

Submission to the National Action Plan to Prevent and Combat Human Trafficking

Summary: The trafficking of human beings for sexual exploitation is a modern form of slavery. The Immigrant Council of Ireland (ICI) shares the Irish Government's commitment to work for the elimination of human trafficking.

The ICI welcomes the recent anti-trafficking initiatives launched by the Irish Government, namely, the publication of the Criminal Justice Bill penalising traffickers and the upcoming National Action Plan to Prevent and Combat Human Trafficking. We acknowledge that the Government has announced its intention to address the protection of victims of trafficking in the upcoming Immigration, Residence and Protection Bill. We look forward to the establishment of the High Level Anti-trafficking group and the Anti-Trafficking in Human Beings Unit. The ICI believes that these steps bring Ireland closer to the ratification of the Council of Europe Convention on Action against Trafficking and demonstrate a commitment to the EU's work towards elimination of Human Trafficking.

The ICI calls for appropriate policy responses that locate trafficking of women and children for sexual exploitation in the broad context of violence against women. Effective victim protection measures must differentiate between different forms of trafficking and provide targeted policies for protection and prevention. A gender sensitive approach in this area is essential.

The ICI calls for a full implementation of the provisions outlined in the Palermo Protocol and in the Council of Europe's Convention on Action against Trafficking, in the areas of prevention, protection and prosecution.

The ICI calls for effective resourcing of NGOs working in the area of human trafficking and for the adoption of successful models established in other jurisdictions. The essential role of the NGOs in the process of identifying and supporting of victims of trafficking should be recognised. The anti-trafficking statutory bodies should engage with and involve NGOs in the State's strategy to eliminate trafficking in human beings.

The ICI calls for an establishment of a specialised unit within the Crime Division of An Garda Síochána to combat the trafficking of women and children for the purposes of sexual exploitation.

**Submitted by the Immigrant Council of Ireland
6th December 2007**

Introduction:

The trafficking of human beings for sexual exploitation, in particular of women and children as a modern form of slavery and forced migration, has increased significantly in the last decade. There are a number of factors contributing to this, including the fact that the feminisation and internationalisation of migration is closely connected to the lives of poor women in countries that experience poverty, conflict and violence. It is not surprising that the countries of origin of many trafficked women are the poorest countries and that trafficked women are from the poorest, often rural, and less well-educated households. There has been a significant growth in the globalisation of the sex industry and demand for trafficked services has increased. Trafficking, therefore, results from a combination of poverty and inequalities between women and men, the increasing globalisation of migration networks, and a demand for sexually exploitative services.

Role of the Immigrant Council of Ireland:

The Immigrant Council of Ireland (ICI) is a national, independent non-governmental organisation that promotes the rights of migrants through information, legal advice and strategic litigation, advocacy, lobbying, research and publications, as well as training work. The organisation was set up by Sr Stanislaus Kennedy in 2001 in response to a need to support migrants coming to Ireland for purposes such as work, study, family reunification, self-employment or to visit.

The Immigrant Council of Ireland works on the issue of trafficking for the purposes of sexual exploitation. It has a three-year strategy, funded by the Religious Sisters of Charity, includes:

- a research programme (see Appendix 1) which will consider the extent of the issue and good practice responses;
- service provision and legal representation (within the migration context);
- networking and alliance building;
- communication of the issue.

The ICI welcomes the Government's recognition of the crime of trafficking to Ireland through the development of a high level anti trafficking unit and its commitment to transpose the EU Convention nationally. We would like to make the following recommendations to inform the development of Ireland's National Action Plan in transposing the EU Convention.

Key recommendations for consideration

Principles to underpin the National Action Plan:

An appropriate policy response will need to locate trafficking for sexual exploitation in the broad context of violence against women. There are signs of this approach, for example, the National Steering Committee on Violence Against Women, which is preparing a strategic plan for the next five years, will include trafficking against women as part of its focus. Women's organisations in Ireland and across Europe as well as some government initiatives, are increasingly coordinating initiatives to combat trafficking with those on violence against women.

Furthermore, an appropriate policy response needs to differentiate between different forms of trafficking in human beings and provide targeted policies for prevention and protection. A general policy approach towards the different forms could undermine the effectiveness of the efforts to protect victims and to prevent the crime of trafficking.

