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## **Human Trafficking in Ireland: Identifying Victims of Trafficking**

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### **Abstract**

While trafficking in human beings (THB) is described as a form of modern-day slavery, little is known of the victim identification process or, how victims are identified at a national level. This research explores the mechanisms in place to identify victims trafficking for sexual exploitation in Ireland. Arguably victim identification is crucial as it guarantees the safety of the victims and removes them from the control of the traffickers. In Ireland victim identification is carried out solely by the Garda National Immigration Bureau at the request of the Minister for Justice, Equality and Law Reform<sup>1</sup>. A qualitative research approach was adopted and data was collected from interviews carried out with relevant state agencies and non-governmental organisations who advocated on behalf of trafficking victims. Perspectives were sought on the victim identification processes, and what could be done to improve those processes. This study concluded that identification was not being carried out in a timely or consistent manner and that this infringed on the victims human rights as laid out in international protocol by the Council of Europe (CoE). A possible alternative is the OSCE National Referral Mechanism (NRM) which advocates for a rights-based multi-agency approach to victim identification.

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<sup>1</sup> Now the Department of Justice and Law Reform.

**Key Words:** Human trafficking; victim identification; National Referral Mechanism

### **List of Abbreviations**

AHTU- Anti Human Trafficking Unit

CoE- Council of Europe

DJELR- Department of Justice, Equality and Law Reform

DPP- Director of Public Prosecutions

EEA- European Economic Area

GNIB- Garda National Immigration Bureau

ICI- Immigrant Council of Ireland

IRP- Immigration, Residence and Protection Bill 2010

NAP- National Action Plan

NGO- Non-Governmental Organisation

NRM- National Referral System

OSCE- Organisation for Security and Co-operation in Europe

RIA- Reception and Integration Agency

SVCC- Sexual Violence Centre Cork

THB- Trafficking in Human Beings

UNDOC- United Nations office of Drugs and Crime

UNFPA- United Nations Population Fund

UNIFEM- United Nations Development Fund for Women

UNTOC- United Nations Convention against Transnational Organised Crime

VOT- Victim of Trafficking

### **Introduction**

The purpose of this study is to explore the legislation and policy relating to trafficking in human beings (THB) in Ireland and the process for identifying the victims. Research on Human Trafficking in Ireland has increased in the last number of years, with more attention being drawn to its activity via the media, from the Irish non-governmental sector and also from the international community. Much has been written in the last number of years with regard to the nature and extent of trafficking in Ireland (Ward and Wylie, 2006) and to the effects of prostitution and globalisation on trafficked women in Ireland (Kelleher et al, 2009). However there was a dearth of

information relating to the victim identification process. This research aimed to uncover the mechanisms in place to identify victims of trafficking, how they come to be identified, what should be done in the identification process and how this can be improved. Additionally, given the often confusing legal jargon used to identify possible victim's, various concepts such as 'reasonable grounds', the terms 'potential' and 'suspected' are also examined in order to shed light on how this process takes place. Overall it is the belief of this research that the interview process is hampering early identification and affecting the rate of prosecution in criminal cases.

Despite the creation of the Criminal Law (Human Trafficking) Act, 2008, there have been no charges or convictions in Ireland to date. Irish legislation is based upon the United Nations (UN) Palermo Trafficking Protocol (2000) which lays the international framework for the definition of trafficking and adopts a criminal justice approach to the crime, focusing on the issues of prevention, protection and prosecution: prevention of the crime, protection of the victims, and the prosecution of the perpetrators (Friesendorf, 2009; Kelleher et al, 2009). Given the finite nature of the Palermo protocol, and its implementation at national level, criminal prosecutions are notoriously difficult to prove. Firstly proof of trafficking, such as an action, means, and purpose, must be all satisfied for human trafficking to have taken place. To clarify, an *action* denotes recruitment, transportation, harbouring etc, carried out by the *means* i.e. threat, use of force, coercion, abduction etc for the *purpose* of exploitation. This framework has been adopted by the Department of Justice in order to prove trafficking has occurred. Consequently victim identification is a difficult process.

