9(2) of the *Refugee Act 1996*.

¹¹³ Comments received from the Immigrant Council of Ireland (November 2013).

The GRETA report urged Irish authorities to ensure that all victims of trafficking ‘are properly identified’ as well to ‘promote multi-agency involvement in victim identification by formalising the role and input of specialised NGOs and involving other relevant actors’ (Council of Europe GRETA, 2013). It acknowledged that the

power to make identification of victims of trafficking lies exclusively with a limited number of officers in the Human Trafficking Investigation and Coordination Unit (HTICU) of the Garda National Immigration Bureau.

GRETA noted that concern had been expressed to them that ‘a number of victims of trafficking are not identified as such due to gaps in the identification procedure’. The issue of applicability of the AIA to persons within the asylum system was raised, with GRETA concluding that thus ‘in practice the application of the Administrative Immigration Arrangements is limited to non-European Economic Area (EEA) citizens who are not asylum seekers’.

The issue of applicability of the AIA to EEA nationals is unclear. The AIA state that the ‘EEA nationals will be treated no less favourably than a person from outside the area’ (Department of Justice and Equality, 2011) As outlined earlier, paragraph 4 of the Arrangements notes that

with 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 nor do they require a temporary residence permission.

However free movement rights are not unqualified. Under Regulation 6(1) of the *European Communities (Free Movement of Persons) Regulations 2006, as amended*, Union citizens may reside in Ireland for up to three months on certain conditions. If they wish to reside for longer than three months, then pursuant to Regulation 6(2),¹¹⁴ their right of residence is conditional on their exercising EU Treaty Rights in Ireland. Similar considerations apply to EEA citizens under the *European Communities (Aliens) Regulations 1977*. Therefore, a Union citizen will not have any entitlement to reside in Ireland under the Regulations of 2006 if they has been here longer than three months and do not fulfil the conditions set out in Regulation 6(2). The same applies to EEA citizens, *mutatis mutandis*.

Overall, GRETA noted that there is ‘no clear statutory basis on which victims of trafficking can invoke protection’ and urged that authorities ensure that ‘all possible victims of trafficking...are offered a recovery and reflection period’. The

¹¹⁴ Conditions that a Union citizen be:-
 - in employment or be self-employed in the State,
 - have sufficient resources to support himself or herself, his or her spouse and any accompanying dependants, and have comprehensive sickness insurance in respect of himself or herself, his or her spouse and any accompanying dependants,
 - be enrolled in an educational establishment in the State for the principal purpose of following a course of study there, including a vocational training course, and have comprehensive sickness insurance in respect of himself or herself, his or her spouse and any accompanying dependants, or
 - subject to paragraph (3), be a family member accompanying or joining a Union citizen who satisfies one or more of the conditions referred to in clause (i), (ii) or (iii).

report did note that authorities had stated that no registration process exists in Ireland whereby a person is certified as a 'victim', with a victim treated as such once they become known to An Garda Síochána and until such time as there are 'compelling reasons to believe the person is not a victim and the case is closed'. The need for a 'specific identification mechanism' for children is raised in the report, with a collective complaint by the Federation des Association Familiales Catholiques en Europe (FAFCE) to the European Committee of Social Rights cited, where it is alleged that authorities have failed to identify victims. The GRETA report considered that Irish authorities

should further involve non-governmental organisations and other members of civil society in the development and implementation of anti-trafficking policy, including evaluation of anti-trafficking efforts.

No evaluation has taken place of methods for the detection or systems of referral of (potential) victims from forced return procedures to other procedures.

6.2 OTHER ACTORS

Limited evaluation of systems of detection and referral has taken place in the case of wider actors. The wider issue of accommodation provided to asylum seekers and to victims of trafficking (both via the Reception and Integration Agency direct provision system) has resulted in a number of reports being published. The Immigrant Council of Ireland (ICI) report (2011) recommended that specialised accommodation should be provided to individuals going through a recovery and reflection period in order to provide for privacy and safety. It described the direct provision system of accommodation as being 'inappropriate' for victims of trafficking, noting the variance in quality and incidence of clients stating that traffickers have 'used the asylum system for residency and accommodation while simultaneously trafficking victims'. In addition, it also recommended that the practice of housing asylum applicants who are cooperating in criminal investigations in direct provision accommodation be ended.

The first Council of Europe GRETA report on Ireland was published in September 2013 and urged Irish authorities to

review the policy of accommodating suspected victims of trafficking in accommodation centres for asylum seekers and to consider setting up specialised shelters for victims of trafficking, with the involvement of NGOs as support providers

(Council of Europe GRETA, 2013).

RIA has stated that the direct provision system allows for levels of security and monitoring of residents that would not necessarily be possible in alternative accommodation solutions; the centres are staffed on a 24/7 basis. In making placements of suspected victims of trafficking RIA consults with the HSE and GNIB, to ensure the best fit for the suspected victims. Efforts are made to offer single

occupancy rooms and appropriate locations, including proximity to specific services.¹¹⁵

¹¹⁵ Comments received from the Reception and Integration Agency (October 2013).