Many of the programmes and policies that exist in international legal norms and in practices in other jurisdictions can be summarised in two main areas. First, these concern policies that cover prosecution, protection and prevention, and second, policies that deal with issues connected to rescue, rehabilitation and reintegration. There are a range of different anti-trafficking strategies that exist in different jurisdictions that have focussed on both the demand and the supply side of trafficking. On the demand side there is a focus on the owners, consumers and sex buyers. This includes prosecution of traffickers, fighting against public corruption, improving intelligence and intercepting of trafficking routes, and measures to deal with people who exploit trafficked women. It is only in Sweden that the purchase of the services of a woman who has been trafficked, like prostitution, is illegal. Europol highlight the extent of criminal networking and criminal gangs.

On the supply side, factors cover the conditions that drive trafficking by alerting communities to the dangers of trafficking, measures that improve and expand education and employment opportunities, as well as promote equal access to education and create better life chances. According to the report of the US State Department *Trafficking in Persons Report 2006*, a number of supply factors that impact on countries of origin include poverty, lack of employment opportunities, violence against women and children, discrimination against women, government corruption, political instability and armed conflict.

There are three main areas that need addressing in policy in Ireland:

- A comprehensive legal framework
- The coordination of policy and service provision
- The provision of victim centred support services

There is a need for comprehensive legislation and policy to combat and prevent trafficking of women and girls for sexual exploitation and so that Ireland can contribute to the global elimination of trafficking. This can be informed by and result from the full implementation of the spirit and the letter of the UN Protocol, the Council of Europe Convention and EU Directives as well as by using best practice approaches in legislation in other countries to inform the content of legislation in Ireland.

It is important to fully implement the provisions in the Palermo Protocol and the Council of Europe's Convention, in the areas of *prevention, protection and*

prosecution. This needs to be set in a human rights framework. Gender sensitive anti-trafficking policy needs to be developed as part of this. The basis for policy should be developed within a human rights based approach with reference to:

- EU *Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings* 2005/C311/01
- Guidelines of the Office of the UN High Commissioner for Human Rights *Recommended Principles and Guidelines on Human Rights and Human Trafficking*
- Council of Europe: anti-trafficking campaign handbook: *Action Against Trafficking in Human Beings*
- Other relevant guidelines and standards are those developed in the European Women's Lobby's Nordic-Baltic project and the World Health Organisation's guidelines on ethical interviewing methods

Summary of the main provisions necessary for best practice in legislation and policy:

The main provisions that should be included in a National Action Plan in order to ensure a best practice approach to legislation and policy relating to trafficking are as follows: protection and support; recovery and reflection period; prosecution and prevention; measures to reduce the demand for sexual exploitation; identification of victims; specific issues concerning children; the role of NGOs; and safe return programmes and reintegration.

Protection and support:

- Measures are necessary to provide for the 'physical, psychological and social recovery' of victims (as required under the Palermo Protocol Article 6(3)).
- Specific measures include providing appropriate housing/shelter, medical, psychological and health care support; counselling, information and legal assistance in a language that the victims can understand; financial support; educational and vocational guidance; vocational training opportunities and provision of education for sustainable livelihoods; rights of education for children; access to welfare benefits etc; employment opportunities, including the possibility of obtaining a working permit.
- Provision of safe shelter and access to other services that meet the needs of trafficked women and children should not be conditional on the willingness of victims to give evidence in criminal proceedings.
- The recovery and reintegration of victims of trafficking into society (country of origin or destination) should be prioritised, including the right to work, the right to access vocational training and education, compensation and legal redress against traffickers. Victims should be given access to health care, including psychological care and treatment (not just emergency medical assistance).
- Account needs to be taken of the safety and recovery from the trauma of trafficking and protections for witnesses and victims during legal and trial proceedings. (The State should adopt and implement Council Directive 2004/81/EU, which requires signatories to attend to the special needs of the most vulnerable during the reflection period, including, where appropriate, psychological assistance).

