HESTIA
AGAINST HUMAN TRAFFICKING

Immigrant Council of Ireland
Independant Law Centre

EXPLOITATIVE SHAM MARRIAGES AND HUMAN TRAFFICKING IN IRELAND

IRISH NATIONAL REPORT

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Published by: Immigrant Council of Ireland
2 St. Andrew Street
Dublin 2, Ireland
Information Helpline: +353 1 6740200
Admin: +353 1 6740202
Email: admin@immigrantcouncil.ie
Website: www.immigrantcouncil.ie

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Written by: Catherine Cosgrave, Dr Monica O'Connor and Nusha Yonkova

Edited by: Minna Viuhko, Anni Lietonen, Anniina Jokinen and Matti Joutsen. This study was carried out under the guidance of the European Institute for Crime Prevention and Control (HEUNI)

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About the Authors

Catherine Cosgrave
Catherine Cosgrave is the Legal Services Manager at the Immigrant Council of Ireland. She is a law graduate of University College Dublin, the University of Edinburgh and the Honourable Society of the Kings Inns. Following graduation, Catherine qualified as a barrister and subsequently became a solicitor. In 2013, she was appointed as the founding Director of the Law Centre for Children and Young People (Ireland), an independent human rights organisation promoting access to justice for children and young people.
Before taking up this role, she spent 13 years in legal practice specialising in human rights and migration law during which time she developed a particular interest in the rights and protections afforded to victims of trafficking and children in care. In addition to legal practice, she has worked as a legal trainer/consultant and lecturer at the University of Limerick and the Dublin Institute of Technology. She is a member of the Board of Management of Canal Way Educate Together National School.

Dr Monica O'Connor
Dr Monica O'Connor is an independent researcher and policy analyst. She is the author and co-author of numerous publications on violence against women including 'Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland' (Kelleher Associates, O'Connor & Pillinger, 2009), which was commissioned by the Immigrant Council of Ireland. In 2010 she was awarded a three-year scholarship from the Irish Research Council to undertake doctoral research examining the issues of choice, consent, agency and harm in the lives of prostituted and trafficked women in Ireland, which was completed in 2014. Dr O'Connor has since acted as the principal investigator in a comparative research project led by the Immigrant Council of Ireland, across six Member States of the European Union, entitled 'Upholding Rights! Early Legal Intervention for Victims of Trafficking'.

Nusha Yonkova
Nusha Yonkova is the Anti-trafficking Manager at the Immigrant Council of Ireland, an independent human rights organisation and a licensed Law Centre. Presently, she is conducting employment-based doctoral research overseen by University College Dublin, School of Social Policy, Social Work and Social Justice, exploring gender-sensitive approaches to assistance and protection of victims of human trafficking. This work is sponsored by the Irish Research Council. Nusha has been working exclusively in the area of human trafficking for the last 9 years and has authored a range of policy documents and reports as well as coordinated research activities undertaken by national and transnational teams. She holds a MSc in Engineering and a MA in Intercultural Studies from Dublin City University in Ireland. In 2008, she became the first migrant woman elected to the Executive Board of the National Women's Council of Ireland. In 2013 and 2014, Nusha served as the elected Chair of the European Network of Migrant Women, a pan-European network.

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IMMIGRANT COUNCIL OF IRELAND
Foreword

Within the European Union, Freedom of Movement is a precious, vital and far reaching expression of the human desire to seek opportunities elsewhere, and is a cornerstone of the rights enshrined in the European project and its Treaties. We at the Immigrant Council of Ireland believe that the movement of citizens within the EU is in essence its lifeblood, and one of the most profound and enriching aspects of our shared European experience. While it is rightly seen by most to bring immense positive impacts, Freedom of Movement is not without its complexity in terms of some of the challenges it presents, as can be expected. Finding the necessary balance between the need to protect and enshrine the core ideals and rights of Freedom of Movement for individuals and families on the one hand and the prevention of any crimes or abuses on the other has proven a challenging task for EU Member States and the Union as a whole. Concerns on the part of State agencies around criminality and security cannot exist in isolation and must be informed by concepts of human rights and dignity. Similarly, concepts of human rights and dignity must have within them mechanisms that react strongly against exploitation and abuse by those such as human traffickers.

Over the years, the Immigrant Council of Ireland has steadfastly maintained that any measures intended to prevent criminal activity or abuses of policies and legislation must be proportionate and must not infringe on the rights of EU nationals and their family members to settle in Ireland and live their lives free of undue scrutiny or suspicion of wrongdoing. Similarly, the Immigrant Council of Ireland as an Independent Law Centre is proud to have represented clients of migrant background who came to our services describing serious rights abuses within their marriages, ranging from issues such as domestic violence to human trafficking. As an organisation, we do not shy away from difficult issues or emerging areas of concern where there are individuals trapped in human rights abuses.

For this reason, the Immigrant Council of Ireland was honoured to accept the invitation to join the avant-garde project of the Latvian Ministry of Interior 'Preventing Human Trafficking and Sham Marriages: a Multidisciplinary Solution'. In broad terms, our aim has been to explore the intersection between two phenomena: exploitative sham marriages (understood as marriages between EU and non-EU nationals for the purpose of immigration advantage where exploitation of one or both parties has occurred) and secondly, trafficking in human beings. It is our belief that this project has made significant progress in highlighting and exploring the existing nexus between these two issues.

The research contained within this report has been conducted in Ireland and is a result of a ten month effort between February and December 2015, whereby researchers used legal review and a qualitative study involving case studies and interviews with professionals encountering human trafficking and exploitative sham marriages. The findings indicate a highly organised system of targeting, recruitment and exploitation of vulnerable young women from EU countries and the coercion of these women into exploitative sham marriages. It was established that alongside appalling experiences of physical and psychological abuse, clear indicators of human trafficking were present in many of the cases, including targeting of vulnerability,

deception, movement, control and exploitation.

This study was carried out under the guidance of the European Institute for Crime Prevention and Control in Finland and represents one of the 5 studies conducted simultaneously in the project's participating countries, namely Lithuania, Slovakia, Latvia, Estonia and Ireland. The Immigrant Council of Ireland has been very privileged to partner on this initiative and to collaborate with the Ministry of Interior of the Republic of Latvia, Lietuvos Caritas (Lithuania), Ministry of the Interior of Slovak Republic, NGO "Shelter "Safe House"" (Latvia), NGO Living for Tomorrow (Estonia), and The European Institute for Crime Prevention and Control (Finland).

On behalf of the Immigrant Council of Ireland, I would like to extend our gratitude to our Irish associate partner in this project, namely the Department of Justice and Equality (the Anti-Human Trafficking Unit). We would also like to thank the Irish Naturalisation and Immigration Services, An Garda Síochána (Garda National Protective Services Bureau) as well as to the Women's Health Service and the Anti-Human Trafficking Team of the Health Service Executive and the Civil Registration Service.

Similarly, I would like to express our sincere thanks to other agencies and Embassies in Ireland with whom we worked collaboratively to develop this evidence base, and whose case studies, information and analysis made this project possible. Thank you to Ruhama, Doras Luimní, Adapt Domestic Abuse Services and the Embassies of Latvia, Lithuania, Estonia and Portugal. I would also like to commend and thank the research team and to thank my colleagues at the Immigrant Council of Ireland who contributed to the study and the realisation of the project in Ireland.

Finally, and most importantly, I sincerely thank Rada* for sharing her personal experience.

*Rada is not her real name.

Brian Killoran

CEO, Immigrant Council of Ireland

National Manager of 'Preventing Human Trafficking and Sham Marriages: A Multidisciplinary Solution - HESTIA'

ACRONYMS

AHTT	Anti-Human Trafficking Team
AIA	Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking
CJEU	Court of Justice of the European Union
EEA	European Economic Area
EU	European Union
HRC	Habitual Residence Condition
HSE	Health Services Executive
INIS	Irish Naturalisation and Immigration Service
GNIB	Garda National Immigration Bureau
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
NGO	Non-Governmental Organisation
RIA	Reception and Integration Agency
TCN	Third Country National (a person who is not a citizen of the EU or EEA)

Executive Summary

In recent years, there have been growing concerns that family reunification entitlements may be misused as a route into settlement in the European Union (EU)[1] and that marriages of convenience might be used in this context for immigration advantage. The latter scenario is commonly referred to as sham marriages.

The issue of sham marriage in Ireland has been the subject of much political debate and legal controversy, as have the measures introduced by the Irish authorities in their attempts to prevent and address perceived abuses of the domestic immigration system in that context.

The sham marriage problem has only been linked to human trafficking in the past few years, in reference to cases presenting to consular and other services, such as refuges, where there are indicators of trafficking. However, the nexus between the two phenomena remained unexplored and there has been little or no research examining the nature or scale of the problem. Consequently, in 2014, the European Commission provided funding to undertake research into the situation in five EU countries – Latvia, Lithuania, Estonia, the Slovak Republic and Ireland, which emerged as the only destination country in the research project. The Immigrant Council of Ireland Independent Law Centre (ICI), an organisation that has been to the fore in identifying the issue of human trafficking for the purposes of sexual exploitation in Ireland and seeking to ensure that the rights of victims are protected fully, undertook the research for this Ireland country report.

It is important to note that there have been many legislative and administrative changes, as well as Irish police operations, in this area of law and policy in recent months. The research for this report was conducted throughout 2015 and is based on the limited information that was available in Ireland at that time. It reflects the position until December 2015.

Two sets of policy and law are relevant to sham marriages and human trafficking, and their relationship to each other plays an important part of the focus of this study. On the one hand, the entry and residence of EU citizens and their family members in Ireland is regulated by Directive 2004/38/EC, which was transposed into national law by the domestic regulations the European Communities (Free Movement of Persons) Regulations 2006 and 2008 (the Regulations)[2]. On the other hand, there are legislative and administrative measures regarding Ireland's international obligations to combat human trafficking, in particular the EU Trafficking Directive.

The legal framework relating to sham marriages

Third country national (TCN) family members must make an in-country application to the Irish Naturalisation and Immigration Service (INIS) for a residence card. Family members are required to submit an application form along with original supporting documentary evidence (including evidence of the identity of the applicant

1. MN Report Misuse of the Right to Family Reunification (2012) available at http://bookshop.europa.eu/en/marriages-of-convenience-and-false-declarations-of-parenthood-pbDR3212278/
2. S.I.No310/2008-European Communities (Free Movement of Persons) (Amendment) http://www.irishstatutebook.ie/eli/2008/si/310/made/en/print

and the EU citizen family member, evidence of their relationship, evidence of their residence in Ireland and evidence of the current activities of the EU citizen). The Regulations do not specifically empower the Minister for Justice and Equality or immigration officers acting on behalf of the Minister to require the applicant and their family member to attend an interview during the application process, but service providers report that this does happen in some cases. TCN family members must also register with the Garda National Immigration Bureau (GNIB).

Applications for residence permits may be refused. Article 27 of the 2004/38/EC Directive, as transposed by Regulation 19(1) of the Regulations, provides for interference with rights on the grounds of public policy, public security or public health.

In addition, under Article 35 Member States may refuse, terminate or withdraw any right conferred by the Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any measures taken should be proportionate and are subject to the procedural safeguards provided for in Articles 30 and 31 regarding the notification of decisions, and access to both judicial and administrative redress procedures to appeal against or seek a review of any decision taken against a person on the grounds of public policy, security or health. In respect of Article 35 (measures to tackle abuse of rights or fraud in Ireland), Regulation 24 of the Regulations provides for the immediate cessation of rights where it is established that a person to whom the Regulations apply has acquired rights by fraudulent means. Regulation 24(2) provides that "fraudulent means" includes marriages of convenience. The term 'marriages of convenience' itself, however, is not defined in the Regulations.

Sham marriage and judicial scrutiny

The processing of EU residence permit applications, including decisions to refuse to grant residence cards, has been the subject of various legal challenges in Ireland. The Irish authorities argued that the requirement of TCN family members to demonstrate prior lawful residence in another Member State, which was not provided for in the 2004/38/EC Directive, was a necessary measure to combat sham marriage and was the subject of a legal challenge before the Irish and European Courts. In Metock[3], which did not concern an alleged 'marriage

3. Case-127/08 Metock and others v Minister for Justice, Equality and Law Reform [25 July 2008], available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0127. This case concerned four TCNs who had unsuccessfully applied for political asylum in Ireland and then married EU citizens who resided in Ireland. Their applications for residence cards as spouses of EU citizens were refused by the Irish authorities on the grounds that they did not satisfy the condition of prior lawful residence in another Member State, as laid down in Irish law. The decisions of the Irish authorities were challenged and the Irish High Court, after finding that none of the marriages in question was a marriage of convenience, referred the cases to the European Court of Justice for a preliminary ruling on the interpretation of Directive 2004/38/EC on the right of citizens of the EU and their family members to move and reside freely within the Member States in order to establish whether the Directive precludes legislation of a Member State that makes the right of residence of a national of a non-member country subject to the conditions of prior lawful residence in another Member States and acquisition of the status of spouse of a citizen of the EU before his/her arrival in the host Member State. The Court determined that the Directive does not make its application conditional on the beneficiaries (namely the family members of a citizen of the EU) having previously resided in a Member State. The Court found that if EU citizens were not allowed to lead a normal family life in the host Member State, the exercise of their guaranteed freedoms would be seriously obstructed, since they would be discouraged from exercising their rights of entry into and residence in that Member State. The Court observed that Member States could refuse entry and residence on grounds of public policy, public security or public health, with the refusal being based on an individual examination of the particular case. The Court also observed that the Member States could refuse any right conferred by the Directive in the case of abuse of rights or fraud. The Court also held that a non-Community spouse of an EU citizen who accompanies or joins that citizen can benefit from the Directive, irrespective of when and where their marriage took place and of how that spouse entered the host Member State. The Court stated that the Directive did not require that the EU citizen must have already founded a family at the time when he moves for his family members to enjoy the rights established by the Directive. The Court also stated that it made no difference whether the family members of an EU citizen enter the host Member State before or after becoming family members of the citizen.

legal challenge before the Irish and European Courts. In Metock[4], which did not concern an alleged 'marriage of convenience', the Court of Justice of the European Union (CJEU) ruled that this requirement was contrary to the Directive and amending Regulations were introduced in Ireland.

Decisions to refuse to grant a residence card have also been the subject of a number of Irish High Court decisions. The case of Tagni[5] examined various issues, including the required time frame for decisions at first instance and, if refused, on appeal. The Court ruled that the six-month time limit for decisions, provided for in the Directive, is mandatory and must be respected in all cases. If the Minister is uncertain of the genuine nature of an application for a residence card and is suspicious that the claim may be fraudulent, but the applicant has provided the required documentation, the Minister has no choice but to grant the residence card within six months. If clear evidence of fraud subsequently emerges, the Minister may then take steps to revoke the residence card.

The issue of 'marriages of convenience' was raised in the Irish courts in the case of Izmailovic[6]. It concerned a challenge to an objection lodged at short notice by An Garda Síochána to a proposed marriage between an EU citizen and her Egyptian fiancé on the grounds that it was a marriage of convenience and that the matter was being investigated by the GNIB. One issue considered was whether the grounds for the objection – a suspected marriage of convenience designed to circumvent the immigration rules – came within the scope of Section 58(1) of the Civil Registration Act 2004[7]. It was determined that the power to object was confined to impediments to marriage in the sense in which that term had been traditionally used, namely prohibited degree of relationship, incapacity, age, marital status and gender[8]. The High Court determined that, even if well intentioned, An Garda Síochána was not empowered to prevent the solemnisation of a marriage on the grounds that they suspect the marriage is one of convenience.

The Court held that, as the law stood at that time, any review of the marriage to ascertain if it was a marriage of convenience, having regard to the terms of the Regulations, could only take place after (and not before) the fact of solemnisation.