As recommended by the OSCE (2004) different mechanisms should exist to allow people to recover from their experiences. Victims should be given time to recover and reflect on their experiences, free from the pressure to answer questions regarding how they came to be trafficked and what information they may have. In Ireland this process is further exacerbated by the vocabulary used in Irish policy documents such as the terms 'reasonable grounds' for believing someone is a possible victim; 'suspected' or 'potential' victims of trafficking, vocabulary which hampers efforts to prosecute the criminals

Additionally victims of trafficking not from the European Economic Area (EEA) are housed within the remit of the Reception and Integration Agency (RIA) and are therein treated as asylum seekers. Arguably this practice of placing victim's in asylum

centre's treats this as an issue of illegal migration, as opposed to a human rights abuse. While there are special visas for those who willingly cooperate in a criminal investigation and who have sufficient information to contribute to that investigation, these are limited to those not already in the asylum system. Those already in the asylum process are prohibited from accessing these visas as they have already been granted permission to remain in the state.

### **Background to the Study**

Recent reports in Ireland into human trafficking include research carried out by Wylie and Ward (2006) called *The Nature and Extent of Trafficking of Women into Ireland for the Purposes of Sexual Exploitation*. This was a report set up to research the findings from 2000-2006 and to establish the nature and extent of trafficking in Ireland. This is the first report with figures indicating the numbers being trafficked into the country and examining international protocols such as the UN framework and other European responses to trafficking in human beings. This research was carried out prior to anti-trafficking legislation and documented initial findings in an Irish context.

Other literature includes Kelleher and associates (2009) publication for the Immigrant Council of Ireland (ICI herein) in collaboration with Ruhama and Women's Health Project (HSE) called *Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland*. This detailed not just the nature and extent of trafficking but also offered an in-depth analysis of trafficking strategies into Ireland. It also detailed victim's stories, information on the sex industry in Ireland and the gendered dimension of migration in the twenty first century. It also refutes the claim that trafficking is just an issue of migration, as it is highly organised and fundamentally exploitative.

#### *Definition of Human Trafficking*

Human Trafficking is a term increasingly used to define the modern day slave trade (Anderson & O'Connell Davidson, 2003; Kelleher et al, 2009; CATW, 2008). Article 3 (a) of the United Nations (UN) Palermo Trafficking Protocol, which is part of the wider protocol of the Convention Against Transnational Organised Crime (UN TOC) 2000, states that:

Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other

forms of coercion, of abduction, of fraud, of deception, or the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others (UN, 2000).

Most importantly the issue of the victims consent becomes irrelevant if any of the above means have been used (Kelleher et al, 2009). According to Anderson and O’Connell Davidson, (2003), human trafficking is a ‘corrupted form of migration’ that transforms very specific migratory projects, such as the desire to accumulate savings, to work abroad in order to support one’s family at home, or the desire to improve one’s life by marrying “well” into an exploitative nightmare (Anderson & O’Connell Davidson, 2003:15). This is especially true of women who migrate under inequitable circumstances, such as female migrants travelling on IOU’s with the aim of paying back debts at a later stage. Arguably such a situation is ripe for exploitation which is clear when we consider the massive ‘debts’ that trafficked women have accrued while trying to access their destination of choice (Escap, 2005).

While Anti-Trafficking legislation in Ireland is relatively new (created and implemented in 2008) there is little evidence as to its success in these relatively early stages of implementation. As there have been no convictions in Ireland to date it was considered pertinent to research legislation and policy pertaining to victim identification and to the effect of delayed identification on the actual victim.

### **Theoretical Framework**

A poststructural feminist perspective was adopted to examine human trafficking, paying close attention to the social construction of the migrant woman, the prostituted woman, and the implications of social policies when legislating for trafficked women. Poststructural feminists tend to view the subjugation of women as a result of the differences constructed in gender discourses, and not simply top-down patriarchy with its roots lying firmly in structural oppression. Poststructural feminist theory focuses on the binary category of male/female, as analysed by Foucault in much of his related work of power and sexuality. It does not focus solely on male privilege and power, as would be the tradition of other feminist perspectives (Crinall, 1997:77). Foucault’s

theory of ‘dividing practices’, where an oppositional binary is created such as man/woman, sane/insane, sick/healthy, can create further power struggles which render one class powerless to the other.