- Protection measures for witnesses and victims during legal proceedings are needed (physical protection, relocation, identity change and assistance in finding employment). The protection of victims during trial proceedings is needed (under Article 6 of UN Convention on Human Rights) e.g. protection of a victim's private life, and where appropriate identity, safety and protection from intimidation.
- Protection and assistance measures should be extended to the families of trafficked persons.
- The burden of proof should not be on the victim / witness protection measures should be put in place.
- Victims should have access to free legal advice/representation and other assistance, with interpretation provided. Victims should be provided with protection from harm, threats or intimidation and should have the right to a fair trial.
- Provisions are needed to safeguard the rights of women and children victims under international law, under the 1951 Convention and the 1967 Protocol relating to the status of refugees. Trafficked persons should be given full opportunity to make a claim for asylum.
- It is essential that legislation providing protection and support to victims of trafficking covers not only non-EEA nationals, as would be the case if such provisions were contained exclusively in the forthcoming *Immigration, Residence and Protection Bill*, but also nationals of EU/EEA Member States and Irish nationals, bearing in mind that the internationally accepted definition of trafficking does not require the crossing of international borders in the act of the transportation of the victim. Furthermore, international evidence shows that across the EU Member States, a significant number of victims of trafficking come from other EU Member States, particularly Eastern Europe and the Baltic States.

Recovery and reflection period:

- Recovery and reflection periods and residence permits are needed. Victims should be entitled to a minimum of 30 days to recover and escape from the influence of the traffickers. Best practice approaches would indicate that the granting of a residence permit should not be made contingent on a victim's co-operation in an investigation or criminal proceedings. It should be recognised that not all victims have relevant information about the criminal gang, the gang may already have been prosecuted or in some cases the victims may be too scared for their own safety or the safety of others to press charges. In these circumstances, a victim's status or entitlement to a residence permit should not be diminished. Placing the emphasis on the protection of victims and offering a genuine means of escape from the situation of exploitation has the potential to result in beneficial results for the fight against crime by instilling trust and confidence in victims.
- Renewable residence permits (in line with Article 7 of the Palermo Protocol) of at least 6 months in length should be issued where a victim's stay is necessary owing to their personal situation or for the purpose of their participation in proceedings. (This also means adopting and implementing the EU Directive 2004/81/EC on trafficking in human beings in order to grant victims of trafficking the option of temporary residence, with a minimum of a 6-month visa. Best practice approaches would indicate that a victim should be able to apply for/long-term/permanent residence permits under general immigration rules thereafter.

- Provisions should be made for family reunification when a trafficked person is issued a residence permit.

Prosecution and prevention:

- International Conventions and European Directives state that trafficking is a criminal offence. The Council of Europe Convention includes measures to criminalise those who use the services of victims of trafficking in human beings. It is a criminal offence to produce, procure or provide a fraudulent travel or ID document or damage, retain, remove, conceal or destroy another person's ID document. Commercial companies, associations or similar legal entities are liable for criminal actions performed on their behalf.
- The European Convention enables authorities to prosecute traffickers and their accomplices without the necessity of a complaint from the victim. The Convention has a provision that enables States not to impose penalties on victims for their involvement in unlawful activities, on the basis that they have been compelled to do so.
- There is a need to address prosecution in line with the Council of Europe Convention (specifically this includes Article 18 regarding the criminalisation of trafficking in human beings; Article 19 regarding the criminalisation of the use of services of a victim; Article 20 on the criminalisation of acts relating to travel or identity documents; Article 21 on attempts, aiding or abetting; and Article 22 on Corporate Liability).
- Resources should be made available to develop a specialised Garda Unit with responsibility for anti-trafficking, based in the Crime Division. There is a need for a specialised (and appropriately staffed and financed) team of police to investigate trafficking and act as an information point for other police investigations. A police trafficking liaison/information desk should also be established to collate information on trafficking at a national level. This could include sharing expertise, information and advice with regional investigating police, including appropriate investigation techniques and victims' support and protection measures. It could ensure links between cases are recognised and information shared.
- The issue of consent needs to be addressed. Consent to leave a country cannot be used to undermine a later trafficking offence. A statement stating the irrelevance of consent needs to be included to comply fully with European and international legal norms.
- Immigration control officers and other relevant agencies should receive training to improve awareness of, and increase the rates of detection, and prosecution of offenders.