4. Case-127/08 Metock and others v Minister for Justice, Equality and Law Reform [25 July 2008], available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008CJ0127. This case concerned four TCNs who had unsuccessfully applied for political asylum in Ireland and then married EU citizens who resided in Ireland. Their applications for residence cards as spouses of EU citizens were refused by the Irish authorities on the grounds that they did not satisfy the condition of prior lawful residence in another Member State, as laid down in Irish law. The decisions of the Irish authorities were challenged and the Irish High Court, after finding that none of the marriages in question was a marriage of convenience, referred the cases to the European Court of Justice for a preliminary ruling on the interpretation of Directive 2004/38/EC on the right of citizens of the EU and their family members to move and reside freely within the Member States in order to establish whether the Directive precludes legislation of a Member State that makes the right of residence of a national of a non-member country subject to the conditions of prior lawful residence in another Member States and acquisition of the status of spouse of a citizen of the EU before his/her arrival in the host Member State. The Court determined that the Directive does not make its application conditional on the beneficiaries (namely the family members of a citizen of the EU) having previously resided in a Member State. The Court found that if EU citizens were not allowed to lead a normal family life in the host Member State, the exercise of their guaranteed freedoms would be seriously obstructed, since they would be discouraged from exercising their rights of entry into and residence in that Member State. The Court observed that Member States could refuse entry and residence on grounds of public policy, public security or public health, with the refusal being based on an individual examination of the particular case. The Court also observed that the Member States could refuse any right conferred by the Directive in the case of abuse of rights or fraud. The Court also held that a non-Community spouse of an EU citizen who accompanies or joins that citizen can benefit from the Directive, irrespective of when and where their marriage took place and of how that spouse entered the host Member State. The Court stated that the Directive did not require that the EU citizen must have already founded a family at the time when he moves for his family members to enjoy the rights established by the Directive. The Court also stated that it made no difference whether the family members of an EU citizen enter the host Member State before or after becoming family members of the citizen.
5. Tagni v Minister for Justice, Equality and Law Reform [2010] IEHC 85
6. Izmailovic & Anor v The Commissioner of An Garda Síochána [2011] IEHC 32
7. Section 58 sets out the grounds upon which a marriage may be objected to: http://www.irishstatutebook.ie/eli/2004/act/3/section/58/enacted/en/html#sec58
8. Until the introduction of the Marriage Act 2015, it was not possible for two people of the same sex to enter into a marriage in Ireland

Recent legislative developments concerning sham marriages

In 2014, the Civil Registration Act 2004 was amended to define marriage and civil partnerships of convenience as one where at least one of the parties to the marriage is a TCN and enters into the marriage solely for the purpose of securing an immigration advantage for at least one of the parties to the marriage[9].

Under this legislation, registrars in the Civil Registration Service have the power to form an opinion on whether an intended marriage constitutes a marriage of convenience and, consequently, if there is an impediment to the marriage. Section 18 of the Civil Registration (Amendment) Act 2014 sets out the criteria that the registrars may consider in forming an opinion as to whether an intended marriage would constitute a marriage of convenience. These include:

- whether the parties to the intended marriage speak a common language
- the period prior to the relevant notification of the intended marriage during which the parties to the intended marriage were known to each other
- the number and frequency of meetings of the parties to the intended marriage prior to the notification of the intended marriage
- if the parties to the intended marriage have lived together in the past or if they currently live together
- the extent to which each party to the intended marriage is familiar with the personal details of the other party
- the extent to which each party to the intended marriage intends to continue an existing commitment to the mutual emotional and financial support of the other party to the intended marriage
- the immigration status of one or each of the parties to the intended marriage who is a foreign national
- if money was paid as an inducement for the marriage, other than in a case where money is paid as a dowry as appropriate to the culture of one or each party to the intended marriage
- if one or both of the parties to the intended marriage has previously been the subject of an objection under the provisions of the legislation
-

9. The recently published 2015 Regulations also define a 'marriage of convenience'. Regulation 28(6) provides that "marriage of convenience" means "a marriage contracted, whether inside or outside the State, for the sole purpose of obtaining an entitlement under (a) the Council Directive or these Regulations, (b) any measure adopted by a Member State to transpose the Directive, or (c) any law of the State concerning the entry and residence of foreign nationals in the State or the equivalent law of another state". Regulation 28(5) provides the Minister for Justice with powers to determine whether a marriage is a 'marriage of convenience' and indicates the matters that the Minister may take into account to make such a determination, which mirror those provided for in the Civil Registration Act. Where the Minister has reasonable grounds for considering that the marriage is a marriage of convenience, they may send a notice to the parties to the marriage requiring the persons concerned to provide, within the time limit specified in that notice, such information as is reasonably necessary, either in writing or in person, to satisfy the Minister that the marriage is not a marriage of convenience (Regulation 28(2)). The Minister may refuse to grant or revoke a residence permit on the basis of fraud or abuse of rights, including a marriage of convenience (Regulation 27(1) and (4)).

- any other information regarding the intended marriage that gives reasonable grounds for considering the marriage to be a marriage of convenience

If a registrar forms an opinion that an intended marriage would constitute a marriage of convenience based on the criteria above, or receives an objection and forms the opinion that the grounds for the objection need to be investigated, the matter shall be referred to a Superintendent Registrar. If, following investigation, the Superintendent Registrar decides that, based on evidence, the proposed marriage constitutes a marriage of convenience, a marriage registration form will not be issued and the Department of Justice and Equality will be notified.

The parties to the intended marriage must be notified of the objection, the grounds for the objection, the investigation and that solemnisation of the marriage will not proceed until the investigation is completed. If it is ultimately decided that there is an impediment to marriage, then a party to a proposed marriage may appeal against the decision to the Circuit Family Court.

Following the enactment of the legislation, the Minister for Justice and Equality stated that it would "strengthen the arm of the State in tackling marriages of convenience and associated immigration abuses"[10]. The legislation came into effect in August 2015 but, shortly after, it was reported that registrars were not willing to comply with the new measures due to a lack of consultation[11] and the need for registrars to be provided with adequate training[12]. It therefore remains to be seen whether the legislation, including the newly published 2015 Regulations, will have the effects intended by the Minister or whether they will also be the subject of a constitutional legal challenge before the courts.

In this regard, although mindful of concerns regarding allegations of exploitation, commentators have questioned whether the proper point of control should be at the granting of residency to already married couples and not at the point of the marriage contract.

Legal regulation of trafficking in Ireland with regard to international obligations

Ireland is a party to all main international treaties relevant to trafficking in human beings. The State acceded to the UN Convention on the Elimination of Discrimination Against Women (CEDAW) in 1985. In 2010, Ireland ratified both the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the UN Convention against Transnational Organized Crime (the Trafficking Protocol), and the Council of Europe Convention on Action against Trafficking in Human Beings. Ireland is also a signatory to the European Convention on Human Rights, which has been incorporated into Irish law at a sub-constitutional level by the European Convention on Human Rights Act 2003.

Ireland is bound by the EU Trafficking Directive[13]. Other relevant applicable EU legislation includes Directive

10. INIS (26 January 2015). 'Immigration in Ireland – 2014'. Press Release. Available at http://www.inis.gov.ie/en/INIS/Pages/Immigration%20in%20Ireland%20%E2%80%93%202014
11. 'Marriage registrars fail to comply with rules on sham unions', Irish Times, 24 September 2015, available at http://www.irishtimes.com/news/politics/marriage-registrars-fail-to-comply-with-rules-on-sham-unions-1.2365149
12. 'Effective ban on marriages of Irish to non-EU citizens lifted', Irish Times, 3 December 2015 available at http://www.irishtimes.com/news/social-affairs/effective-ban-on-marriages-of-irish-to-non-eu-citizens-lifted-1.2453269
13. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims

2004/80/EC, which relates to compensation to crime victims and Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012, which establishes minimum standards on the rights, support and protection of victims of crime. In July 2015, the Minister for Justice and Equality published the Heads of Criminal Justice (Victims of Crime) Bill, which is intended to transpose the latter Directive into Irish law but which, to date, has not been enacted. When enacted, victims of crime and their families, including victims of human trafficking, will have enhanced rights to recognition, privacy, information and protection.

Domestic legal framework on trafficking

As Ireland is a dualist state, international law needs to be incorporated into domestic Irish law to have direct legal effect. To give effect, in whole or in part, to Ireland's international obligations, the Criminal Law (Human Trafficking) Act 2008 was enacted.

The legislation provides the criminal legislative framework for the prosecution of traffickers and criminalises the forms of trafficking in human beings covered by the Trafficking Protocol and the Council of Europe Convention, which includes labour and sexual exploitation.

The anti-trafficking legislation was amended in 2013 by the Criminal Law (Human Trafficking) Amendment Act 2013 to include forced labour, forced begging and forced engagement in criminal activities. The legislation provides for penalties of up to life imprisonment and, at the discretion of the court, an unlimited fine.

Identification, support and assistance to victims of trafficking

The 2008 Act does not provide for the identification of victims of trafficking. The rights of victims of trafficking to support and protection have not been placed on a statutory footing. These were provided for separately in the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (AIAs)[14], which were intended to be a temporary measure. However, they still stand and there are no published Government plans to place the protection of victims of trafficking on a legislative basis.

The AIAs provide for the issuing of a 60-day recovery and reflection period, a six-month renewable temporary residence permission on condition of cooperation with authorities in an ongoing investigation and changes of immigration status, after certain conditions have been met (for example, they must have three years of temporary residence permission and have continued to cooperate with authorities).

However, the AIAs are of limited scope and only apply to undocumented foreign nationals, defined as a person from outside the European Economic Area (EEA). In practice, therefore, EU citizens and individuals who have applied for international protection are excluded from accessing the social protections and other benefits envisaged for victims of such crimes.

14. Available at: http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf

For instance, the right of residence for economically inactive EU citizens may be subject to restrictions. Access to social welfare payments is prevented due to habitual residence condition (HRC) requirements under social welfare legislation, which may lead to difficulties for EU citizen victims of trafficking in accessing appropriate social protections.

The absence of statutory protections for victims of trafficking and the restrictions arising from the AIAs have been the subject of criticism, in particular by international monitoring bodies[15]. In particular, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) Committee Report 2013[16] urged the Irish authorities to ensure that all victims were properly identified and could benefit from the assistance protection measures contained in the Convention, in particular by amending the relevant regulations to allow asylum seekers, EEA nationals and Irish nationals to be formally identified as victims of trafficking and guaranteeing that identification would not be contingent on the suspected victim's cooperation in the investigation.

The question of effective transposition of the EU Trafficking Directive has been the subject of legal proceedings in Ireland. In a recent judgment of the High Court, the current victim identification process was deemed to be inadequate[17]. Since this judgment in April 2015, there have been no formal amendments to the victim identification process.

Aside from the identification process, the Anti-Human Trafficking Team (AHTT) of the Health Service Executive (HSE) is responsible for developing individual care plans for victims of trafficking under the statutory national action plan 2009-2012[18]. Potential victims are referred to this service from the GNIB. The team then assesses and plans care with the individual according to their particular needs and within the limitation of the existing policies.

Many of their general health and social welfare issues are addressed (such as housing, finances, medical concerns, family issues, social welfare benefits etc). Some concerns exist regarding the lack of appropriate accommodation for particularly traumatised victims of sexual abuse, which is touched on in the field research section. Staff also support people through the investigation process with the GNIB and liaise with all the statutory and NGO services who can offer additional support to victims of trafficking[19].

Potential or suspected victims of trafficking are provided with the same accommodation and ancillary services as those provided to newly arrived asylum seekers, namely direct provision reception centres, which are

15. Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Ireland from 30 January to 2 February 2012 http://www.osce.org/secretariat/99775?download=true; Trafficking in Persons Report 2015 http://www.state.gov/documents/organization/243559.pdf
16. GRETA (2013) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf
17. P. v Chief Superintendent of the Garda National Immigration Bureau & Ors [2015] IEHC 222. In this case, the applicant had spent almost three years in detention in prison, much of that time waiting for a decision on her application to be recognised as a victim of human trafficking. See IHREC, 'IHREC calls for immediate action to protect victims of human trafficking following High Court Judgment', [press release], 15 April 2015, http://www.ihrec.ie/news/2015/04/15/ihrec-calls-for-immediate-action-to-protect-victim/
18. National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012
19. http://www.hse.ie/eng/services/list/5/sexhealth/whp/Anti_human_trafficking_team.html

arranged by the Reception and Integration Agency (RIA)[20]. The RIA is a functional unit of the INIS, which is a division of the Department of Justice and Equality. The Legal Aid Board provides legal aid and legal advice to potential and suspected victims of trafficking in both civil and criminal cases[21].

Overall, the attempts to introduce effective measures to address sham marriages and trafficking provided for under the relevant Directives are proving a challenge for the Irish authorities. The EU Citizenship and Trafficking Directives have not been transposed entirely, effectively or correctly, as evidenced by some of the case law that has emerged in the Irish and European courts. It remains to be seen whether Operation Vantage and the new powers conferred on marriage registrars will be implemented and deemed effective in addressing sham marriages and abuses of the immigration system.

It is likely that EU free movement, residence entitlements, sham marriages and effective responses to victims of trafficking will continue to be the subject of political debate and legal challenge, both domestically and regionally, particularly in light of Ireland's failure to transpose the relevant Directives correctly.

Methodology of the field research

In addition to the legislative and policy overview presented so far, field research on exploitative sham marriages was conducted in Ireland as part of the overall transnational research study led by the European Institute for Crime Prevention and Control. Fourteen interviews were conducted with key stakeholders, including NGO front-line services, embassy staff, the Department of Justice and Equality, An Garda Síochána and one victim of a sham marriage.

Case studies were provided by the Latvian (five) and Lithuanian (one) embassies. They represented a sample of exploitative sham marriages highlighting common elements embassy staff had observed. Further case studies were provided by NGOs, including Ruhama which responds to women engaged in prostitution and women trafficked to Ireland for sexual exploitation; Adapt a domestic violence shelter that also helps women at risk of trafficking and sham marriages; the Immigrant Council of Ireland Independent Law Centre which provides support and legal advocacy and representation to migrants in Ireland; and Doras Luimní, a migrant support and advice centre.

Statistical data was provided by the Latvian and Estonian embassies and the INIS, and some media reports from Garda operations were also included. It was clarified that the term sham marriage is generally meant to describe a consensual business marriage between an EU citizen and a TCN, in which one party gains residency in a desired state and the other party benefits financially. In this research, the term exploitative sham marriage was used to express the potential for or presence of exploitation in the context of the sham marriage.

Latvian and Estonian perspective

20. http://www.ria.gov.ie/en/RIA/Pages/Background
21. http://www.legalaidboard.ie/lab/publishing.nsf/content/Human_Trafficking_Legal_Advice_and_Aid

After joining the EU in 2004, the Latvian embassy in Ireland noticed a high proportion of Latvian women marrying TCNs in Ireland. Initially, the marriages appeared to be purely business arrangements. However, in 2009 the embassy reported a new profile of women entering sham marriages; they were typically young, uneducated women from impoverished regions of Latvia. Many of these women reported experiencing exploitation. Of particular concern was the proportion of highly vulnerable young women and, in a number of cases, women with mental health difficulties.

From October 2010 to August 2013, 500 Latvian citizens visited the embassy regarding a planned marriage – the vast majority of whom were female. Out of these 500 citizens, 450 had arrived in Ireland just shortly before registering the marriage. The majority of these women were under 20 years old, came from large families in impoverished regions, married Pakistani or Indian men, and did not receive any payment other than food and accommodation. Some of these women had children before the marriage and only three of the Latvian citizens involved in suspected sham marriages were men. In 2012, four of the women who registered for marriage suffered from a disability. Groups of two or more biologically related women entered into marriages around the same time under similar circumstances.