It is Foucault’s concept of dividing practices (how a subject has been objectified) which is the most pertinent in the construction of the trafficked woman or asylum seeker. For example, a fully fledged citizen enjoys access to all institutions, be they civil, political, or social. However, the asylum seeker is precluded from these mainstream institutions, awaiting citizenship and rendered powerless and outside of the norm. Therefore, the citizen/asylum seeker binary creates unequal power relations which are played out in everyday life. Furthermore, by creating asylum seekers of trafficked women they are relegated to this sub-category of non-citizen, where they have limited rights and entitlements compared to ordinary citizens. This has the power to resonate in the consciousness of a society which can lead to corruption and exploitation, while at the same time allowing policy makers to deny the basic human rights of this group. The category of asylum seekers sets the understanding in the public consciousness and imposes defining social and cultural codes which can restrict subjectivities and personal choices, while maintaining the status quo. The importance of subjective identity is highlighted by Weedon (1987) if an individual is excluded from any such practices due to gender, race, age or cultural background. This is pertinent in relation to the categories of the prostituted woman, the illegal migrant, or the asylum seeker. Often, as is the case in Ireland, a victim of trafficking will encompass elements of all of the above categories, making it especially difficult to transcend into the mainstream. Therefore, advocacy by civil society groups and support services by state organisations are crucial to the individual’s recovery and acceptance.

## **Human Trafficking in Ireland**

### *Legislation and Policy*

The *Criminal Law (Human Trafficking) Act, 2008* directly criminalizes the trafficker in Ireland and officially acknowledges human trafficking as an offence in the Irish state. It was created to deal specifically with human trafficking in an Irish context and it refers to victims of trafficking for labour exploitation, sexual exploitation, the removal of organs and to child trafficking and it carries a maximum sentence of 25

years to life, once proven. With the drafting of the *National Action Plan to prevent and combat trafficking of human beings in Ireland 2009-2012* (NAP herein), the government has established a comprehensive framework within which trafficking is defined and government commitment to stamp out trafficking is outlined in the 3 P Paradigm: protection, prevention and prosecution. To clarify, this signifies the protection of individuals once identified as victims of trafficking, the prevention of human trafficking through awareness raising mechanisms and training for front line government officials, and the prosecution of perpetrators and brothel owners who willingly enslave women against their will (ATHU, 2009a). The plan also aims to establish the legal and administrative framework required to allow for the ratification of all the relevant international requirements as set out by the *United Nations Office on Drugs and Crime the International Framework for Action: To Implement the Trafficking in Persons Protocol*.

#### *Immigration Arrangements*

Under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, where a foreign national is identified as a possible victim of human trafficking, the Minister for Justice is first required to consider that persons immigration status in the state. While those from the EEA countries are entitled to the same services as those not from the EEA region, the focus of these administrative arrangements is to identify the immigration status of the trafficked person, and to determine if they have permission to reside legally in the state. As outlined in the arrangements, a migrant who is identified as a suspected victim of human trafficking, and where there are ‘reasonable grounds’ for believing that he or she is a victim of an offence under sections 2 or 4 of the Criminal Law (Human Trafficking) Act 2008, cannot be removed from the state (AHTU, 2008:1). However ‘reasonable grounds’ must be satisfied during victim identification in order to establish that the person has been trafficked. Often the initial stages of the identification process can prove difficult, and while evidence *per se* is not required, substantial knowledge must be obtained in order to satisfy the Superintendent of the Garda National Immigration Bureau (GNIB) that the person is ‘trafficked’.

However, in recent months the additional categories of ‘*potential*’ and ‘*suspected*’ victim of trafficking are being used when referring to victim identification. In the Anti-Human Trafficking Unit’s *Summary Report of Trafficking in Human Beings in*