Section 7

Conclusions

Certain advances have been made in recent years in the development of Ireland's legal and institutional framework for action against human. These include the adoption of anti-human trafficking legislation and a National Action Plan, establishment of specialised units such as the Anti-Human Trafficking Unit, coordination of a National Referral Mechanism and rolling out of awareness-raising training, particularly among law-enforcement personnel. However several issues remain regarding the identification of victims in asylum and forced return procedures.

No independent system exists for the formal identification of all victims of trafficking. Limited 'proactive' screening is in place in asylum procedures, with a reliance on self-reporting in later stages.

No stand-alone, formal identification procedure for all victims of trafficking, irrespective of nationality and immigration status (ensuring access to protection and assistance measures), exists in Ireland. Eligibility for the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* (AIA), (often interpreted as analogous to identification) is confined to a 'foreign national' who is considered to be a potential or suspected victim of trafficking by An Garda Síochána, and who does not otherwise have a 'valid immigration permission'.

Identification of a potential or suspected victim of human trafficking is currently the sole responsibility of An Garda Síochána. The 2013 GRETA Report for Ireland recommends the involvement of other bodies such as NGOs in the identification process in order to increase scrutiny of the decision taken, counter reported problems regarding delays, and provide access to protection for victims unwilling or unable to engage directly with the authorities.

Proactive screening for victims of trafficking is not generally in evidence within the asylum and forced return procedures in Ireland. At first instance, some procedures are in place with staff said to be trained to observe particular signs during interview. A reliance on self-reporting was evident at appeal and forced return stages. Research has shown that it can take some time for victim of trafficking to disclose the full details of a case.

Victims of human face differences in treatment depending on what part of the immigration system they fall under.

Victims of trafficking who are in the asylum process do not have access to the AIA, resulting in reduced access to accommodation, education, training and work supports, which are targeted to their needs. Furthermore, periods of time spent in Ireland in the international protection procedure do not count as 'reckonable' legal residence in the State for the purpose of applying for a longer-term status. There is an absence of a clear relationship between the AIA and other statutory procedures by which a suspected victim might otherwise obtain permission to reside in the State. Certain ambiguity exists as to the applicability of the Arrangements to persons making representations regarding 'leave to remain' as victims of trafficking in Ireland, as well as in the case of EEA nationals.¹¹⁶

Overall, good access to services by all victims of trafficking referred to An Garda Síochána has been reported by NGOs.

¹¹⁶ At the time of writing, new procedures regarding subsidiary protection status were in development following enactment of the *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)* in November 2013; for this reason, procedures regarding the identification of (potential) victims of trafficking in the subsidiary protection process are not covered in this report.

Annex: Statistics

A.1 STATISTICS ON THE SCALE AND SCOPE OF (POTENTIAL) VICTIMS DETECTED AND IDENTIFIED IN PROCEDURES FOR INTERNATIONAL PROTECTION AND FORCED RETURN

The annual reports of the Anti-Human Trafficking Unit of the Department of Justice and Equality contain statistics on the immigration status of cases of (potential) victims.¹¹⁷

Table A.1 Alleged Victims of Human Trafficking Reported to an Garda Síochána in 2011, 2012

<i>Immigration status (All exploitation types)</i>	<i>2011</i>	<i>2012</i>
Irish Citizen	6	19
Citizen of an EU Member State	9	9
Asylum Seeker	32	8
Immigration permission under consideration	-	4
Not present in the State	-	3
Present under international treaty rights	-	3
In the care of the HSE	-	2
Administrative arrangements	1	-
Information unavailable	9	-
Total	57	48

Source: *Department of Justice and Equality, 2012, 2013b.*
Statistics on referrals to national referral mechanism were not available.

¹¹⁷ Available at www.justice.ie.

Table A.2 Available Statistics on Third-Country National Victims of Human Trafficking Identified in Procedures for International Protection and Forced Return

	2008	2009	2010	2011	2012
<i>Third-country nationals (TCN) identified as (potential) victims and who have withdrawn from or stopped procedures for international protection</i>					
Number of TCN who have withdrawn from/ stopped international protection procedures and (later) granted a reflection period as a (potential) victim of human trafficking	0	0	0	0	0
Number of TCN who have withdrawn from/ stopped international protection procedures and (later) granted a (temporary or permanent) residence permit as a victim of human trafficking	0	0	2* Nigerian adult females	0	3*Nigerian females (1 minor 2 adults)
<i>Third-country nationals identified as (potential) victims and who have <u>been rejected</u> from procedures for international protection <u>following a (final) negative decision</u></i>					
Number of TCN who have <u>been rejected</u> from (EU harmonised) international protection procedures <u>following a negative decision</u> and who have - following official identification procedures - (later) been granted a reflection period as a (potential) victim of trafficking in human beings	NA	NA	NA	NA	NA
Number of TCN who have <u>been rejected</u> from (EU harmonised) international protection procedures <u>following a negative decision</u> and who have (later) been granted a residence permit as a victim of human trafficking	0	0	1 Nigerian adult female*	0	3 Nigerian females (1 minor 2 adults)*
<i>General statistics</i>					
Number of TCN who have been granted a reflection period as a victim of human trafficking	NA	10	5	1	0
Number of TCN who have been granted a residence permit as a victim of human trafficking	NA	11	6	2	3

***Note:** *It is not possible to determine whether these persons withdrew or were rejected.*

Source: *Anti-Human Trafficking Unit, Department of Justice and Equality (November 2013).*

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