The Latvian embassy reported that there were clear indicators of trafficking and expressed concern to the Irish authorities. GNIB failed to identify elements of trafficking stating that sham marriage was not referred to in current Irish trafficking legislation. In 2013, the Latvian government responded by introducing legislation that criminalised those in a sham marriage and clarified, in line with Directive 2011/36/EU, that trafficked persons who had been forced to commit the crime would be exempt from criminal liability. This legislation also introduced preventive measures, mandated investigations, and provided support for victims.

From 2011 to 2014, the Latvian embassy reported 233 potential Latvian human trafficking victims in Ireland, yet Irish authorities did not identify any victims of trafficking within the context of a sham marriage at that time.

In 2009, the Estonian embassy began expressing concern regarding the proportion of Estonian nationals marrying TCNs in Ireland. Similar to the Latvian embassy, the Estonian embassy found that the majority of the women entering sham marriages were young, uneducated and most often married men from the Asian sub-continent, particularly from Pakistan and India. The embassy reported these findings to the Irish authorities but received little response at the time.

Irish police investigation into sham marriages

In 2014, the INIS launched Operation Vantage, with a view to investigating possible sham marriages in Ireland. From November 2014 to July 2015, 1,697 marriages between EU and non-EU nationals were recorded by the General Register Office. After excluding marriages involving Irish nationals, 914 marriages were analysed. The majority of men (80%) were non-EU nationals and most originated from Pakistan (36%), India (12%) or Bangladesh (8%). Most women (80%) were EU nationals, with the largest group originating from Portugal (26%) followed by Latvia (8%). A clear pattern of males from the Indian sub-continent (Pakistan, India and

Bangladesh) marrying EU national females from Portugal and Eastern European countries (mainly Latvia, Romania, Hungary and Estonia) is evident.

The INIS stated that it believed a significant proportion of these weddings were marriages of convenience for the men to secure an immigration advantage. Following this report, the Portuguese embassy voiced its concerns at the large proportion of Portuguese women in Ireland marrying TCNs, stating that these young vulnerable women may be at risk of exploitation.

Case studies findings

To gain a deeper understanding of risk and vulnerability factors, patterns of targeting and recruitment, and the experiences of exploitation of the women in sham marriages, 13 case studies and one interview with a woman who had been exploited in a sham marriage in Ireland were analysed.

Risk and vulnerability factors

Several common risk factors were identified, including teenage pregnancy and a background of domestic violence, neglect, sexual abuse, and foster and/or institutional care at a young age. The most common risk factors for women being recruited for sham marriages and exploitation were family breakdown and extreme poverty. The majority of women were uneducated and had no workable knowledge of English, and a concerning number of women had mental disabilities.

At the time of recruitment, all of the women were vulnerable to exploitation – all were experiencing financial difficulty, many were living in unsuitable accommodation and some were struggling to care for their children. Service providers working directly with victims of exploitative sham marriages believed that there was ample evidence of deliberate, organised and systematic recruitment of women.

Recruitment and organisation

All of the women had some pre-existing connection with their recruiter, who was a family member, a friend or a friend of the family from their country of origin. Recruiters were both male and female and worked either with other recruiters of the same nationality that resided in Ireland or directly with the TCNs. Recruiters did not coerce the women into migrating to Ireland; the promise of a better life, escape from extreme poverty and the allure of Western European life were among the main motivational factors for the women. Some women were promised jobs, others were told they would enter a business marriage but would be provided with alternative accommodation, and one believed she was visiting a friend. For many, there was no mention of a sham marriage and only two women were promised a specific amount of money.

Experiences upon arrival in Ireland

When the women arrived in Ireland, they were met either by organisers who were of their own nationality or by their potential husband. They were then brought to their accommodation, most of which housed a number of men, and were closely monitored. The women were immediately economically dependent on these men and isolated in a strange country of which language they knew little. Many women had their papers taken, reported that their movements were tightly controlled and had little or no access to outside support.

Exploitation

Women reported multiple forms of exploitation – most commonly sexual assault, rape and physical abuse – by individuals or several perpetrators – that lasted several weeks, months or years. Some women became pregnant during their time in Ireland by the husband or another man. Even when the husband was not the biological father he often claimed paternity, viewing it as something that would help his application for residency.

Trafficking indicators

This research revealed that there were clear indicators of trafficking; there was evidence of targeting and abuse of vulnerability, deception in the country of origin and exploitation in the destination country. Key informants stated that there was systematic targeting and recruitment of young vulnerable women and clear cooperation between recruiters in the origin country and organisers in Ireland. There was a deliberate intention to exploit, although in some cases it may be difficult to establish that the sexual exploitation was the primary motive or intention of the recruiters and merits further investigation. It was also noted that, in a small number of cases, the husbands faced a risk of exploitation by the organisers and one woman reported that her husband was being exploited in employment.

Financial gains

The women in this study did not seem to have any knowledge of financial transactions. However, Garda information has revealed that huge profits were being accrued by the organisers. Very few women received money and those that did were only paid enough to meet basic needs of food and accommodation. Marriage proceedings and papers were arranged by the husbands and often the registration of marriage and ceremonies took place throughout Ireland or outside the country, which may have been done deliberately to avoid suspicion.

Response to the individuals affected

Ireland's official response to victims of exploitative sham marriages was perceived by the non-State respondents

as totally inadequate. Consistent attempts were made by embassy staff and NGO service providers to obtain support and protection from the Irish authorities for women seeking their help, and to identify them as victims of trafficking. The majority of women in the case studies directly called or went to their respective embassy for help and some went to An Garda Síochána.

Embassies and NGOs provided psychological support, legal advice and the provision of basic things such as toiletries and clothing. Embassies arranged flights and papers and worked with shelters and NGOs in the origin country to help victims return home. Many victims were traumatised and needed access to health care, welfare, sexual health services, rape crisis centres and interpreters. Despite an overall lack of policy and willingness of the State to acknowledge these woman as victims of trafficking with specific needs, specialist services in Ireland provided a wide range of support for victims, including accommodation, health care and legal advice.

Failure to identify potential victims of trafficking

The failure of the GNIB to recognise the indicators of trafficking in sham marriages is unsurprising and telling of the overall ineffective identification process for human trafficking victims in Ireland. What is particularly relevant to these cases is that suspected victims of trafficking in Ireland are denied the benefits of a recovery and reflection period if they are EU nationals, as they are deemed to have the right to remain in the state.

While victims can still be accommodated in direct provision centres (which were established for individuals seeking asylum in the state) without being formally identified, they have no legal right to a recovery and reflection period; welfare support; private accommodation; or assistance with education, employment and long-term recovery strategies – all of which are afforded to identified victims. Furthermore, the fact that sham marriage is not specifically mentioned in the legislation, appears to have contributed to the failure to identify these cases as trafficking.

It is also worth noting that, even if women had been identified, they would have been placed in direct provision accommodation, which has been severely criticised as unsafe and inappropriate, and in some cases has resulted in re-victimisation.

It is important to note that this research only examines the question of investigation of potential offences of human trafficking. Even where individuals were not identified as victims of human trafficking, other serious offences may have been the subject of investigation by An Garda Síochána.

Conclusions and recommendations

To provide the wider context, this research report has outlined information regarding the overall regulation

of sham marriages and human trafficking in Ireland. However, the recommendations outlined below are specifically and exclusively focused on the issue of exploitative sham marriage where there are indicators of trafficking.

- Reform of the identification process for victims of trafficking in Ireland
  It is recommended that the review of the identification process for victims of trafficking is carried out with utmost urgency. It is also recommended that the renewed arrangements will lead to the following process:

- When a designated first responder/agency/Garda (Irish police officer) identifies a person as a potential victim of trafficking, including victims of exploitative sham marriages, the person would be immediately referred to a designated specialist support service where a risk and needs assessment would be carried out.

- The person should also have access to appropriate emergency accommodation, especially for victims of sexual abuses, in-depth support and legal advice at the earliest opportunity.

- Where the first responder provides reasonable grounds to suspect that the person has been trafficked, a referral should be made under the National Referral Mechanism (NRM) for a recovery and reflection (R&R) period, regardless of the immigration status or the nationality of the victim. This would include EEA nationals and asylum seekers, and it should involve the issue of a residence permit where such is required. This R&R period should be issued within five days, enabling the service/agency to offer on-going protection and support.

- The purpose of the R&R period is to allow time for the person involved to recover from their traumatic experience and to take an informed decision about their future, including whether they wish to cooperate with the authorities and police in Ireland. If they wish to do so, they should be referred to the Garda National Protection Services Bureau (GNPSB) and an advocate or legal representative should accompany them when they go to make their statement.

- If, during those interviews, the GNPSB believe there is evidence to trigger an investigation, or in cases where the personal circumstances linked to age, health, pregnancy, nature of abuse and trauma require that the person remains in Ireland, the person should be formally identified as a victim of trafficking by way of written communication to the victim and her legal representative.

- As an alternative to the GNPSB, a referral should be made to a panel of accredited experts who would be able to formally identify a person as a victim of trafficking, where a submission to this effect has been made by the victim or her legal representative.

- In the case of a victim who does not have permission to be in the State, including asylum seekers, they should be issued with a temporary residence permit to ensure they are granted the full set of rights and supports designated to trafficked victims in the State, including the right to s private residence, vocational training and work.

- Provision of supports to victims of other crimes against the person

In the case where there is insufficient evidence of trafficking but there is evidence that crimes against the person have been committed (including assault, sexual assault and rape) the person should be acknowledged as a victim of crime and provided with appropriate supports for the exploitation experienced. Similar arrangements as for victims of trafficking need to be in place, which allow for that person to remain in Ireland and have access to support and welfare for the duration of the investigation. In the case of EU citizens, the habitual residence condition needs to be waived for that person to have access to refuge provision, private rented accommodation and welfare support.

- Resources for first responders

The work with victims of trafficking and exploitative sham marriages is complex and resource intensive. It is essential that service providers have sufficient resources to provide best-practice responses, including appropriate safe accommodation and a wide range of supports. Early legal intervention by specialist legal practitioners must also be resourced as such intervention is critical for victims to access their rights and entitlements and to enable successful prosecutions.

- Training for General Registrars and immigration officers

Special training is needed for General Registrars and immigration officials to enable better identification of suspected victims, including recognising subtler forms of exploitation such as may occur within exploitative sham marriages, and to ensure that the implementation of law and administrative procedures in respect of marriages and the processing of residence applications by TCNs generally are applied in a proportionate and non-discriminatory manner.

- Bilaterals/police/NGO cooperation between the origin states and Ireland

International human rights provisions highlight the importance of coordination and inter-agency mechanisms for tackling trafficking based on partnerships between public authorities, law-enforcement agencies and NGOs. There should be cooperation between the Member States to monitor this and other emerging trends, to identify victims of trafficking and other crimes, to provide appropriate supports and to develop effective law-enforcement responses and measures to prevent exploitation. To facilitate the informed nature of this necessary inter- and intra-states cooperation, the EUROSTAT report should pay special attention to emerging and less-recognised forms of exploitation in trafficking, such as the one occurring in the context of marriage. Efforts should be made at EU level to gather statistical information capturing these new trends with a view to informing timely prevention.

- Data and further research

To assist evidence-based policy making and evaluate the effectiveness of law and administration, the Irish authorities should collect and publish data annually on the number of visa and residence permit applications made, the number of visa applications and residence permits granted and refused, as well as the reasons for refusals. Any such data should be disaggregated by showing nationality, gender and age of the applicants and their family members.

Section 1: Introduction

In recent years, there have been growing concerns, most notably by policy makers, that family reunification entitlements may be misused as a route into settlement in the European Union (EU)[22].

In Ireland, the issue of sham marriage has been the subject of much political debate and legal controversy, as have the measures that have been introduced by the Irish authorities in their attempts to prevent and address perceived abuses of the domestic immigration system by individuals entering in marriages for the sole purpose of gaining residence entitlements in Ireland[23]. There has been widespread media coverage of various operations, such as Operation Charity[24] and, more recently, Operation Vantage[25], conducted by An Garda Síochána (the Irish police) to intervene in individual cases and to investigate sham marriage operations[26].

Whilst some concerns had been expressed regarding exploitation of vulnerable EU citizens[27], until recently issues related to sham marriage have generally not been linked with human trafficking[28]. However, in the past few years, authorities and non-governmental organisations (NGOs) across Europe have identified cases presenting to consular and other services, such as refuges, where there are indicators of trafficking.

To date there has been little or no research examining the nature or scale of the problem. Consequently, in 2014, the European Commission provided project funding to undertake research regarding the situation in five EU countries - Latvia, Lithuania, Estonia, the Slovak Republic and Ireland, which is the only destination country included in the research project. The Immigrant Council of Ireland Independent Law Centre (ICI), an organisation that has been to the fore in identifying the issue of human trafficking for the purposes of sexual exploitation in Ireland and seeking to ensure that the rights of victims are protected fully, undertook the research for this Ireland country report.

At the outset, it is important to note that this is an area of law and policy where there have been many legislative and administrative changes, as well as Irish police operations, in recent months. The research for this report was conducted throughout 2015 and is based on the limited information that was available in Ireland at this time. It reflects the position until December 2015.

22. EMN Report Misuse of the Right to Family Reunification (2012) available at http://bookshop.europa.eu/en/marriages-of-convenience-and-false-declarations-of-parenthood-pbDR3212278/
23. INIS Press Release 'Sham marriages leading to abuses of EU freedom of movement rights', 9 June 2011, available at http://www.inis.gov.ie/en/INIS/Pages/PR11000007
24. 'Few Legal Means to Restrict Rise in Bogus Unions', Irish Times, 17 August 2010, http://www.irishtimes.com/news/few-legal-means-to-restrict-rise-in-bogus-unions-1.638680
25. '200 Gardaí involved in nationwide searches in massive sham marriage probe', The Irish Independent, 25 November 2015 http://www.independent.ie/irish-news/200-gardai-involved-in-nationwide-searches-in-massive-sham-marriage-probe-34233842.html See also: 'Gardaí arrest 11 in suspected sham marriage scam', The Irish Times, 26 November 2015.
26. Operation Vantage commenced in August 2015. The operation has focused on the disruption of the organisers and facilitators behind this process and it is reported that a number of investigations are underway. Further information on Operation Vantage is provided throughout the report, in particular in Chapter 2.3 and Chapter 2.4.
27. See, for example,: http://brophysolicitorsimmigration.blogspot.ie/2011/09/eu-treaty-rights. html
28. Existing research regarding trafficking has focused on trafficking for the purposes of sexual exploitation in the sex industry. See, for example, Kelleher et al, Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland (ICI, 2009).

Section 2: The legal framework relating to sham marriage and trafficking in Ireland

2.1 Introduction

In Ireland, as with all EU Member States, EU citizens and their family members are permitted to enter and reside in Ireland in accordance with the provisions of the EU Citizenship Directive[29]. Chapter 2.2 sets out the general legal framework governing applications for residence in Ireland by third-country family members of EU nationals and the specific measures, including the powers of civil marriage registrars, to prevent alleged abuses. The entitlements to enter and reside are, of course, not absolute and applications may be and are refused in some instances. It is clearly not the case that all marriages between EU citizens and third country nationals, including failed asylum seekers or those who may be unlawfully residing, are sham and, equally, residence applications may be refused on other grounds where there are no concerns arising regarding the bona fides of the family relationship.

As previously noted, until recently issues related to sham marriage have not been linked with trafficking and there are entirely separate legislative and administrative measures introduced to give effect to Ireland's international obligations to combat human trafficking, in particular the EU Trafficking Directive[30]. For this reason, chapter 2.3 sets out the relevant anti-trafficking legislation, as well as the Administrative Immigration Arrangements for the protection of suspected victims of human trafficking.

2.2 Legal framework relating to sham marriage

The entry and residence of EU citizens and their family members in Ireland is regulated by Directive 2004/38/EC, as transposed into national law by domestic regulations, the European Communities (Free Movement of Persons) Regulations 2006 and 2008 (the Regulations)[31].