*Ireland 2009* (AHTU, 2009b), the term ‘suspected’ victim of trafficking refers to an individual who has satisfied the criteria of trafficked persons, as laid out in the National Action Plan (NAP) and has therefore been afforded the protection of the state as outlined in the Administrative Immigration Arrangements. This includes a 60-day ‘recovery and reflection’ period, and subsequently a 6 month temporary residency permit if a victim is cooperating with a criminal investigation. However, the term ‘potential’ victim of trafficking is the term used to describe where, although there may be reasonable grounds to believe the individual may have been trafficked, but where a decision confirming this has yet to be made by the GNIB (ibid, 2009b). In 2009, 66 cases of ‘potential’ or ‘suspected’ cases of human trafficking came to the attention of the Gardaí; 13 cases concluded through lack of evidence, and the remaining 53 cases were at various stages of investigation by the end of that year (ibid, 2009b). Of those remaining cases, 11 ‘suspected’ victims of trafficking were identified, 40 cases were already in the asylum process, therefore not requiring any additional permission to remain in the state, and 2 had left the state voluntarily (ibid, 2009). It should be noted that those already in the asylum process are excluded from accessing these special visas as they already hold permission to reside legally in the state. Therefore 40 of the victims identified in the 2009 reporting period were denied access to any additional services on these grounds. Arguably concern for the immigration status of the trafficked person is being prioritised over the wellbeing and recovery of the victims.

#### *Paradox of ‘Reasonable Grounds’*

In the victim identification process a Garda Superintendent must make the assessment on the basis that there are ‘reasonable grounds’ to suspect that the person in question is a victim of trafficking. However, what is considered ‘reasonable’ after 5 minutes and what is considered reasonable after 3 months can vary significantly. According to the Immigrant Council of Ireland (ICI herein), “what is reasonable for a person in a place of safety may be different from what is reasonable for a person at risk” (ICI, 2010:3). This is important to a person identifying themselves as trafficked and often relates to how they feel about those in authority. It may take time to trust authorities especially for those coming from countries where police and officials are often corrupt or not acting in the victims best interests (OSCE, 2004). Among other NGOs, the ICI recommends that when victim identification takes place “a standard of proof lower than that used in criminal proceedings must be applied” (ICI, 2010:1).

Arguably the 3-P Paradigm adopted by the NAP should not be applied in the initial stages of victim identification as this sets too high a precedent. According to the victim identification process Article 10 of the Council of Europe is independent of any criminal proceedings. “*A criminal conviction is therefore unnecessary for either starting or completing the identification process (paragraph 134, Article 10 of COE)*”. Therefore ‘reasonable grounds’ to suspect that someone has been trafficked should be the beginning of the victim protection process and identification the end of the process. First and foremost, the victim should be protected. Currently those suspected of being victims of trafficking in Ireland are not afforded the protection as outlined in the *Council of Europe Convention on Action against trafficking in Human Beings*. According to non-governmental groups, in the initial stages of identification it should be enough that trafficking cannot be ruled out.

However, suspected victims are often expected to attend many lengthy meetings with Gardaí before satisfying a ‘test of reasonableness’ (ICI, 2010:1). On many occasions victims of trafficking have begun to give detailed witness statements before the period of recovery and reflection has been granted. This “practice leads to the purpose of recovery and reflection period, as laid out in the COE convention, not being served” (ICI, 2010:2). It should be acknowledged that Article 13(1) of the CoE Convention is only to enable victims of trafficking to recover and escape the influence of traffickers and/or to make an informed decision on cooperating with the relevant authorities and that the granting of the period of recovery is not conditional on their cooperating with a criminal investigation (CoE, 2005).

#### *Alternative options?*

Victims of trafficking not from the European Economic Area (EEA), who cannot or will not cooperate with a criminal investigation, are not afforded any benefits as set out in the *Administrative Immigration Arrangements for Protection of Victims of Human Trafficking*. Therefore, they do not have right of access to the 6 months temporary residency permit and must then explore other options open to them, such as

seeking asylum or voluntary repatriation. Where voluntary repatriation is not considered a safe or viable option, entering the asylum process may be the only avenue open to trafficked women. There is also no provision in the current draft of the *Immigration Residence and Protection Bill, 2010* for victims of trafficking to remain in Ireland on humanitarian grounds.