Measures to reduce the demand for sexual exploitation:

- Prevention should cover the reduction and discouragement of demand for sexual exploitation (Council of Europe Convention Article 6). With this in mind it would be appropriate to make it an offence to use the services of a victim of trafficking in the legislation (this can be undertaken with reference to the Council of Europe Convention Article 19 on the criminalisation of the use of services of a victim and Article 9, paragraph 5 of the Trafficking Protocol).

- Measures that address the risk factors associated with trafficking need to include victim support programmes that decrease the likelihood of re-trafficking.

Identification of victims:

- Victims should not be treated as illegal migrants and criminals. Failure to identify could result in a denial of fundamental human rights. During the identification process, the person cannot be removed from the territory. Special provisions for child victims aged under 18 years (child's identity and nationality; locate child's family when in the child's best interest) should be adopted.
- The Government should provide the appropriate training to relevant state authorities and officials in the identification of trafficked persons including appropriate legislative measures, guidelines and procedures, training and cooperation. According to the United Nations "A failure to identify a trafficked person correctly is likely to result in a further denial of those persons rights".
- The role of the NGOs in the process of identification of victims of trafficking process should be accepted and an effective collaboration between the state authorities and the NGOs should be developed for further verification. The NGOs should be able to avail of a similar training offered to state officials.

Compensation:

- Article 25 of the UN Convention against Transnational Organised Crime requires states to set up procedures for victims of trafficking to access compensation. This would be best fulfilled by the establishment of a fund (partly financed by assets confiscated from convicted traffickers) to provide for compensation for all victims of trafficking regardless of their cooperation with police or conviction of their traffickers.
- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims requires that each EU Member State has a national scheme in place, which guarantees fair and appropriate compensation to victims of crime. With the introduction of the Directive, the Council recognised that a vital part of support to crime victims is the possibility to get compensation for the physical and psychological injuries they have suffered. Crime victims may often find it impossible to be awarded damages from the perpetrator of the crime, since she/he may lack the means to satisfy any judgment to pay damages, or since the perpetrator may remain unknown. When the crime has been committed outside the victim's country of residence, which will often be the case in the context of trafficking, the victim may find it difficult to apply for compensation because of practical and linguistic difficulties. While Ireland has not introduced separate legislation to implement this Directive, its full implementation should be ensured through the work of the Criminal Injuries Compensation Tribunal which should be fully equipped to deal with claims of victims of trafficking.

The role of NGOs

- NGOs should be funded to support victims and should have the right to assist and support the victim (with his or her consent) during criminal proceedings.
- NGOs working with victims of trafficking are often trusted and closer to women at risk. (Under Article 27 of the CoE Convention there is a right to be recognised as

a valid organisation working with trafficked women, and be approved as an agency of expertise with the right to make submissions and be included in working groups on trafficking).

- There should be effective resourcing of NGOs working with victims of trafficking, using the models of the POPPY Project in the UK and other similar projects in other countries (i.e. Italy, Sweden and UK – see Appendix 2).
- The implementation of the plan should have clear targets, timeframes, and a monitoring mechanism that engages key-stakeholders (inclusive of NGOs) and should be written into legislation to ensure its full implementation.

Return programmes and reintegration:

- Safe and voluntary return programmes that take account of the needs of trafficked women and children, including access to residency in the country of destination or third-country resettlement if appropriate.
- In partnership with NGOs, the Governments should ensure that assistance and support is provided on return to ensure well-being, social integration, physical and psychological health, and housing, education and employment services should also be provided for returned trafficking victims.
- Return programmes need to have due regard to the rights, safety and dignity of the person. For example, the European Convention states that repatriation programmes should be established in cooperation with NGOs aimed at avoiding re-victimisation.
- Development and aid initiatives should target countries of origin of trafficked victims; this should be designed to assist with programmes of return and reintegration of trafficked victims.

Data Collation:

- Improve the knowledge of the nature and scale of human trafficking in Ireland by identifying knowledge gaps and developing targeted research strategies. Improve the collection of data on trafficking issues and develop a central point for the collation of data and information on trafficking.