In respect of third country national (TCN) family members, an in-country application for a residence card must be made to the Irish Naturalisation and Immigration Service (INIS) and there is also a registration requirement with the Garda National Immigration Bureau (GNIB). The relevant residence application and registration requirements are set out in Regulation 7 of the Regulations and applications must contain the particulars set out at Schedule 2. As a matter of administrative practice, family members are required to submit an application form, together with necessary original supporting documentary evidence, including evidence of identity of the applicant and the EU citizen family member, evidence of their relationship, evidence of their residence in Ireland and evidence of the current activities of the EU citizen[32]. There is no information

29. Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
30. Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.
31. European Communities (Free Movement of Persons) (No. 2) Regulations 2006 and 2008 (Statutory Instrument No. 656 of 2006) (Irish Regulations 2006 and 2008) and the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (Statutory Instrument No. 310 of 2008) (Irish Regulations 2008) (referred to as the Irish Regulations 2006 and 2008). In December 2015, revised European Communities (Free Movement of Persons) Regulations 2015 (Statutory Instrument No. 548 of 2015) (2015 Regulations) were published. These new Regulations will revoke the 2006 Regulations but will not be commenced until 1 February 2016.
32. See the information provided by the EU Treaty Rights Section, INIS available at http://www.inis.gov.ie/en/inis/pages/eu%20treaty%20rights

publicly available regarding how the applications are considered by the INIS once received. The Regulations do not specifically empower the Minister for Justice and Equality or immigration officers acting on behalf of the Minister to require the applicant and their family member to attend for an interview in the course of processing the application but service providers report that this does happen at least in some cases.

Applications for residence permits may be refused. Article 27 of the Directive, as transposed by Regulation 19(1) of the Regulations, provides that interference with rights is permitted on grounds of public policy, public security or public health. These grounds should not be invoked to serve economic ends and any restrictions must comply with the principle of proportionality and be based exclusively on the personal conduct of the individual concerned. Personal conduct must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and any such threat must be identified within three months of the date of arrival in the territory.

In addition, under Article 35 Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by the Directive in the case of abuse of rights or fraud, such as marriages of convenience. Any such measures shall be proportionate and subject to the procedural safeguards provided for in Articles 30 and 31 regarding notification of decisions and access to both judicial and administrative redress to procedures to appeal against or seek review of any decision taken against a person on grounds of public policy, security or health. In respect of Article 35, measures to tackle abuse of rights or fraud in Ireland, Regulation 24 of the Regulations provides for the immediate cessation of rights where it is established that a person to whom the Regulations apply has acquired rights by fraudulent means. Regulation 24(2) provides that "fraudulent means" includes marriages of convenience. The term 'marriages of convenience' itself, however, is not defined in the Regulations (see further chapter 2.2.2 below).

2.2.1 Sham marriage and judicial scrutiny

The processing of EU residence permit applications, including decisions to refuse to grant residence cards, has been the subject of various legal challenges in Ireland. When the Directive was first transposed into Irish law, Regulation 3(2) made the right of residence of TCN family members conditional upon their prior lawful residence in another Member State. This requirement, which was not provided for in the Directive, was argued by the Irish authorities as a necessary measure to combat sham marriage, (referred to as 'marriages of convenience') and was the subject of legal challenge before the Irish and European Courts. In Metock[33],

33. Case-127/08 Metock and others v Minister for Justice, Equality and Law Reform [25 July 2008], available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62008 CJ0127. This case concerned four TCNs who had initially unsuccessfully applied for political asylum in Ireland and then married EU citizens who resided in Ireland. Their applications for residence cards as spouses of EU citizens were refused by the Irish authorities on the ground that they did not satisfy the condition of prior lawful residence in another Member State, as laid down in Irish law. The decisions of the Irish authorities were challenged and the Irish High Court, after finding that none of the marriages in question was a marriage of convenience, referred the cases to the European Court of Justice for a preliminary ruling on the interpretation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States in order to establish whether the Directive precludes legislation of a Member State which makes the right of residence of a national of a non-member country subject to the conditions of prior lawful residence in another Member States and acquisition of the status of spouse of a citizen of the Union before his/her arrival in the host Member State. The Court determined that the Directive does not make its application conditional on the beneficiaries, family members of a citizen of the Union having previously resided in a Member State. The Court found that if EU citizens were not allowed to lead a normal family life in the host Member State, the exercise of their guaranteed freedoms would be seriously obstructed, since they would be discouraged from exercising their rights of entry into and residence in that Member State. The Court observed that Member States could refuse entry and residence on grounds of public policy, public security or public health, the refusal being based on an individual examination of the particular case. The Court also observed that the Member States could refuse any right conferred by the Directive in the case of abuse of rights or fraud. The Court also held that a non-Community spouse of an EU citizen who accompanies or joins that citizen can benefit from the Directive, irrespective of when and where their marriage took place and of how that spouse entered the host Member State. The Court stated that the Directive did not require that the EU citizen must have already

which did not in fact concern an alleged 'marriage of convenience', the Court of Justice of the European Union (CJEU) ruled that this requirement was contrary to the Directive, and amending Regulations were introduced.

Decisions to refuse to grant a residence card have also been the subject of a number of Irish High Court decisions, including Tagni[34]. The case concerned a failed asylum seeker who applied for a residence permit on the basis of his marriage to an EU citizen exercising freedom of movement for work purposes and the decision of the High Court examined various issues, including the required time-frame for decisions at first instance and, if refused, on appeal. Edwards J. [judge] held that the six month time limit provided for by Article 10 of the Directive is mandatory and must be respected in all cases. In the case that the Minister is uncertain regarding the genuine nature of an application for a residence card on the basis of a suspicion that the claim may be fraudulent, but the applicant has provided required documentation, the Minister has no choice but to grant the residence card within the six month time-frame. If clear evidence of fraud subsequently emerges, the Minister may then take steps to revoke the residence card.

The issue of 'marriage of convenience' was raised in the Irish courts in the case of Izmailovic[35], which concerned a challenge to an objection lodged at short notice by An Garda Síochána to a proposed marriage between an EU citizen and her Egyptian fiancé on the grounds that it was a marriage of convenience and that the matter was being investigated by the GNIB. One issue considered was whether the ground of objection, a suspected marriage of convenience designed to circumvent the immigration rules, came within the scope of Section 58(1) of the Civil Registration Act 2004[36]. It was determined that the power to object was confined to impediments to marriage in the sense in which that term had been traditionally used, namely prohibited degree of relationship, incapacity, age, marital status and gender[37]. The High Court determined that even if well intentioned, An Garda Síochána was not empowered to prevent the solemnisation of a marriage on the grounds that they suspect that the marriage is one of convenience. Although no application for a residence permit had been made or refused in the particular case, the court nonetheless did make a number of observations regarding the residence entitlements provided for under the relevant Regulations.

The Court held that as the law stood at that time any review of the marriage to ascertain if it is a marriage of convenience is one which, having regard to the terms of the Regulations, can only take place after (and not before) the fact of solemnisation. Hogan J. [judge] stated that "this is clear from the actual language of Article 24 of the 2006 Regulations itself, since it provides that where it is established that a person to whom the Regulations apply "has acquired any rights or entitlements under these Regulations by fraudulent means" then "that person shall immediately cease to enjoy such rights or entitlements." The italicised words thus envisage an administrative review of whether the marriage is a marriage of convenience after the event… and must also be hedged in with appropriate procedural safeguards." Such a marriage would be a valid marriage for all purposes other than EU Treaty rights. The question of whether the TCN family member could be deprived of the prima facie benefits of the marriage for the purposes of the 2006 Regulations is one which is committed to a senior official of the Minister by Article 21 of the Regulations in the manner envisaged by Article 31 of the Directive.

founded a family at the time when he moves, in order for his family members to enjoy the rights established by the Directive. The Court also stated that it made no difference whether the family members of an EU citizen enter the host Member State before or after becoming family members of the citizen.

34. Tagni v Minister for Justice, Equality and Law Reform [2010] IEHC 85
35. Izmailovic & Anor v The Commissioner of An Garda Síochána [2011] IEHC 32
36. Section 58 sets out the grounds upon which a marriage may be objected to: http://www.irishstatutebook.ie/eli/2004/act/3/section/58/enacted/en/html#sec58
37. Until the introduction of the Marriage Act 2015, it was not possible for two people of the same sex to enter into a marriage in Ireland.

2.2.2 Recent legislative developments

Since the judgment in Izmailovic, and perhaps following the conclusions and recommendations to Ireland arising from the Universal Periodic Review 2011[38], the Civil Registration Act 2004 has been amended and marriage and civil partnerships of convenience are now defined. Section 3 of the Civil Registration (Amendment) Act 2014[39] provides that a marriage (or civil partnership) of convenience means where at least one of the parties to the marriage is a third country national and enters into the marriage solely for the purpose of securing an immigration advantage for at least one of the parties to the marriage[40].

Under this legislation, registrars in the Civil Registration Service have the powers to form an opinion on whether an intended marriage constitutes a marriage of convenience and, consequently, if there is an impediment to the marriage. Section 18 of the 2014 Act (amending Section 58 of the 2004 Act) sets out the criteria that the registrars may consider in forming an opinion as to whether an intended marriage would constitute a marriage of convenience, which include:

- whether the parties to the intended marriage speak a common language,
- the period prior to the relevant notification of the intended marriage during which the parties to the intended marriage were known to each other,
- the number and frequency of meetings of the parties to the intended marriage prior to the notification of the intended marriage,
- if the parties to the intended marriage have lived together in the past or if they currently live together,
- the extent to which each party to the intended marriage is familiar with the personal details of the other party,
- the extent to which each party to the intended marriage intends to continue an existing commitment to mutual emotional and financial support of the other party to the intended marriage,
- the immigration status of one or each of the parties to the intended marriage who is a foreign national,
- other than in a case where money is paid as a dowry as appropriate to the culture of one

38. UN Human Rights Council Report of the Working Group on the Universal Periodic Review – Ireland 2011 available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/175/20/PDF/ G1117520.pdf?OpenElement
39. Available at: http://www.irishstatutebook.ie/eli/2014/act/34/enacted/en/html
40. The recently published 2015 Regulations, referred to above at footnote 8, also define a 'marriage of convenience'. Regulation 28(6) provides that "marriage of convenience" means 'a marriage contracted, whether inside or outside the State, for the sole purpose of obtaining an entitlement under (a) the Council Directive or these Regulations, (b) any measure adopted by a Member State to transpose the Directive, or (c) any law of the State concerning the entry and residence of foreign nationals in the State or the equivalent law of another state'. Regulation 28(5) provides the Minister for Justice with powers to determine whether a marriage is a 'marriage of convenience' and indicates the matters that the Minister may take into account in order to make such a determination, which mirror those provided for in the Civil Registration Act. Where the Minister has reasonable grounds for considering that the marriage is a marriage of convenience, he or she may send a notice to the parties to the marriage requiring the persons concerned to provide, within the time limit specified in that notice, such information as is reasonably necessary, either in writing or in person, to satisfy the Minister that the marriage is not a marriage of convenience (Regulation 28(2)). The Minister may refuse to grant or revoke a residence permit on the basis of fraud or abuse of rights, including a marriage of convenience (Regulation 27(1) and (4)).

or each party to the intended marriage, if money was paid as an inducement for the marriage,

- if one or both of the parties to the intended marriage has previously been the subject of an objection under the provisions of the legislation, and
- any other information regarding the intended marriage which gives reasonable grounds for considering the marriage to be a marriage of convenience.

If a registrar forms an opinion that an intended marriage would constitute a marriage of convenience based on the criteria listed above, or receives an objection that the intended marriage is one of convenience and forms the opinion that grounds for the objection possibly exist and need to be investigated, the matter shall be referred to a Superintendent Registrar. If, following investigation, the Superintendent Registrar decides that based on evidence, the proposed marriage constitutes a marriage of convenience, then a marriage registration form will not be issued and the Department of Justice and Equality shall be notified. Where there is an objection to the marriage, Section 58 of the 2004 Act provides that the parties to the intended marriage must be notified of the objection, the grounds of the objection, the investigation and that solemnisation of the marriage will not proceed until the investigation is completed. If it is ultimately decided that there is an impediment to marriage, then a party to a proposed marriage may appeal to the Circuit Family Court against the decision.

Following the enactment of the legislation the Minister for Justice and Equality stated that it would 'strengthen the arm of the State in tackling marriages of convenience and associated immigration abuses'[41]. The legislation did not in fact enter into force until August 2015. Shortly after the commencement of the legislation it was reported that registrars were not willing to comply with the new measures due to a lack of consultation[42] and need for registrars to be provided with adequate training[43].

It therefore remains to be seen whether the legislation, including the newly published 2015 Regulations, will have the effects intended by the Minister or whether they will also be the subject of a constitutional legal challenge before the courts on grounds of, for example, a disproportionate interference with the protected right to marry or that the burden to prove the marriage is a sham is on the State rather than the parties to the marriage to provide it is genuine[44]. In this regard, although mindful of concerns regarding allegations of exploitation, commentators have raised questions as to whether the proper point of control then, should be at the granting of residency to already married couples and not at the point of the marriage contract[45].

41. INIS (26 January 2015). 'Immigration in Ireland – 2014'. Press Release. Available at http://www.inis.gov.ie/en/INIS/Pages/Immigration%20in%20Ireland%20%E2%80%93%202014
42. 'Marriage registrars fail to comply with rules on sham unions', Irish Times, 24 September 2015, available at http://www.irishtimes.com/news/politics/marriage-registrars-fail-to-comply-with-rules-on-sham-unions-1.2365149
43. 'Effective ban on marriages of Irish to non-EU citizens lifted', Irish Times, 3 December 2015 available at http://www.irishtimes.com/news/social-affairs/effective-ban-on-marriages-of-irish-to-non-eu-citizens-lifted-1.2453269
44. See, for example, the recent UK Court of Appeal judgment in Agho v SSHD [2015] EWCA Civ 1198
45. 'Preventing Marriages of Convenience in Ireland', Human Rights Blog 18 August 2010, available at http://humanrights.ie/children-and-the-law/preventing-marriages-of-convenience-in-ireland/

2.3 Legal regulation of trafficking in Ireland

2.3.1 International obligations

Ireland acceded to the UN Convention on the Elimination of Discrimination Against Women (CEDAW) on 23 December 1985. In 2010, Ireland ratified both the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime (the Trafficking Protocol), and the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention entered into force in Ireland on 1 November 2010. Ireland is also a signatory to the European Convention on Human Rights which has been incorporated into Irish law at a sub-constitutional level by the European Convention on Human Rights Act 2003.

Ireland[46] is bound by the EU Trafficking Directive[47]. Other relevant applicable EU legislation includes Directive 2004/80/EC relating to compensation to crime victims. It was not considered necessary to introduce new legislation to implement this Directive as it was considered that it was "implemented via the existing national scheme of compensation for personal injuries criminally inflicted"[48]. That scheme is operated by the Criminal Injuries Compensation Tribunal and provides for out of pocket expenses only.

Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime came into effect on 16 November 2015. In July 2015, the Minister for Justice and Equality published the Heads of Criminal Justice (Victims of Crime) Bill, which is intended to transpose the Victims' Directive into Irish law but which, to date, has not been enacted. When enacted, victims of crime and their families, including victims of trafficking in human beings, will have enhanced rights to recognition, privacy, information and protection.

2.3.2 Domestic legal framework

As Ireland is a dualist state, international law requires incorporation into domestic Irish law in order to have direct legal effect. To give effect, in whole or in part, to Ireland's international obligations, the Criminal Law (Human Trafficking) Act 2008 was enacted.