In Ireland asylum seekers and refugees are prohibited from accessing the labour market via Section 9 (4) (b) of the *Refugee Act, 1996*. They are also prohibited from living independently, as Section 13 of the Social Welfare Miscellaneous (Provisions Act) 2003, prevents asylum seekers from accessing rent allowance provisions (Moran, 2005). Most controversially the effects of long-term residency on women and children in Irish direct provision centres have been identified (Mbugua, 2010), as have the effects of housing trafficked women in similar type accommodation (Zimmerman, 2003). Conditions of the 6 month temporary residency permit stipulate that victims of trafficking who DO participate in a criminal investigation (should they have enough evidence to warrant an investigation) have access to social welfare and rent allowance payments, are allowed to participate fully in vocational training or employment programmes as provided for by the state employment agency Fás. And on completion of a certificate of fitness from the HSE they are also permitted access the labour market. Arguably these are two vastly different ways of treating a victim of trafficking.

The OSCE developed a national referral system toolkit in 2004 as a reference guide for countries in the OSCE trying to address the challenges connected to trafficking in human beings by state and civil society groups. This recommended the establishment of cross-sector multidisciplinary teams made up of state-run organisations and those working in the non government sector, such as NGOs, to develop and monitor human trafficking policies. By building these partnerships between state organisations and civil society group's victim protection can be understood in all its complexities. Therefore a National Referral Mechanism (NRM) can acknowledge the broader aspects of trafficking, such as victim protection and support. Often the human rights of the victim can be overlooked by the prosecuting authorities when dealing with the criminal justice aspect of human trafficking and organised crime. Therefore a system of referrals will ensure that all victims of trafficking- and not just those participating

in criminal investigations- can receive support and protection (OSCE, 2004:18). It can also ensure that victims are not held in detention and can pursue any legal entitlements. They can also gain access to appropriate services and [for non-EEA persons] they can also apply to immigration authorities to resolve their immigration status, either with a temporary residency permit or a 'recovery and reflection' period (ibid, p.18).

## **Research Methodology**

### *Overview*

The purpose of this study was to explore the legislation and policy relating to trafficking in human beings (THB) in Ireland and the process for identifying the victims. As there is limited information relating to service provision for victims of trafficking, it was necessary to review perspectives on this subject from NGOs and state agencies who deal directly with this group. The study adopted a qualitative and interpretivist approach by using semi-structured interviews which were carried out between June and August 2010. The views and perspectives of state and non-governmental agencies were sought in order to shed light on the influence of

legislation and policy, the quality of services provided to trafficked women, and to how these services impacted on their lives after the experience of being trafficked.

#### *Research Limitations*

As the issue of human trafficking for sexual exploitation is especially sensitive, interviewing service providers, as opposed to trafficking victims, was more suitable considering the time constraints posed by this research. The information gathered sought to expose some of the issues faced by migrant women who had been trafficked into Ireland for sexual exploitation. The allocated timeframe did not permit the time it would take to build networks or trusting relationships with vulnerable trafficked women.

Additionally, the phenomenon of child trafficking was deemed to be outside the scope of this research as it raises different political and ethical issues. Therefore this research focused solely on the experiences of trafficked women (over the age of 18) for sexual exploitation.

#### *Participating organisations*

In the course of my research I interviewed participants from the following organisations:

- The Sexual Violence Centre, Cork – The Director of the centre
- The Garda National Immigration Bureau – Representative from the Human Trafficking Investigation and Co-ordination Unit.
- The Anti-Human Trafficking unit – Executive Director of the unit
- Ruhama – Public Relations officer
- Immigrant Council of Ireland – Anti-trafficking co-ordinator

## **Major Research Findings**

### *Introduction*

Under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*, a suspected victim of trafficking (if they do not have a pre-existing immigration visa to remain in the State) is entitled to (i) a 60-day ‘recovery and reflection’ period in the State and (ii) subsequent periods of 6 months temporary residency (renewable) in the event they are cooperating with an investigation or prosecution (AHTU, 2008). However, there were concerns about access to these visa

entitlements; also about how victims were being identified and the lack of input by non-governmental organisations in the identification process.

### *Victim Identification Process*

The Human Trafficking Investigation and Co-ordination Unit at the GNIB is the designated competent authority when identifying victims of trafficking (VOT's herein). The victim identification process is clearly problematic, as highlighted by the non-governmental participants:

ICI: The obstacles stem from the fact that the identification process is carried out by representatives of the GNIB, who have other functions and conflicting responsibilities. Other players, such as NGOs, health and legal practitioners do not have the opportunity to meaningfully participate in this process.