Specific issues concerning children:

- Effective and sensitive measures for children who have been victims of trafficking for sexual exploitation need to be introduced in line with the UN Optional Protocol. There is also a need for prevention measures for child asylum seekers, whether as separated children, or in the context of family reunification.
- Reference should be made to the need for the full implementation of the UN Convention on the Rights of the Child.
- It is essential that the forthcoming *Immigration, Residence and Protection* legislation include provisions not only to protect unaccompanied children but also measures to ensure that adults accompanying children into the State and/or presenting as persons taking responsibility for them within the State are in fact authorised to take this role.

- It is also essential that the forthcoming *Immigration, Residence and Protection* legislation reflect international best practice standards regarding the age assessment of minors. It is not appropriate for immigration officers to be solely responsible for any 'age assessment' under the legislation. If there is any dispute as to age, the matter should be referred to an independent panel of experts. It is generally recommended that assessment should be carried out in a child and gender sensitive manner and only where there are *reasonable* grounds for believing the child is not under 18 years. In the event of remaining uncertainty any individual should be given the benefit of the doubt to avoid gross violations and detrimental effects to the welfare of children.

APPENDIX 1: Trafficking, Prostitution and the Sexual Exploitation of Migrant Women in Ireland

Commissioning Organisation: Immigrant Council of Ireland

The trafficking of women and the sexual exploitation of migrant women has become a major concern across the world and in Ireland. The Irish government is planning legislation and measures to tackle the problem following directives and protocols, which have been drawn up by the United Nations, the Council of Europe and the European Union.

The Immigrant Council of Ireland, established by Sr Stanislaus Kennedy, has commissioned research with a view to highlighting “best practice” policies for tackling the trafficking and sexual exploitation of migrant women. The research is part of an overall strategy to work in co-operation with other key agencies in developing gender sensitive approaches to legislation, policy and service provision aimed at protecting the rights of all women exploited by the sex industry in Ireland.

The objectives of the research are to:

- Document the extent and effects of the sexual exploitation and trafficking of migrant women in Ireland
- Examine the organisation and operation of the sex industry in Ireland into which migrant women are trafficked
- Develop policy proposals for legislation, national strategic plans and service provision
- Highlight how victims can be protected and supported, and how prostitution, sexual exploitation and trafficking can be prevented.

The research will:

- Collect data on the nature and causes of trafficking, prostitution and sexual exploitation of women in Ireland with specific reference to migrant women
- Interview women who have been exploited in the sex industry
- Interview service providers and key people from migrant-led organisations
- Survey international promising practice in relation to legislation, national strategic plans and service provision in order to inform Irish policy and practice.

The research will be carried out in ethical ways, which do not further stigmatise or place at risk women engaged in prostitution or in other segments of the sex industry. Women interviewed will be given a clear explanation of the purpose of the research and will be asked to give their consent. They will be given an assurance of anonymity and confidentiality and assured that they can terminate the interview at any time.

The research is being overseen by an Advisory Committee.¹

kelleherassociates in association with Jane Pillinger and Monica O’Connor is carrying out the research.

¹ Denise Charlton, CEO, Immigrant Council of Ireland; Stanislaus Kennedy, Chair, RSC, Immigrant Council of Ireland; Grainne Healy, Chair, European Observatory on Violence against Women; Ursula Barry, University College Dublin; Linda Regan, Child and Woman Abuse Studies Unit, London Metropolitan University; Kathleen Fahy, Director, Ruhama; Rebecca Dudley, NIHRC; Rosemary Byrne, IHRC; Dug Cubie, IOM; Linda Latham / Kathryn McGrath, Women’s Health Project; Helen Atkins, POPPY Project; Catherine Cosgrave, Senior Legal Advisor, ICI; Hilka Becker, Senior Solicitor, ICI; Sr Sheila Wall, Cori Anti trafficking group; Nusha Yonkova, Anti trafficking Co-ordinator, ICI.

APPENDIX 2:

Examples of different country approaches:

Italy: wide ranging legislation provides victims of trafficking with support and protection. International best practice in relation to trafficking visas can be found in Italy, where: Article 18 of Law 286 of 1998 provides renewable six month stay permits to victims of exploitation who are in danger as a result of escaping. The stay permit includes an obligation for the victim to take part in a social assistance and reintegration program offered by NGOs and community projects in Italy. There are currently approximately 49 integration programmes run by NGOs and local authorities. The stay permit includes the right of access to social services and education, enrolment with state employment bureau and access to employment. The stay permit does not require the victim to take part in investigations or prosecution. This has resulted in many women ultimately bringing criminal charges against perpetrators having first gained trust in the law enforcement / prosecutorial agencies. Ultimately, a person can gain access to permanent residency under the generally applicable immigration rules.