The legislation provides the criminal legislative framework for the prosecution of traffickers and criminalises the forms of trafficking in human beings covered by the Trafficking Protocol and the Council of Europe Convention, which includes labour and sexual exploitation. In accordance with Section 1 of the Act, 'labour exploitation' includes enslavement of the person or subjecting him or her to servitude or a similar condition or state, and 'sexual exploitation' includes the production of pornography, the prostitution of the person, the commission of various sexual offences against the person as identified in the Sex Offenders Act 2001 or otherwise causing the person to engage or participate in any sexual, indecent or obscene act.

The anti-trafficking legislation was subsequently amended in 2013 by the Criminal Law (Human Trafficking)

46. Ireland opted out of Directive 2004/81/EC 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.
47. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.
48. See Dáil Question 1106, 26 January 2006 of Ruairi Quinn TD to the Minister for Justice and the Minister's Response https://www.kildarestreet.com/wrans/?id=2006-01-25.3735.0

Amendment Act 2013 to include forced labour, forced begging and forced engagement in criminal activities. The legislation provides for penalties of up to life imprisonment and, at the discretion of the court, an unlimited fine.

2.3.3 Identification, support and assistance to victims of trafficking

The 2008 Act does not provide for the identification of victims of trafficking and the rights of victims of trafficking to support and protection have not been placed on a statutory footing. These were provided for separately in the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (AIAs)[49], published in 2008 by the Department of Justice and Law Reform (now Department of Justice and Equality) and updated in March 2011. The AIAs were originally intended to be a temporary measure pending the enactment of the Immigration Residence and Protection Bill 2010. However, this draft legislation has not progressed and there are currently no published Government plans to place the protections of victims of trafficking on a legislative basis.

The AIAs provide for the issuing of a 60 day recovery and reflection period, a six month renewable temporary residence permission on condition of cooperation with authorities in an ongoing investigation, voluntary repatriation and changes of status to longer term status, after certain conditions have been met. Identified victims of trafficking are issued with a temporary residence permit, which enables them to access social protections and benefit payments, employment and education/training.

However, the AIAs are of limited scope and are stated to only apply where a foreign national is identified as a person suspected of being a victim of human trafficking and the Minister for Justice and Equality is required to consider that person's immigration status in the State. Additionally, the AIAs apply to a foreign national who is identified as a suspected victim of human trafficking, that is, 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 or Section 3 (other than subsections (2A) and (2B)) of the Child Trafficking and Pornography Act 1998. For the purpose of the AIAs a 'foreign national' means a person from outside the European Economic Area (EEA). In practice, therefore, EU citizens and individuals who have applied for international protection are effectively excluded from accessing the social protections and other benefits envisaged for victims of such crime.

Arising from the EU Citizenship Directive, there are no restrictions placed on EU citizens accessing the labour market. However, the right of residence for economically inactive EU citizens may be subject to restrictions and, access to social welfare payments, other than discretionary welfare payments, is prevented due to habitual residence condition (HRC) requirements under social welfare legislation[50]. This may lead to difficulties for EU citizen victims of trafficking in accessing appropriate social protections, as they may wrongly be considered to be an EU citizen exercising free movement who does not meet the HRC conditions, as opposed to a victim of trafficking accessing their entitlements provided for under Article 11 of the EU Trafficking Directive.

49. Available at http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20 Arrangements%20for%20the%20Protection%20of%20Victims%20of%20 Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements% 20for%20the%20Protection%20of%20Victims%20 of%20Human%20Trafficking%20-%20March%202011.pdf

50. See: http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx

In this regard, it is important to note that when a person is identified as a suspected victim of trafficking under the AIAs, there is no written judgment in the individual case setting out the factors in the case resulting in a positive identification. A qualifying foreign national is issued a temporary residence card but an EU citizen will not be issued with any written confirmation of the position.

The absence of statutory protections for victims of trafficking and the restrictions arising from current AIAs have been the subject of criticism, in particular by international monitoring bodies[51]. In particular, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) Committee Report 2013[52] urged the Irish authorities to ensure that all victims are properly identified and can benefit from the assistance protection measures contained in the Convention, in particular by amending the relevant regulations to allow asylum seekers, EEA nationals and Irish nationals to be formally identified as victims of trafficking and guaranteeing that identification is not contingent on the suspected victim's co-operation in the investigation. The GRETA report also noted and raised concerns that the majority of victims of trafficking are either asylum seekers or EEA nationals and recommends that the Irish authorities ensure that all possible victims of trafficking are offered a recovery and reflection period, as well as all the measures of protection and assistance envisaged.

In addition to international monitoring, the question of effective transposition of the EU Trafficking Directive has been the subject of legal proceedings in Ireland and, in a recent judgment of the High Court, the current victim identification process had been deemed to be inadequate[53]. Since this judgment in April 2015, there have been no formal amendments to the current victim identification process.

Aside from the identification process, the Anti-Human Trafficking Team (AHTT) of the Health Service Executive (HSE) is responsible for developing individual care plans for victims of trafficking under the statutory national action plan 2009–2012[54]. Potential victims are referred to this service from the GNIB and the team then assesses and plans care with the individual according to his or her particular needs. Many of their general health and social welfare issues are addressed such as housing, finances, medical concerns, family issues, social welfare benefits etc. Some persons are deeply traumatized by their experiences and a longer rehabilitation and journey of care is necessary. Staff also support persons through the investigation process with GNIB and liaise with all the statutory and NGO services which can offer additional support to victims of trafficking[55]. Potential or suspected victims of trafficking are provided with the same accommodation and ancillary services as those provided to newly arrived asylum seekers, namely Direct Provision reception centres, which are arranged by the Reception and Integration Agency (RIA)[56], a functional unit of the INIS, a division of the Department of Justice and Equality. The Legal Aid Board provides legal aid and legal advice

51. Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Ireland from 30 January to 2 February 2012 http://www.osce.org/secretariat/99775?download=true
52. GRETA (2013) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf
53. P. v Chief Superintendent of the Garda National Immigration Bureau & Ors [2015] IEHC 222. In this case, the applicant had spent almost three years in detention in prison, much of that time waiting for a decision on her application to be recognised as a victim of human trafficking. See IHREC, 'IHREC calls for immediate action to protect victims of human trafficking following High Court Judgment', [press release], 15 April 2015, http://www.ihrec.ie/news/2015/04/15/ihrec-calls-for-immediate-action-to-protect-victim/
54. National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012
55. http://www.hse.ie/eng/services/list/5/sexhealth/whp/Anti_human_trafficking_team.html
56. http://www.ria.gov.ie/en/RIA/Pages/Background

to potential and suspected victims of trafficking in both civil and criminal cases[57].

Finally, there is little information available regarding perpetrators in Ireland, as there have been few trafficking cases generally and there are no published information regarding any convictions in sham marriage cases.

2.4 Conclusions

The attempts to introduce effective measures to address sham marriage and trafficking provided for under the relevant Directives are proving a challenge for the Irish authorities. The EU Citizenship and Trafficking Directives have not been transposed entirely, effectively or correctly, as evidenced by some of the case law that has emerged in the Irish and European courts. It remains to be fully seen whether Operation Vantage and the new powers conferred on marriage registrars will be implemented and deemed effective in their objectives of addressing sham marriage and abuses of the immigration system. It is likely that EU free movement, residence entitlements, sham marriage and effective responses to victims of trafficking will continue to be the subject of political debate and legal challenge, both domestically and regionally, particularly in light of Ireland's failure to transpose the relevant Directives correctly.

57. http://www.legalaidboard.ie/lab/publishing.nsf/content/Human_Trafficking_Legal_Advice _and_Aid

Section 3: Research into sham marriage in Ireland

3.1 Introduction

In this section the findings of the research into sham marriage with possible links to human trafficking in Ireland are presented. The aims of the research were to:

- Explore the links between sham marriages and trafficking in persons
- Provide new information on the vulnerabilities, factors, methods and channels that facilitate sham marriages resulting in trafficking in persons
- Utilise both qualitative approaches and statistical information to examine the phenomenon

3.2 Methodology

The present research conducted in Ireland is part of a transnational research study led by the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), which developed the research framework for the production of comparable reports from Estonia, Latvia, Lithuania, Ireland and the Slovak Republic. The international research constitutes an essential aspect of the programme of work under the EC ISEC funded initiative "HESTIA Preventing Human Trafficking and Sham Marriages: A multi-disciplinary solution" led by the Latvian Ministry of Interior in partnership with among others the Immigrant Council of Ireland as well as the Department of Justice and Equality in an associate partner capacity.

Fourteen semi-structured thematic interviews were conducted with key stakeholders including NGO front-line services, statutory service providers, embassy staff, An Garda Síochána and representatives of the Department of Justice and Equality Anti-Human Trafficking Unit and the INIS (a full list of the agencies is contained in Appendix 1). The interviews were all conducted face to face and were recorded where consent was given with the main points subsequently transcribed. Where consent was not given for recording, handwritten notes were taken. It was possible to interview only one victim of exploitative sham marriage. The difficulty in relation to interviewing victims in Ireland is that those who come forward for help in this country have limited rights in relation to State services or welfare payments which would enable them to remain in Ireland. It appears that those seeking help directly from embassies are generally supported to return immediately and the embassies work closely with the specialist services and police in the origin country. In some cases, women are referred or seek help from Irish NGOs which provide support and services for as long as they can, before the person returns to their home country either voluntarily or with the help of the State. Key informants are also aware that many women may not present to embassies or services, they may have remained in Ireland with the support of friends but do not wish to have contact with the authorities and/or may have returned home.

Following the interviews, it was decided that the best way to gain a deeper understanding and a more comprehensive picture of the phenomenon was for front-line practitioners to document each case and provide the researcher with the written material. The research questions were formulated into a template

by the researcher, to serve as a guide regarding the most pertinent information (see Appendix 2). The template was also designed to ensure that the information gathered was, in so far as possible, consistent across the different agencies and practitioners. Case studies were provided by the Latvian (5) and Lithuanian (1) embassies, and these represented a sample of the cases of exploitative sham marriage highlighting common elements that they had observed. NGOs provided further cases, which comprised all of the cases of exploitative sham marriage to which they had responded. These NGOs include the specialist NGO Ruhama which responds to women engaged in prostitution and women trafficked to Ireland for sexual exploitation (5); a domestic violence shelter Adapt, which has extended its service to respond to women at risk of trafficking and sham marriage (1); the Immigrant Council of Ireland Independent Law Centre, which provides support and legal advocacy and representation to migrants in Ireland (1) and Doras Luimní, a migrant support and advice centre (1). Thirteen case studies were submitted in writing following the guidelines. One interview with a victim was obtained. She was approached by her support worker in an NGO requesting her participation in the research. The researcher travelled to meet her in an anonymous location of her choice near her home. She was assured of complete confidentiality and was asked to describe her experience following a similar format of questions used in the case study template.

Statistical data was obtained from the Latvian and Estonian embassies and the INIS. The findings of an internal piece of research carried out by the Latvian Embassy were also provided. Chapter 3.3 provides the background and data illustrating the emergence of sham marriage in Ireland. A number of requests for information were sent to relevant Irish authorities, such as the Chief Marriage Registrar, the Director of Public Prosecutions, the GNIB, the EU Treaty Rights Section of the INIS and the Courts Service. INIS provided valuable data, in addition to accepting an interview with a high-ranking representative of the agency for the purposes of this research. Media reports on current Garda operations were included.

Chapter 3.4 provides the findings of the interviews, the case studies and the observations of those seeking to provide support and protection to women subjected to exploitation. Data analysis was conducted according to the themes identified at the initial stages of the HESTIA research, primarily patterns of recruitment in the origin country, arrival in the destination country, the experience of exploitation in Ireland, the knowledge and experience of front-line responders and (where known) what subsequently happened to the women. Ethical guidelines were strictly adhered to.

It should be noted that an important limitation of the research arises in relation to the nature of the response of An Garda Síochána to allegations of serious criminal offences that are documented in this Report; notably in chapter 3.4. It is important to note that this research is confined only to examination of the question of investigation of potential offences of human trafficking and that even where individuals were not identified as victims of human trafficking that other serious offences may have been the subject of investigation by An Garda Síochána. Data limitations preclude the provision of any information in this regard as it was not possible to determine in almost all cases the nature of the investigations that were actually carried out.

3.3 Findings from interviews and quantitative data on the emergence of sham marriage in Ireland

3.3.1 The understanding of the term sham marriage

Many interviewees expressed the view that the term sham marriage is problematic. It is generally understood to connote an equal consensual marriage which is contracted in order to circumvent immigration regulations. In a typical scenario, a TCN pays a significant amount of money to an EU citizen in order to submit an application for residency under the EU Citizenship Directive on the grounds of marriage. One party benefits financially and the other in relation to residency. Thus the only deceived party is the State. Respondents recognised that this was an illegal act and was a deliberate attempt to deceive the immigration authorities. However, all respondents believed that sham marriage, when understood or defined in this manner, may constitute a crime against the State, but not a crime against the person[58]. As such, it fails to indicate either the negative consequences or in some cases the severe exploitation and crimes that may arise for one side of the contract, primarily young women:

> *People talk about, that is women themselves and service providers, business, forced, sham, arranged marriages … there is a need to clarify these different kinds of marriages but most of all there is a need to examine the outcomes, the impacts and the harm for women. (NGO service manager)*

> *It is critical to capture all the criminal acts including rape, false imprisonment and threats to the person which may occur in the context of sham marriage, not simply the sham marriage itself. (Anti-Human Trafficking Unit)*

Thus the term 'exploitative sham marriage', when suggested by the researcher, was welcomed and considered to be a more helpful term when seeking to indicate the potential for or the presence of exploitation. Most respondents also believed that even where there was no evidence of exploitation, the negative consequences ensuing for women were neither foreseen by the women themselves nor understood by the authorities. They had seen the legal consequences for example of prolonged divorce proceedings, paternity issues and financial difficulties arising for women, and believed that these should also be highlighted by the research. Consequently, agreement was reached with participants that the main focus of this inquiry was on the investigation of cases of exploitation, in particular where there was evidence and indicators of trafficking, whilst also highlighting unforeseen and negative consequences for women that did not fit within an exploitative framework commonly associated with human trafficking crimes.

3.3.2 Sham marriage emerges as an issue of concern

On accession of Latvia to the European Union in 2004, within one year the Latvian Embassy began to notice a high proportion of Latvian women marrying third country nationals in Ireland. In the early years, it appeared to be a business arrangement where well-informed and educated Latvian women in the 25 to 35 age bracket were agreeing to a sham marriage for considerable amounts of money. Between 2004 and 2008 the estimated amounts involved were between 3,000 and 10,000. The Latvian Embassy was concerned that this constituted a serious abuse of the EU Citizenship Directive providing for freedom of movement, referred

58. In accordance with Regulation 25 of the 2006 Regulations, it is an offence for a person to assert an entitlement to any rights under the Regulations on the basis of information which he or she knows to be false or misleading in a material particular. The Regulations provide, on summary conviction, for a fine not exceeding 5,000 or a term of imprisonment not exceeding 12 months, or both.

to in chapter 2. They brought their concerns to the attention of the Irish authorities on numerous occasions, including departmental officials and politicians, highlighting a number of factors which were facilitating this in Ireland including:

- Lack of legislation in relation to sham marriages
- Insufficient information sharing, e.g. no notification about marriages concluded in Ireland to the embassies
- No restrictions on getting married while residing illegally in the State
- No obligation to submit proof of marital status from the country of origin
- No rights for marriage registrars or Gardaí (Irish Police Force) to intervene in cases of suspicious marriages, even in cases where the bride and groom communicate with each other by using an interpreter during the marriage registration ceremony

The embassy was surprised at what they perceived was a general lack of interest in addressing this issue. They were repeatedly informed by the authorities that under Irish and European law, people had the right to marry and that there was nothing the Irish State could do to intervene on suspicion of a sham marriage. The embassy recorded the figures to indicate the scale of the problem:

Since 2004 more than 1600 marriages have been registered in Ireland between citizens of Latvia and third country nationals.