This was reiterated by Ruhama stating that service providers are not afforded the opportunity to engage with Gardaí when identifying victims of trafficking. Despite years of experience and working as a front line agency with VOT's, the system of referral between Gardaí and non governmental agencies was not reciprocated:

Ruhama: Identification needs to be done much more with recognised service providers who have worked in this field and who are experts in the area [...] it is problematic for the victim if it's left purely to the Gardaí, and also the Gardaí in charge of immigration to make the recommendation.

When questioned on the cooperation between the state and the non-governmental sector in identifying VOT's, Ruhama believed that the non governmental agencies who were experts in this field should participate in victim identification procedures. This is outlined in the OSCE National Referral Mechanism report, where the purpose of an NRM is to establish cross-sector and multidisciplinary teams to develop and monitor policies between civil society groups and state sector when identifying VOT's. However this does not extend to the victim identification process:

Ruhama: We are certainly cooperating as much as we can. There is concern that the new administration procedures, for instance, the garda if they meet a woman, the referral goes directly to HSE. We are not necessarily seen as on the system [NGOs]. It is very much a state approach. We believe it is very important that we get referrals also, as we refer on to the state".

It seems that the only forum for debate on victim identification is at the roundtable discussions between the Anti-trafficking Unit and the CEOs of the Non-Governmental

Organisations, which are held at various intervals throughout the year. This has proved contentious:

Ruhama: With the use of the wording [in the National Action Plan]. “Where necessary [...] where needed, use NGOs”. It seems advice is sought on a variety of issues but not required at time of identification.

The round table discussions were established to inform development on the National Referral Mechanism. It created an environment to review and make proposals to the existing legislation. However, suggestions from non-governmental groups are confined to round table discussions and were not required to participate in more practical issues, such as victim identification. According to the OSCE a national referral mechanism can prevent gaps in victim identification by ensuring that a combination of state and non-governmental actors are present at the time of victim identification.

However, despite anti-trafficking legislation there doesn't seem to be a uniform way of identifying suspected victims, which in turn proves problematic when trying to persuade people to come forward and give evidence to the GNIB:

Ruhama: I can't honestly say I've seen a standardised approach to [identifying victims]. When we are trying to encourage women to come forward and report the crime and all the rest, it can be quite difficult to explain to a woman what's going to happen as we're unsure from the pattern that's happening [...] as it sometimes been different for different people”.

When questioned about the criteria of the interview process to identify VOT's, the GNIB stated the following:

GNIB: The investigating Gardaí gather as much information as possible in relation to each case. All cases are different; there are no set criteria for the number of meetings or interviews which are to be carried out.

When asked about the possible problems which may arise from the victim identification process the following was contributed:

GNIB: The challenge facing Gardaí is to distinguish victims of trafficking from individuals that are being smuggled or who are independent irregular migrants. Failure to provide clear and detailed accounts of their experiences, vagueness in recollection and at times a reluctance to co-operate can hamper and delay identification and investigation

To conclude, there seems to be a clear priority in the victim identification process to identify illegal migrants. This may be hampering efforts to effectively identify VOT's in a timely manner, which in turn can cause delays and anxiety while the GNIB make their decision.

#### *Witness Statements*

According to the Anti Human Trafficking Unit it is the sole responsibility of the GNIB to grant a referral in respect of a 'recovery and reflection' period. Additionally, it was stated that the special visa entitlements should not be granted on the condition of the victim participating in a criminal investigation:

AHTU: GNIB have responsibility for ensuring that a recommendation in respect of a period of recovery or reflection or temporary residence permit or referral to a service provider is not conditional upon a potential or suspected victim participating in a criminal prosecution.