An example of an innovative voluntary organisation in the Marche Region and along the Atlantic coast, *On the Road*, is working with prostitution and the trafficking of human beings for the purpose of sexual exploitation, with a particular focus on migrant women and minors, who are often victims of trafficking organised by criminal organisations. The women face multiple forms of discrimination and disadvantage, as migrants, as former prostitutes and as women. Most have few educational qualifications and language skills, and existing educational qualifications are not recognised. The project works within an outreach model with street workers, outreach units, drop in centres and vocational guidance, training and social and occupation integration. Structured activities and services are tailored to the people who are affected. Street work and outreach services are provided by intercultural mediators who come from the same geographic or linguistic area as the target group. Individualised programmes are provided, often with multiple interventions in areas such as housing, health, psychological support, protection and security, legal assistance, education and training activities, vocational guidance, language training, and social and occupational insertion. Training programmes, work experience and ongoing support are also provided as part of the project. Since the project started in 1998, over 38 women have successfully accessed the job market.

Sweden: there is a best practice approach to tackling trafficking of women for sexual exploitation linking prostitution to trafficking. Since 1999, Swedish prostitution has been defined and legislated as male violence against women and children so that purchasing sexual services is a criminal offence – this means that women and children who are victims of prostitution do not risk any legal repercussions. Swedish law “that prohibits the purchase of sexual services as a particularly apt expression against the demand side of trafficking, for it not only formally condemns the use of prostituted person, but does so in a context which explicitly recognized the gendered nature of commercial sex industry”²

Sections of Chapter 6 of the Swedish Penal Code are also relevant: Section 3: A person who induces another person to engage in a sexual act by gross abuse of his

² See Special Rapporteur on trafficking report to the UN High Commissioner Feb 2006

or her dependant state shall be sentenced for sexual exploitation to imprisonment for at most two years. The same shall apply to a person who engages in a sexual act with another person by improperly taking advantage of the fact that the latter is helpless or in some other state of incapacitation or is suffering from a mental disturbance. If the accused has exhibited particular ruthlessness or if the crime is otherwise to be considered gross, imprisonment for at least six months and at most six years shall be imposed for gross sexual exploitation

UK: a new Action Plan (2006) on trafficking aims to coordinate all of the work that takes place across government agencies on human trafficking; to identify gaps and areas requiring further consideration; increase transparency and provide for a more strategic and holistic approach to tackling trafficking. The action plan situates trafficking in a human rights framework and aims to strike a balance between human rights, enforcement and support, protection and assistance for victims. A UK Human Trafficking Centre (UKHTC) has been established to develop expertise and operational co-ordination in relation to the trafficking of human beings. It is a multi-agency centre which links the immigration service and law enforcement, and has a victim centred human rights based approach to tackling human trafficking. Specific resources are provided for projects to protect and assist victims. Protection and assistance of victims takes place in three areas:

- Improving identification and referral procedures and practices to help liberate victims from exploitation and enable them to access appropriate support services;
- Enhancing the support available and extending the rights for adult victims; and
- Assisting in the re-integration and resettlement of victims and helping prevent re-trafficking.

Specific measures are introduced on child trafficking by coordinating work already being carried out, improving child protection measures and providing specially trained multi agency teams of immigration staff, police and social workers, also trained in child protection, alongside multi-agency work with agencies and organisations working with children.

In the UK, the POPPY Project run by Eaves Housing, has since 2003 provided accommodation and support for adult victims of trafficking for sexual exploitation and there has been a good partnership with policy and governmental agencies in supporting victims. In 2006, the government entered into a two year £2.4 million funding agreement to expand the project. This model of support is now a recognised example of best practice both domestically and internationally. The Action Plan states that the lessons from the evaluation of the project will be used to develop guidance on service standards and create a network of appropriate services across the UK. In Scotland, the TARA Project was established in 2004 to provide advice and support to women who have been trafficked into Scotland for the purposes of sexual exploitation and to help existing service providers to meet the needs of vulnerable women.