Since 2006 approximately 2000 third country nationals have applied for a residence permit as a family member of an EU national at the INIS, based on a marriage with a Latvian citizen. It is likely that the difference between 1600 and 2000 can be explained by the fact that some of the marriages between citizens of Latvia and third country nationals have been registered outside Ireland (Pakistan, Nigeria and India, as well as other EU countries, including Denmark, Cyprus, Spain and Sweden).

The embassy was also becoming increasingly aware at that time of the negative consequences and potential legal complications that were arising for women who had contracted a sham marriage. Latvian women had no realisation that obtaining a divorce in Ireland for the most part took up to five years and that failure to declare a sham marriage contracted in Ireland when later wishing to marry in Latvia, could result in women being culpable of bigamy. Furthermore, serious complications in relation to paternity were also arising for women at a later stage as they were marrying and having children within a second marriage that was not valid, and therefore paternal rights remained with the third country national through the sham marriage. Despite repeatedly raising these issues, it was conveyed very clearly to the embassy by the Irish officials that it was their responsibility to prevent their citizens from engaging in this activity, not the responsibility of the Irish State. As noted above (chapter 2), the Irish authorities did in fact take some measures to intervene and object to some marriages taking place but these actions were deemed to be unconstitutional.

3.3.3 The changing pattern of sham marriage

From 2009/2010 onwards, a very different pattern emerged which gave rise to heightened levels of concern at the Latvian Embassy. The profile of young women presenting to and seeking help from the embassy was of far younger women with low levels of education and little or no English. They noticed that many of the young women came from very large, impoverished families and many had been placed in care at a young age. At the time of leaving Latvia many were lone parents with very low income and worryingly, some were presenting with mental disabilities, as described by the Latvian Embassy representative:

> *We were responding to distress calls on a twenty four hour basis. Women arriving at the embassy were much younger, more vulnerable with very little education or English. They were frightened and distressed, did not have any knowledge of Ireland and had experienced severe forms of control and exploitation, including rape and sexual assault. In increasing numbers, we were seeing young women with mental disabilities and mental health problems.*

The embassy staff realized that what was demanded was a far more heightened response to this issue by the embassy itself, the Latvian authorities, service providers in Ireland and Latvia, and the police of both jurisdictions. Eventually the General Register Office in Ireland introduced guidelines in registry offices, and prospective brides were sent to the embassy in order to certify the authenticity of the birth certificate, or asked for consular or other support in relation to the marriage with citizens of third countries with the purpose of obtaining a residence permit within the EU. This enabled the embassy to get a much clearer picture of what was happening.

The embassy carried out their own research into the profile of Latvian citizens who were potential and current participants of sham marriages from October 2010 to August 2013. The research was based on the data available for 500 Latvian citizens who visited the embassy regarding a planned marriage. The main findings of the research provided by the embassy were:

- Approximately 450 of these Latvian nationals arrived in Ireland shortly before the registration of marriage
- 104 of these Latvian nationals registered or planned to register the marriage before reaching 20 years of age; in 2011, there were 27 women seeking formalities at the embassy between the age of 18-19
- In 185 cases the women were from large families, where there were four or more children; in nine cases where there were more than 10 children in their families
- In 167 cases Latvian nationals had children before their marriage; in 71 cases two or more children
- In 40 cases before entering into the marriage, children have been left in Latvia without proper legal formalities; in 28 cases out of 40, children were born to underage mothers

- In 29 cases the cases involved sisters; in two of these cases the women were twins, in five cases three sisters married third country nationals
- The average bride did not receive anything other than food, shelter, clothes and a mobile phone or computer from their prospective husband; the only money changing hands that the women could discern was 1000-4000 being paid to the sham marriage organisers by potential husbands
- Apart from Riga, which is the place of residence for 53 of the brides, the origin of women is strongly dominated by 5 regions - Liepaja (40), Valmiera (30), Jelgava (27), Bauska (26) and Saldus (22), which are recognised as regions with high levels of poverty; altogether 17 municipalities are represented.

Further information provided by the embassy revealed that in 2012, they identified four cases in which Latvian nationals with signs of disability planned to register a marriage with nationals of third countries. In four other cases mothers and daughters were married with nationals of third countries, in one case a mother, daughter and aunt. In 2012, when 75 consular assistance cases were registered, these included 18 cases of repatriation of pregnant women and 9 minor children. In three cases the women were pregnant with another man`s child when getting married (shortly before giving birth) to the third country national. In five cases while being married to the third country national, data entered into the birth certificate contains details of a father – another man, not the husband. In four cases an inspection was carried out regarding what is called 'double-marriage'. In three cases out of the 500 the Latvian nationals involved in sham marriages were men.

The embassy also began to document the nationalities of the third country nationals involved and found a statistically significant number of men from the Asian sub-continent marrying Latvian women in Ireland. Table 1 indicates the top three nationalities marrying Latvian women.

Table 1. Latvian marriages to third country nationals

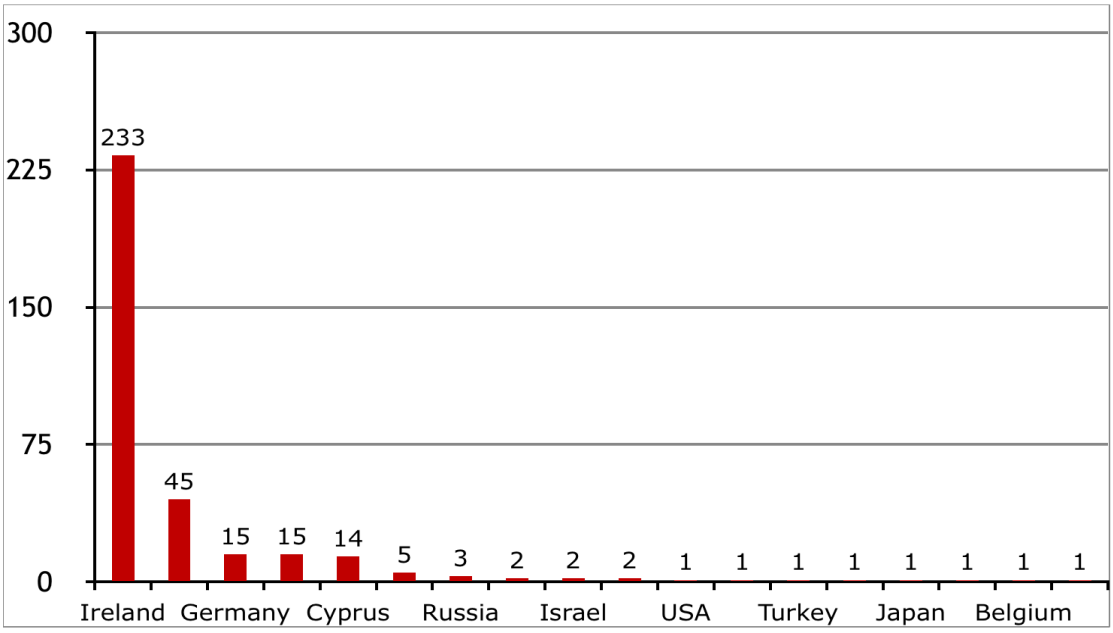
1st Party	2nd Party	Total 2009	Total 2010	Total Jan-Sep 2011	Total 2012	Total 2013	Total 2014
Latvia	Bangladesh	20	17	11	16	7	3
Latvia	India	80	37	10	15	18	22
Latvia	Pakistan	257	143	39	56	65	76
Total		357	197	60	87	90	101

3.3.4 Sham marriage and trafficking in human beings

The Latvian Embassy recognised that there was clear evidence of a highly organised system of targeting, recruitment and intentional deception in the origin country, i.e. Latvia; organised travel to a destination country, i.e. Ireland; and increasing evidence being disclosed of severe levels of exploitation of these women in Ireland: the three elements of trafficking in human beings as defined under the UN Trafficking Protocol. The embassy experienced huge frustration with the Irish authorities, who refused to recognise the indicators of trafficking. The embassy staff were repeatedly told by the GNIB, the agency with responsibility for identification of victims of trafficking, that sham marriage was not in the legislation and thus not within their remit. This issue will be returned to in chapter 3.5.1.

In April 2013, the Latvian Government introduced a law criminalising those who entered into a sham marriage[59] alongside a number of preventative measures including information and education campaigns and materials. The authorities with responsibility for anti-trafficking strategies also initiated investigations into the intersection of sham marriage with trafficking and worked closely with specialist services to provide a range of intensive support for women where exploitation was suspected. Identification as a victim of trafficking ensured that women could receive full rights and protection under Latvian anti-trafficking measures and services. Chart 1 (information provided by the Latvian Embassy) indicates the high level of identification of victims of trafficking (VOT) in Latvia who had been exploited in Ireland.

Chart 1. Number of Identified (including potential) human trafficking victims in Latvian missions abroad



59. Section 285/ Amendment to the Criminal Law of Latvia: Ensuring in Bad Faith with a Possibility to Acquire the Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or the Swiss Confederation.

The chart clearly indicates the very high number of women exploited in Ireland relative to other European countries. It is important to note that no woman who was subjected to exploitation within the context of a sham marriage was identified as a victim of trafficking by the Irish authorities at that time.

3.3.5 The emergence of other EU nationals affected by exploitative sham marriage

3.3.5.1 Estonia

Since 2009, the Estonian Embassy has also been concerned regarding the number of Estonian nationals marrying third country nationals in Ireland. Although the numbers are estimated to be between 45 and 50 per year, an embassy official pointed out that as Estonia only has a population of 1.3 million, this figure is quite high. The embassy staff has also seen the same pattern of men from the Asian sub-continent being disproportionately represented in the figures. Table 2 (information supplied by the Estonian Embassy) shows a similarly high proportion of men from India and Pakistan involved in these marriages with Estonian women in 2014, as was evident in the figures supplied by the Latvian Embassy.

Table 2. Estonian marriages to third country nationalities in Ireland in 2014

First Party Nationality	Second Party Nationality	
Estonia	Bangladesh	2
Estonia	Brazil	2
Estonia	China	1
Estonia	Czech Republic	1
Estonia	Estonia	2
Estonia	India	18
Estonia	Ireland	10
Estonia	Ivory Coast	1
Estonia	Kenya	1
Estonia	Latvia	2
Estonia	Mauritius	4
Estonia	Moldova	2
Estonia	Nigeria	1
Estonia	Pakistan	25
Estonia	Poland	3
Estonia	Romania	2
Estonia	Ukraine	2

Since 2009, the Estonian Embassy and social services in Estonia have also seen the same shifting pattern as observed by the Latvian Embassy. Initially, they found it was mainly Estonian women who were living and working in Ireland entering what appeared to be a marriage of convenience for financial gain. However, in more recent years they have also identified the targeting and recruitment of young women from particularly impoverished regions of Estonia. The representative of the Estonian Embassy expressed her concern regarding the high proportion of Russian-speaking girls and young women from families who have experienced disadvantage in relation to employment and discrimination:

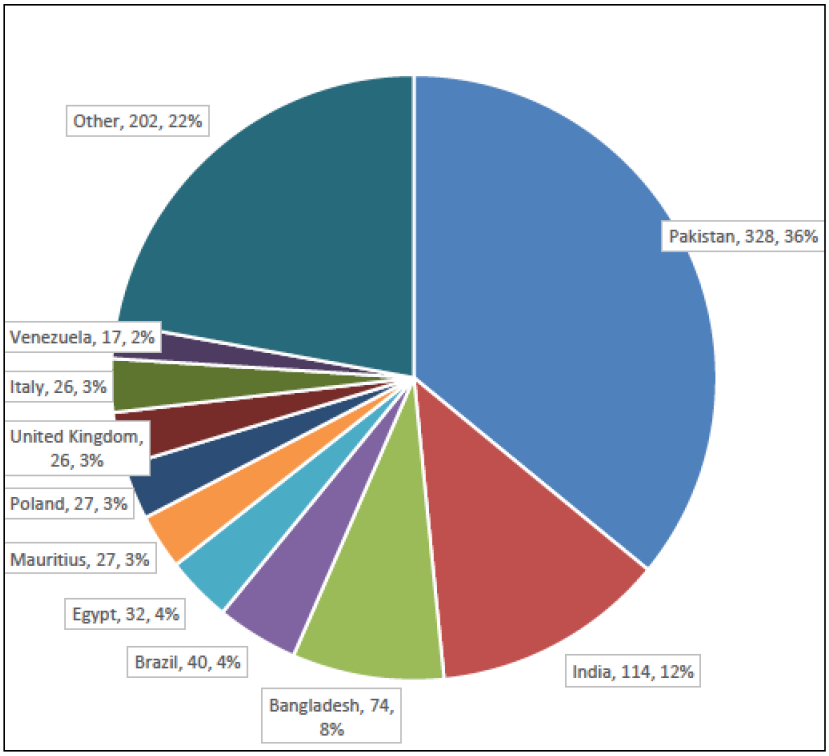
> *Many of these girls are very young, very vulnerable and have already been involved with social services due to being in care or early/teen pregnancies. We are increasingly seeing clusters of girls from the same area, the same town and even from the same educational establishment being recruited. In one case it was the mother of one of the girls who was recruiting her daughters' friends.*

The embassy official stated that the social services in Estonia are deeply concerned regarding the number of young pregnant and single mothers involved and in recent years have also come across cases where the young woman in question has a mental disability. The Estonian social workers and the embassy have also expressed their concern to the Irish authorities that this constitutes a form of trafficking in human beings, with very little response.

3.3.6. Other nationalities

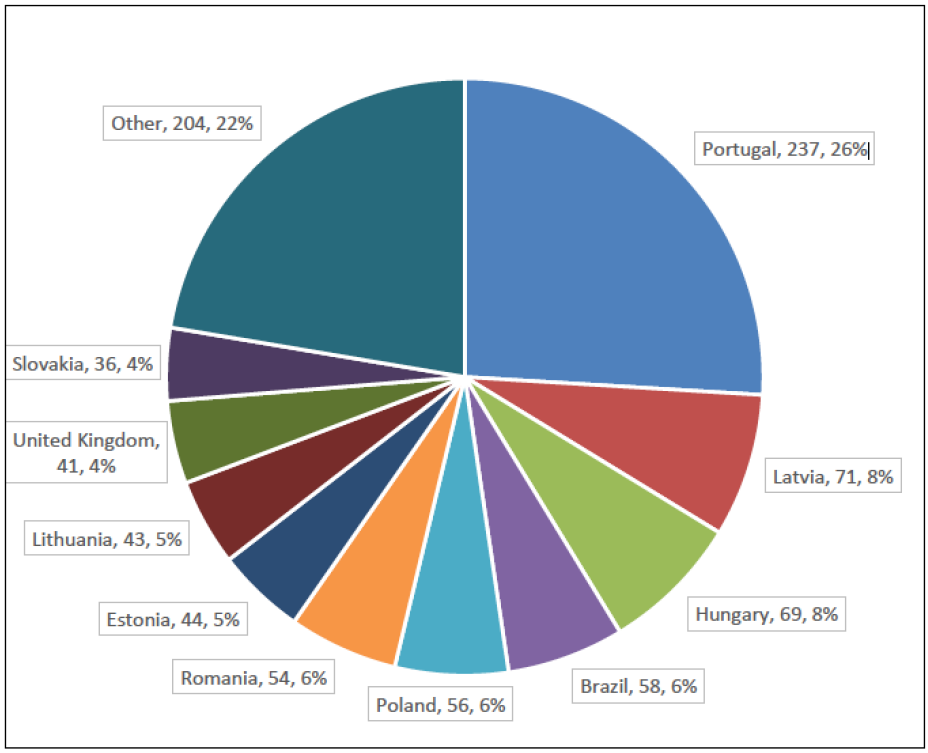
In 2015, the INIS carried out an investigation called Operation Vantage into the numbers of third country nationals marrying EU nationals in Ireland. The following data was provided by INIS for this research. In a nine-month period between 01 November 2014 and 31 July 2015 a total of 1,697 marriages were recorded by the General Register Office as having taken place between EU and non-EU nationals. Marriages between two non-EU nationals were not included as they do not fall within the remit of Operation Vantage, as no immigration advantage can be secured on the basis of the marriage under the EU Citizenship Directive. For the purposes of this analysis all marriages involving Irish nationals were also excluded which account for 783 marriages (484 Irish males, 299 Irish females), since the focus was on the Citizenship Directive measures, which do not apply to non-mobile own citizens. The remaining 914 completed marriages were analysed. Chart 2 indicates the top 10 nationalities for the 1st party males (i.e. males who were a party to/engaged in the marriage).