When queried about possible barriers to clear and detailed accounts of trafficking experiences the GNIB listed the following examples: traumatisation (post traumatic stress disorder), having an inherent fear of authorities/police, being under the influence of juju (African sacred ritual), and being in fear of their traffickers. These were all possible reasons suggesting why potential victims could not immediately give clear accounts of their experiences. Incidentally, fear of those in authority is cited by the OSCE (2004) as one of the main reasons why victims will not cooperate with criminal investigations. It also states that where victims fear authorities, a relationship of trust and protection must be ensured in order to meet the needs of the trafficked person. This ensures their basic human rights and further increases the possibility of prosecuting traffickers. To conclude, as stated by the OSCE, "experience shows that co-operation agreements between state and non-state actors raise the rate of successful prosecutions of human traffickers" (OSCE, 2004:65).

Nevertheless, there was the suggestion that suspected victims of trafficking were not being granted the 'recovery and reflection' period immediately, but often after many lengthy interviews with the GNIB. Therefore trafficked persons are not being given the opportunity to recover and reflect from their experiences before their involvement in a criminal investigation begins:

Ruhama: We find that some people were even giving statements before they got it [recovery and reflection] and in practice everybody seems to be giving a statement on some level.

This is contentious for several reasons: as stated above, the granting of recovery and reflection is not supposed to be conditional on a witness giving a statement, and not all victims have the same information regarding traffickers. Some have bank details, mobile phone numbers, or addresses. However, others may have limited knowledge as to their situation and may not have known even basic details, such as what town they were located in. For others, the language barrier and being moved from place to place continued the circle of confusion as to where they were or what they knew. Yet, this is the process in which victims are identified. Despite their level of expertise NGOs provide information in an advisory capacity only, and are not permitted to engage in the initial identification process.

There was also the added concern that those who identified themselves as trafficked, but who were already in the asylum system, were not being granted any special visa entitlements for contributing to criminal investigations:

ICI: The ICI is concerned that currently witness statements are taken from victims of trafficking who are part of the asylum process and as such are precluded from the possibility to obtain one of the above mentioned specialised permits and to avail of the associated protections, including provisions for non-prosecution.

This concern was also expressed by Ruhama:

Ruhama: Getting people into that [recovery and reflection] is the difficulty and the ones already in the asylum process are just left there....

The timing of the victim identification process was also criticised, as it often took months of interviews to eventually identify someone as a ‘suspected’ victim:

Ruhama: Waiting time has varied very differently...for people who ended up succeeding in getting recovery and reflection...but some people have had to wait months.....

There were also concerns about the language used in the AHTU *Summary Report of Trafficking in Human Beings in Ireland for 2009*, where the terms ‘suspected’ and ‘potential’ were used to describe different categories of trafficked victims. It was suggested by the NGO sector that the figures were incomplete and that Department of Justice was adding to an already sizeable terminology on the discourse of trafficking. 11 victims were granted recovery and reflection in 2009, 5 of whom were trafficked for sexual exploitation (AHTU, 2009b). Ruhama alone encountered 26 women in 2009 that had been trafficked for sexual exploitation (Ruhama, 2010).

Ruhama: We have a lot of concerns that Ireland is packing on layers. The DJELR uses terms like ‘potential’ victim or ‘suspected’ victim. The Department of Justice finds it very hard to actually name someone a victim of trafficking.

This concern was also expressed by the ICI:

ICI: AHTU report was re-worded [...] as there are not only 11 cases [...] they changed the whole rhetoric of that section. Now calling them a selection of the 11 cases [...] to examine [...] they are saying these are not our only cases [...] these are just a sample of our cases....

From the above statement it is clear that the Department of Justice are expanding the semantics of human trafficking. Consequently this is preventing effective identification, prolonging the ordeal for the victims and creating a situation whereby potential victims are reluctant to come forward and identify themselves as ‘trafficked’. In the time it takes to grant the recovery and reflection period victims are already contributing statements to the Gardaí. Also those already in the asylum process (40 of the 66 identified in 2009) were not given any special visa entitlements despite their possible contribution to criminal investigations.

Arguably there is a paucity of statistics in relation to identifying VOT’s, which in itself warrants further investigation. As victim identification is complicated a more nuanced understanding of the factors which drive migrants to migrate under risky circumstance needs to be taken on board if victims are to be identified and sufficiently protected. Additionally the input of non-governmental service providers would be beneficial in order to veer away from an illegal immigration perspective when dealing with VOT’s.