Chart 2. Top ten nationalities for the 1st party males



The figures indicate a similar pattern found by the embassies. Pakistani nationals account for the largest group of males at 328 (or 36%), followed by Indian nationals at 114 (12%) and Bangladeshi nationals at 74 (or 8%). There are also high figures of certain other nationalities emerging, including men from Egypt and Mauritius, where an immigration advantage could be gained by marriage. The majority of males were non-EU nationals (731 males or 80%). The investigation found that the average age for the males was 30 years old and noted that 50 of the 913 males (or 5%) stated that they were previously married and now divorced. Chart 3 indicates the figures in relation to the 2nd party females (i.e. females who were party to/engaged in the marriage):

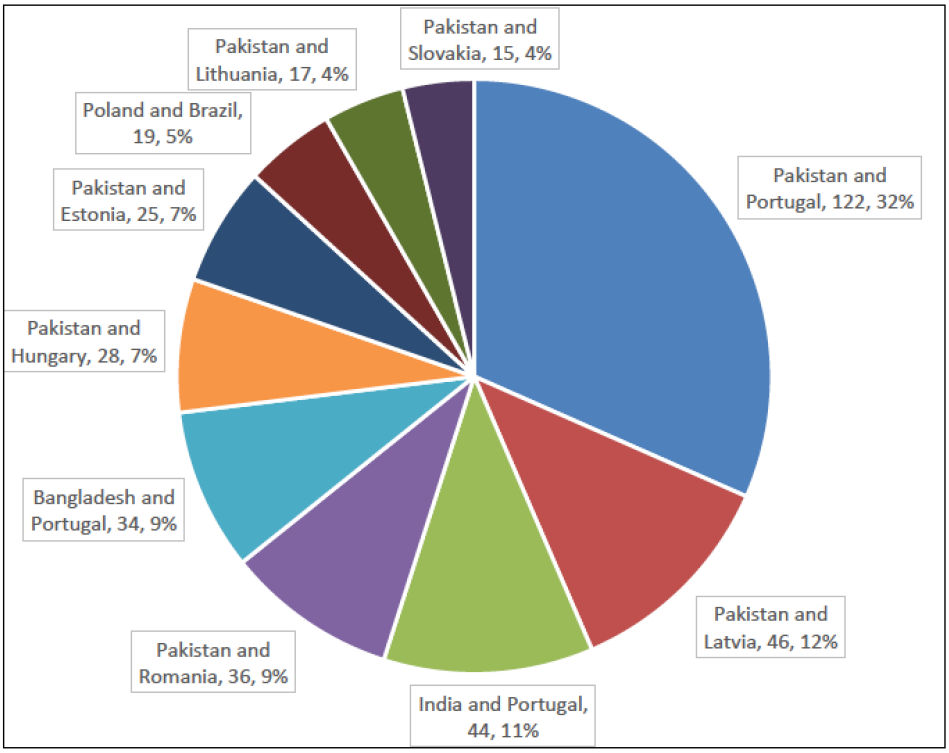
Chart 3. Top ten nationalities for the 2nd party females



Whilst the data on 1st party nationals reflects the trends witnessed by the Latvian and Estonian embassies, Chart 3 shows some surprising trends in the nationality of the women. There are clearly a hugely disproportionate number of Portuguese nationals arising in recent times. They account for the largest group of females at 237 (or 26%), followed by Latvian nationals at 71 (or 8%) and Hungarian nationals at 69 (or 8%). The chart also indicates very high numbers of women from the other new Member States of the EU, including Hungary, Poland, Lithuania, Romania and Slovakia. The majority of females were EU nationals (731 females or 80%). The average age for the female was 28.2 years old. Some 93 of the 913 females (or 10%) stated that they were previously married and now divorced.

Chart 4 indicates the nationalities most represented for marriages in the period under examination (a total of 913).

Chart 4. Most represented nationalities



There is a clear pattern of males from the Indian sub-continent (Pakistan, India and Bangladesh) marrying EU national females from Portugal and Eastern European countries (mainly Latvia, Romania, Hungary and Estonia). The INIS believe that a significant proportion of these weddings may be marriages of convenience in order to secure an immigration advantage for the males in question[60]. This gives rise to concerns that perhaps the comprehensive measures initiated by the Latvian Embassy and authorities and the Estonian Embassy and authorities following suit, has led to the targeting and recruitment of women from other countries. The representatives of the Portuguese Embassy expressed their serious concern regarding this trend and that young vulnerable women were at risk of exploitation:

> *Portugal has been severely hit by the financial crisis and austerity measures and we believe young impoverished women might be easily deceived and recruited into this form of exploitation and these women would be very vulnerable.*

The Portuguese Embassy has not dealt directly with any women seeking assistance but is very open to learning from the experience of other embassies. They were informed by a concerned person of a case involving a young Portuguese woman and an Indian national that they immediately reported to the General Register Office but they received no feedback in relation to the case. The embassy would welcome more cooperation with the Irish authorities in initiating preventative and legal measures to protect young Portuguese women.

60. However, no information has been provided by the INIS regarding the numbers of entry visa application and/or residence permit applications that have actually been refused on the grounds of alleged or actual sham marriage.

3.3.7 Conclusions

It was the persistent work of the Latvian Embassy in consistently highlighting this issue that has placed this issue on the political agenda in Ireland. The commitment of the staff to documenting the experience of women presenting to them has provided invaluable knowledge and information. They described how they tirelessly brought these issues to the authorities in Ireland with little effect and when faced with negative and unhelpful responses they sought to provide protection, support and financial help to the victims themselves. They worked with NGOs, state services and police forces in their own country leading to the identification of a high proportion of women as victims of trafficking, ensuring access to appropriate supports and protection. The Estonian Embassy has followed suit in raising these issues, and they are also working with social services in their own country to intervene early and try to prevent this form of exploitation. However, Operation Vantage highlights that the figures remain very high and are extremely concerning in indicating the rise of new vulnerable nationalities being targeted for sham marriage.

3.4 Findings in relation to women's experience of exploitative sham marriage

This section contains the analysis of case studies, combined with the observations and experience of those directly responding to women who had been subjected to exploitation. As stated in chapter 3.2 the front-line practitioners in the Irish NGOs documented all the cases of sham marriage they had responded to where there was evidence of exploitation, whilst the cases supplied by the embassies were a sample of the cases they had responded to where there was exploitation. All case studies were documented according to the guidelines and submitted in writing to the researcher. This section provides a more in-depth understanding of individual women's experience of exploitation and the experience of front-line services and embassies in seeking to protect and support women presenting to them for help and/or women referred to them. All the material and quotes are drawn from the written case studies and from interviews with front-line responders. However, it is worth noting that since Ireland is a destination country, there is evidence of concrete exploitation in this jurisdiction but very little knowledge of the outcomes for women when they return to their own countries. The country of origin of women included Bulgaria (2), Estonia (1), Czech Republic (1), Latvia (8), Lithuania (1) and Poland (1). They were aged between eighteen and thirty-nine years at the time of recruitment. All names used in this section are pseudonyms.

3.4.1 Early life experience

The early lives of women indicate numerous risk factors which made them vulnerable to being targeted for exploitation. Extreme poverty was a common factor in their childhoods and in the lives of most of the women at the time of being approached. Any exploration and knowledge gained by responders and services in relation to their background stories indicate domestic violence, neglect, family breakdown and sexual abuse leading to many of them being placed in foster care and/or institutional care at a young age. Table 3 indicates the age women were when they were recruited and the early life experience of women, where it was known or disclosed.

Table 3. Age at time of recruitment for sham marriage and early life experience

Case number	Age when recruited	Poverty	Family break-down	Child sexual abuse	Care / foster care/ orphanage	Teen or early pregnancy	Learning difficulty	Very low level education	No/little English skills	Child in care
1	21									
2	19									
3	18									
4	39									
5	18									
6	29					x 2				x 2
7	27									
8	27									
9	21									
10	18									
11	19					x 2				x 2
12	36									
13	25									
14	21									

- present - absent

Table 3 highlights the multiple overlapping risk factors which created the context of vulnerability for women being recruited for sham marriage and exploitation. There is a remarkable consistency in relation to childhood poverty and family breakdown, with eight girls being placed in care, seven in orphanages and one girl in foster care. Teenage pregnancy was disclosed in five cases, with babies being taken into care in three cases; in two of those, the girls had given birth to a second child who was also taken into care.

> *Anna's father began abusing her when she was a young child which resulted in her being taken into care. While in care she became pregnant at 17 so dropped out of school. When she left care she and her baby had nowhere to live and she had no job so she moved in with her mother, her sister and her boyfriend and their children.*

The vast majority of women had very little education and no workable knowledge of English. In recent years first responders have also seen a worrying number of girls and young women with learning difficulties and mental incapacity:

> *Clara is from a very poor background, raised in care and has learning difficulties. She had a child at 16 who was placed in care in her home country and she is now a single mother with a young child.*

There is also evidence that the recruiters targeted more than one girl in the same family or girls in the same

orphanage, who had experienced socio-economic disadvantage:

> *Valia was one of four sisters from a socially disadvantaged family, all of whom were involved in sham marriages. Prior to coming to Ireland parental rights to her two daughters were terminated because she was not able to take proper care of the children. Using her vulnerability, at the age of 19 years, she was recruited and invited to join her sisters in Ireland to get married to a Pakistani national.*

> *Nadia was one of four very young women recruited who had been in the same orphanage. She was 18 and living in social care when she was contacted by a girl who had been in the orphanage and persuaded to come to Ireland.*

3.4.2 Situation at the time of recruitment

At the time of being approached, all of the women were in financial difficulty and most were severely impoverished and living in difficult circumstances. The women were living in unsuitable accommodation, crowded situations with families, in hostels and care centres:

> *Bella had no parents, no family and was raised in an orphanage until she was 18 years of age. When it was time for her to leave she had no accommodation, no job and a poor education level. She was befriended by a couple who used to visit – she thought they were nice and they offered her a better life and work in Ireland.*

Another concerning aspect of these cases is the number of young lone mothers (5) who were struggling to rear children with very little financial resources albeit with some support from social services, and the number of women who were suffering from loss of a baby being placed in care.

> *Maria suffers from a mental disability since childhood. She was studying in a social care centre and struggling to care for a six-month old baby when she was approached by her brother's former wife.*

> *Frea was living alone in a hostel for homeless people. She had been treated for a mental health condition. She had recently given birth to a boy who was subsequently taken into care.*

3.4.3 Targeting and recruitment

Respondents who had directly responded to women in services and embassies believed there was ample evidence of deliberate, organised and systematic recruitment of the girls and women. The profile of women described above indicates the vulnerability of the women presenting to them and the lack of resources or capacity to organise travel and accommodation in Ireland. These women were intentionally approached with varying degrees of deception involved, and the organisation of their tickets and travel arrangements clearly demonstrates that this is not random or opportunistic. The pattern would appear to be a highly organised system operating between recruiters in the origin countries, organisers in Ireland and prospective third country national husbands. Table 4 indicates the pattern of recruitment.

Table 4. People by whom women were recruited

Case number	Family	Friend	Friend of family	Visitors to orphanage	Mother of a friend	Official	Acquaintance	Internet friend	Unknown
1			■						
2		■							
3				■					
4		■							
5		■							
6					■				
7									
8		■							
9			■						
10								■	
11	■								
12						■			
13								■	
14	■								

■ -yes ☐ - no

It is worth highlighting that in all cases there was some pre-existing connection between the recruiter and the women, and no one was approached by a complete stranger. The most typical method of recruitment was that a member of the family, a friend of the family or a friend introduced the idea of travelling to Ireland and the possibility of money, a job and a new life. The recruiters were male and female and were all from their own country. These included a relation of the boyfriend of a woman's sister, the former wife of a woman's brother, the mother of a friend, in two cases visitors to the care home/orphanage, and friends or acquaintances. In one case it was an official in the City Council.

> *Dana knew a man who was employed by the City Council in the capital city of her home country. He introduced her to a man from India who goes there occasionally in cooperation with the city council official looking for girls to bring to Ireland. They introduced her to another man who lives in Dublin and owns a PC shop, and as she has skills in computers and web design she was offered a job.*

In two cases the women were recruited on social media sites, again by friends. It would appear that the recruiters worked with either other recruiters of the same nationality who were resident in Ireland or directly

with third country nationals. However, key informants for this study had limited information on recruiters and organisers. In a further two cases the recruiter was a woman of their own nationality married to a third country national in Ireland, arranging this for a friend or relation of their husband.

3.4.4 Motivation for migrating

The biggest motivating factor for women was extreme poverty and the need for some money to improve their lives. There was no need for coercion, as the women were easily deceived into believing that Ireland offered hope of a better life. This hope was the most common reason women gave to front-line responders for making the decision to migrate. The young women were attracted by the lure of a Western European life, the promise of jobs, money, accommodation and the possibility of living in a new country with opportunities for them and their children. Table 5 indicates the reasons women gave to the services for accepting the offer to come to Ireland, the organisation of their travel and who met the woman in Dublin: recruiters (RC) or third country nationals (TCN).

Table 5. Motivation, travel and arrival in Dublin

Case number	Hope of better life	Offer of a job	Money	Awareness that she would enter into a sham marriage	Travel tickets organised	Met in Dublin by
1						
2						TCN
3						TCN
4						TCN
5						Friend
6						RC
7						TCN
8						Friend
9						TCN
10						TCN
11						Sister
12						
13						RC
14						RC/

- yes - no

My sister had a boyfriend who had a cousin in Ireland who he said wanted to get married. He said I would get a job and accommodation and I would get money for the marriage. (Rada)

Anna was told that all she had to do was marry someone. She was promised €4,000 on completion of the marriage ceremony and that she would be able to get a job easily in Ireland.

In one case the woman believed it was an arranged marriage and hoped to have a real marriage. In another, the young woman was just coming to visit a friend and had no idea she was being recruited for a sham marriage.

3.4.5 Arrival in Ireland

When the women arrived in Ireland there were generally two scenarios. They were either met at the airport by organisers who were of their own nationality (both men and women), or by the potential husband. None of the women were aware prior to arrival of the nationality of the prospective spouse. They were brought to accommodation where in most cases there were a number of men living:

Elli disclosed having been deceived by a female friend who had invited her to come visit her in Ireland. When she arrived there was a male from her home country waiting in Ireland who brought her to an apartment. Then he left and the two Pakistani men arrived.

Suddenly the woman was placed in the position that she was in a strange country, with very little English skills, living in a house with a number of men who only spoke English. Women were immediately in a situation of economic dependency, isolation in a strange country with no access to help or services and very little English skills. Rada describes her different emotions at that time:

It was my first time out of my country. A girl from my own country and a man met me at the airport and brought me a long way to a small town and said I would be living in this house with these men … I was shocked because they were brown skinned and there were three of them. I had learned a little English in school but I could not really say anything to them and could not understand them … I feel like I want to change my mind … I don't know anyone … every night in bed I thought of how I could go home.