## **Conclusion and Recommendations**

### *Overview*

One of the central conclusions of this research was that victim identification was not being carried out in a timely or efficient manner. The failure of the Garda National Immigration Bureau to grant the ‘recovery and reflection’ visa to victims of trafficking on first identification can hinder the process of recovery and create further anxiety among this vulnerable group. It can take months to finally grant these visas and often after lengthy interview sessions, in which victims often give detailed witness statements in order to satisfy ‘reasonable grounds’ for believing a person is a

victim of trafficking (NAP, 2009:13). As illustrated in the *Council of Europe Article 13(1) on the Convention on Action Against Trafficking in Human Beings*, the purpose of the recovery and reflection is solely to enable victims to recover and escape the influence of traffickers. It is during this time that suspected victims can decide if they wish to continue with a criminal investigation. As stated in the CoE convention this period “is likely to make the victim a better witness as statements from victims wishing to give evidence to the authorities may well be unreliable if they are still in a state of shock from their ordeal” (CoE, 2005:50). Most importantly it states that the granting of the recovery and reflection period should not be conditional on their cooperating with a criminal investigation.

Additionally the definition of ‘Potential’ victim and ‘Suspected’ victim is adding to the sizeable ‘vocabulary’ of trafficking, and victims were not coming forward and identifying themselves as trafficked as there was no clear procedure or time scale within which they could be interviewed. Therefore it was difficult to encourage potential victims to come forward. Most worryingly there have been no convictions to in Ireland to date or no clear indications as to why possible cases had not gone before the DPP.

### *Recommendations*

Victims should be protected regardless of their willingness to cooperate with a criminal investigation. Victim’s rights and entitlements as outlined in the *CoE convention for Action Against Trafficking in Human Beings*, should be transposed to include all victims of trafficking, and not just those participating in criminal investigations. This is the recognised model across Europe when dealing with victims of trafficking. Specialised services should be extended to include all victims and not just those participating in criminal investigations. According to the OSCE (2004), a ‘reflection delay’ would give victims time to recover from their experiences and create a better state’s witness should a criminal investigation ensue. The OSCE guidelines should be mandatory and law enforcement agencies should identify presumed trafficked persons as trafficked during the first interrogation session (OSCE, 2004:64). This study identified gaps in the victim identification process, with identification often taking months in order to grant the potential victim the trafficking status. As stated by one of the participants there were concerns that there didn’t

appear to be a standardised approach to victim identification, and that all cases relating to the victim identification process had been different. As a result it was very difficult for NGOs to encourage women to come forward and give evidence as no standard procedure appeared to be in place.

Therefore, as outlined in the OSCE guidelines, the following would be helpful if implemented in Ireland:

- The interview procedures should be clearly outlined and the suspected victim should be well informed of the interview process and its consequences;
- The information should be clear and accurate and in the trafficked persons native language;
- Experienced interpreters should be present throughout the interview process;
- Questions relating to the person's privacy should be avoided. This includes information regarding intimate relationships or experiences in prostitution (OSCE, 2004:64).

It is recommended that Ireland guarantee the safety of victims by ensuring that all suspected victims of trafficking are granted 'recovery and reflection' period to ensure recovery and participation in criminal investigations. In order to do so victims should not be treated as asylum seekers but acknowledged as a victim of a crime perpetrated against them. Additional services as laid out under the 6-month temporary residency permit should be guaranteed to maximise recovery, and to aid participation in the criminal proceedings.

As it can take months to build trust between trafficked women and investigating authorities (OSCE, 2004) then visa applications should reflect this. A 'recovery and reflection period' and a 6-month temporary visa should be issued once there are reasonable grounds to suspect someone has been trafficked. If trust is built, then statements can be invaluable in prosecuting traffickers. Trafficked people are often told not to trust authorities, or they can be told to give false information as to their trafficker's whereabouts. It often takes longer periods to break the chain of control imposed on women by traffickers and pimps. Trafficked women are often mistrustful of people in authority, such as police or immigration officials, are therefore fearful of disclosing information to them (Zimmerman, 2003). Therefore, it may take months to

eventually disclose important information relating to their experiences. It is recommended that trafficked women are given the extended time to recover from their experiences, to build up their self-esteem and to regain confidence in those around them.

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