3.4.6 Experience of exploitation in Ireland

The service providers and embassy staff documented multiple forms of exploitation experienced by women. But it is important to note that in many cases our knowledge of the levels and forms of exploitation are limited because of the short time women spent in Ireland which was not sufficient for a full disclosure of what had happened to them to the service provider. Due to lack of identification as victims of trafficking and regulations in relation to welfare, there were no options of remaining for a longer period of time (this is elaborated upon in chapter 2.5.2). Therefore, this cannot be regarded as a comprehensive or systematic recording of all forms of abuse to which women were subjected. Despite this, Table 6 indicates the high level of exploitation disclosed and the clear indicators of trafficking present in these cases.

Table 6. Forms of Exploitation

Note: In case 8 early intervention prevented potential sexual exploitation and in case 12 there were cameras in the bedroom although no sexual assault took place.

Case number	Case number	Rape/ sexual assault	Rape/sexual assault by multiple perpetrators	Physical abuse	Psychological abuse/fear	Domestic servitude*	Control of movement	Papers taken	Threats to family	Prevented contact with family
1		■	■	■	■	■	■	■		
2		■	■		■		■			
3		■	■		■		■	■		
4		■	■	■	■		■	■	■	■
5		■	■	■	■			■		
6		■		■	■		■			
7		■		■	■					
8					■					
9		■		■	■		■			
10		■		■	■					
11					■					
12				■	■		■			
13				■	■	■			■	■
14		■	■		■		■	■		

■ - present ☐ - absent

Table 6 indicates the high number of women who were subjected to rape and sexual assault by an individual man and in many cases by multiple perpetrators. In all cases the perpetrators were their potential third country national husbands and/or friends of their potential husbands. For most women these sexual assaults were repeated over weeks, months and in some cases years:

> *I was living in a house with five men … there was especially one man who kept coming to my room every second day and even though I locked my door he got in … I told the man who I was to marry but he did nothing.*

> *Clara was a very, very vulnerable and very young woman living with numerous men and while she did not report rape she has described being 'passed around' a group of men and having sex with all of them.*

All women expressed feelings of fear and distress and manifested the traumatic impacts of severe psychological abuse. Some women found it difficult to name or identify the sexual acts that were demanded of them as rape and sexual assault. They were isolated and controlled and the majority of women were subjected to physical violence, especially if they tried to resist or escape:

> *When Petra returned to Ireland having married her husband in his own country she was subjected to psychological abuse – being left on her own, being locked into the house, having her I.D, her personal public service number and bank cards taken from her, being refused medical intervention when necessary and not having any finances. She was also subject to physical assault when she tried to escape. One of the men who*

lived in the house sexually propositioned her regularly and eventually another man raped her. The rapes continued over a number of weeks. Since she has escaped many threats have been made to her and her family.

When her baby son was just one month old Nadia's husband arrived home intoxicated and attacked her, dragging her into the bathroom by her hair and trying to kick her. He attacked her small daughter as well. Physical, emotional and sexual abuse was common when the husband was under the influence of alcohol.

Some women disclosed how their papers or passport were taken and their movements very directly controlled and monitored. However, all of the women were clearly in an extremely dependent and controlled situation with little or no access to outside support or help. In three cases women experienced domestic servitude where they were forced to carry out all the cleaning and cooking and mind children for long hours with no remuneration:

Anna had to do all the cleaning of the house and they would not allow her to have food so she had to sneak small amounts of food at night. She was put into a situation of complete dependence and felt she could not leave. She was raped repeatedly by her future husband and the other men in the house. This all took place before the marriage ceremony.

One case documented by a service provider illustrates the multiple forms of brutality and violation one very young, eighteen-year old girl was subjected to by numerous perpetrators:

When Bella came to Ireland she worked for a wealthy third country national family as their au pair and domestic worker. She was not allowed out at all, she had to cook and clean and mind the children and worked 20-hour days. Sometime later this family invited a number of men of the same nationality to the house and she was told she had to marry one of them. She was made to dress up for the men and the highest bidder, a man in his fifties took her away to marry her. She had to do the same in his house. She cooked and cleaned for him but this man raped her over and over again, every day. He also subjected her to very inhuman and degrading sexual practices. He later sold her to another man who did the same.

Petra was older and more educated and she was not physically or sexually assaulted yet she also found herself in a very frightening and distressing situation. The potential employer met her at the airport but he was accompanied by a second man whom she was told was to be her roommate and that there would be no private room as she had been promised:

When she arrived in Dublin there was a second man whom she was told was to be her roommate and no private room that she had been promised. After about two weeks she learned that her roommate's visa was to expire in September 2014 and the first man started persuading her to marry him. When she refused they started treating her badly. She wasn't receiving her post anymore and they had taken her bank card that had been sent to her. They were also reading her emails and some of the stuff she had saved on her g-drive. Then they installed cameras in her bedroom more like he was monitoring all her movements. Finally, when she still refused to marry him they became very angry and threw all her stuff outside and told her to leave.

3.4.7 Pregnancy and child protection

Many interviewees raised serious questions regarding the welfare of young mothers and their children, and the responsibility of the State in relation to child protection. In two of the cases studies women became pregnant during the time they were being sexually abused within the context of exploitative sham marriage:

> *Clara has a learning disability and was very vulnerable. She was given by her 'husband' to another man. She then became pregnant and had a baby – it is not clear whether the father of the baby was her 'husband'-to-be or another man. There were serious concerns regarding her capacity to parent but on return to her own country she has been placed in a mother and baby home.*

> *Maria arrived in Ireland with her son, a six month old infant. Nine months later she escaped with the help of the embassy. She told the embassy staff and GNIB that she was sexually abused and was pregnant with her husband's baby. She and her son were repatriated with assistance from a shelter where she had a baby boy.*

In other cases, although the prospective/sham marriage husband was not the biological father, establishing paternity was seen as something to be used in relation to applying for residency:

> *After two months of residing in Ireland, Nadia discovered she was pregnant with a child from a man at home. No sexual relations had occurred with the prospective sham marriage husband in Ireland but he said he was willing to adopt the child and take care of them both. She married him and gave birth to a son. The husband pushed her to write him down as the father of the child, which she, in fear, did.*

> *Jalna travelled to Ireland with her small daughter and was placed in a house with her prospective husband and seven other men. She married her prospective husband and he successfully applied for the EU Treaty Rights. As this marriage was false from the beginning, she started a real relationship with another third country national and became pregnant. She and her underage daughter suffered abuse and violence from this man, even during her pregnancy. He collected the child benefit and she was kept in helpless conditions, even without the possibility to top-up her mobile phone so she could not contact anyone. She escaped from the home after two years and came to the embassy asking for help. This man has since married another woman from her own country and was subsequently granted residency in the State on this basis. A further issue is that on the birth certificate of her baby, issued in Dublin, it is her husband who is registered as the father, which he had demanded.*

The Estonian Embassy expressed concern regarding cases where very young women, who were struggling with parenting, remained in Ireland with the husband and his community, and maintained no contact with the embassy or social services. Serious child protection concerns were reported to the authorities in two cases.

Interviewees also described the pressure placed on some women to return to their husbands after they had given birth to a baby, including women who had returned to their own country. The men tried to persuade them that things would be different now and that they would be looked after. Rada explains what happened to her after she had left:

After I had been helped by a friend to escape and had reported what the men did to me to the police, the men were still trying to get me to come back with constant messages on my Facebook. My husband and his friends kept saying they had not done anything, that all would be fine, that he needed his visa and if I came back all would be fine and I could live with other girls when I came back.

Interviewees believed that even in cases where they were not the biological fathers, the men clearly regarded paternity as a benefit in assisting in the renewal of residence permits in Ireland.

3.4.8 Indicators of trafficking

There are clear indicators of trafficking for sexual exploitation in cases documented for this research. There is strong evidence of targeting and abuse of vulnerability, deception and exploitation in the destination country. All of the key informants believe there was systematic targeting and recruitment and many of the women accessing their services also spoke about other women who they knew were being recruited. In some cases they had been asked to approach other women in their home country who they could ask to come to Ireland. Their travel was organised and there was clear cooperation between the recruiters in the origin country and the organisers in Ireland. There was also a deliberate intention to exploit, and in the vast majority of cases documented above, the exploitation was severe and ongoing. The forms of exploitation were multiple and overlapping, including sexual, physical, and psychological abuse, and clearly the women were controlled and isolated.

Investigations into cases of women exploited in Ireland have resulted in a high number of women being identified as victims of trafficking in Latvia. What this study also indicates is that in some cases it may be difficult to establish that the sexual exploitation was the primary motive or intention of the recruiters. Nevertheless, young vulnerable women ended up in extremely precarious situations with numerous unknown men, where there was ample opportunity to sexually exploit them. Whether the sexual abuse was intended from the beginning as part of the sham marriage contract is unknown and it may have been opportunistic rather than planned. This issue needs further investigation.

However, what can be stated is that there is no evidence of concern or intention to protect these young women from that possibility, and when it occurred there was no attempt by recruiters or by the potential husbands to stop it. Furthermore, even where it may not be possible to prove that the sexual exploitation was the intention of the recruiters or traffickers, these women were subjected to serious indictable criminal acts in Ireland. Consequently, recourse to psychological support, protection and legal advice should be immediately available.

3.4.9 The organisation and financial transaction of sham marriages

As the interviews and case studies reveal, the organisation of sham marriages involves recruiters who would appear to be the same nationality as the women; organisers in Ireland who are both the same origin country nationals as the women and third country nationals; and the prospective husbands who are third country nationals. The known nationalities of the prospective husbands were Bangladeshi (1), Egyptian (1), Indian (2), Pakistani (8) and Turkish (1). It would appear that the financial transaction is between the organisers and

the prospective husband, what some women describe as a 'finder's fee'. Garda information released on 25 November 2015 as part of the continuing Operation Vantage would indicate that there are huge profits being accrued by the organisers, with up to €20,000 being paid by prospective husbands. In one house that was searched in the course of the operation, €30,000 was seized along with false identity documents, driving licences and marriage certificates, providing more evidence of the organisation behind these activitie[61]s. At this time there are no completed prosecutions in Ireland, and therefore limited information is available in relation to the financial transactions.

The women in this study did not seem to have any knowledge of these financial transactions and of the huge amount of money changing hands. The evidence from key informants and case studies would suggest that in very few cases did women receive any money, and where any money was paid to them it was minimal to meet their basic needs of food and accommodation. The marriage proceedings and papers were arranged by the prospective husbands and very little of this legal process seemed to be understood by the women. Rada explains:

> *My business husband arranged all the papers … I don't understand anything … they brought in a translator[62] to the ceremony but they didn't ask me anything about my situation. They should have asked me how I was … was I okay? (Rada)*

It is worth noting that the registration of the marriage and the ceremonies where they occurred, took place in numerous locations in Ireland, particularly outside Dublin city in small towns. This may indicate a deliberate attempt to spread the marriages around the country as it would be less likely to be noted as suspicious. Key informants also pointed out the number of marriages which occur outside the country.

In some cases, it is clear that women come to Ireland for the registration and interview and then return home, only coming back three months later to Ireland for the ceremony[63]. The case studies and the interviews with key informants indicate that it is the women who remain here during the required three month notice period who are highly at risk of exploitation:

> *It is our experience that the shorter the time women were in Ireland the better … as the three months unfolded, the potential for exploitation, particularly sexual exploitation, occurred. (Latvian Embassy representative)*

As stated in chapter 3.4.6, placing young vulnerable women in a house with numerous unknown men created a context that was highly conducive to predatory sexual behaviour.

3.4.10 Exploitation of the prospective husband

This research sought to investigate where crimes against the person are committed and it has revealed that severe and extensive crimes against the person have been committed against a very high proportion of women who were recruited for sham marriage. However, it must be acknowledged that the prospective husband is also being exploited in the sense that advantage is being taken of his desire to obtain residency

61. See Garda Press Release, Operation Vantage - Investigation into Sham Marriages and Immigration Issues, 25 November 2015 available at: http://www.garda.ie/Controller. aspx?Page=16224. See also: '11 arrested over marriage-of-convenience fraud' available at http://www.rte.ie/news/ireland/2015/1125/749111-marriages/.
62. To be understood as 'interpreter' in this particular context.
63. For a marriage to be legal in Ireland, the parties to the proposed marriage must give a minimum of three months notification to a Registrar in person of their intention to marry. More information is available at: http://hse.ie/eng/services/list/1/bdm/marriagesinireland/

in Ireland. Of course, this person is seeking to circumvent immigration regulations, but the crime is against the State and there is no intentional harm directed at another person. A number of respondents interviewed for this research also raised their concerns that there is some evidence that both parties to the marriage could be victims of different forms of exploitation. One service provider noted that in a recent presenting case the alleged sexual exploitation of the EU citizen was not perpetrated by her spouse but rather by the organisers and others living at the same address and that the victim believed that her husband was also being exploited in employment by the organisers. The issue of groups of men working with false papers in concentrated areas of employment with no recourse to legal rights and vulnerable to labour exploitation was also highlighted by the representative of the INIS:

> *The Department is concerned that fabricated employment is a significant contributing factor to this problem and this raises the question of the potential for labour exploitation of the prospective husband.*

3.5 The response to women subjected to exploitative sham marriage in Ireland

The vast majority of women documented in this study sought help directly by calling the Latvian Embassy or presenting to their staff, usually following a prolonged period of exploitation. The figures provided by the embassy indicate the huge pressure on the embassy to provide extensive levels of support, protection and financial aid to women reaching out to them for help in the absence of any state support from Irish authorities. In some cases, where the embassy was informed of or called by a woman at risk they were able to persuade the Gardaí of the seriousness of the situation and enlisted their help in meeting women and getting them to safety. The internet was used in some cases to make contact by the woman herself or by a friend on social media:

> *We were informed by a shelter in Latvia that a young woman had contacted them to say she had received a call for help on social media from a friend who had travelled to Ireland to work on the invitation of a childhood friend. Now she was in danger of being sold to her husband's friend, a third country national for marriage. The embassy contacted her mobile and told her to leave and make her way towards the embassy as she was living within close proximity, and the Gardaí picked her up. (Representative of the Latvian Embassy)*

The Lithuanian Embassy also described their response when a woman contacted them via e mail:

> *We wrote her a detailed reply on how to approach the Garda in the town where she lived, gave her contacts, and some English expressions, gave her the number of our on-duty phone number to call any time. We kept with her communicating via email and mobile phone until we could get her securely home to Lithuania.*

The embassy staff was dealing with women who were frightened and distraught with no resources and knowledge of any service in Ireland from which they could seek help for themselves and their children. For the most part, the women just wanted to go home as the Latvian Embassy representative explained:

> *Very young women were arriving at the door of the embassy with nothing, no money, no papers. Often they were pregnant or had young children with them. Most of them just wanted to go home so we would organise papers, book flights, and drive them to the airport. We would contact the police and NGO services in Latvia*

and they would meet them at the airport and bring them to a shelter.

Over time the embassy built up very good relationships with the key front-line services, including the local shelter, which was very willing to provide emergency accommodation if a flight could not be organised immediately. In some cases, Irish NGOs who were working with women who had presented or been referred directly to them, were in contact with the embassy. They worked with them to ensure the women could return safely with NGO and police support, ensuring their needs were met and the exploitation was recorded and documented in Latvia. The service manager of one of the core services commented specially on this intervention and how important it is for women to know that their own embassy and country recognize the crimes committed against them:

The support this woman received from her embassy was really positive. It is very important for a victim of crime to know that their country is trying to assist and respond to them abroad. The fact that this particular embassy is very aware of this problem of sham marriage makes it easier to respond to the victim because they are not 'denying' that this happens. They have a return home programme which offers various supports that are vital for victims.

For the women who reached Irish services directly, some escaped and ran to the local Garda station, others had been befriended by a woman of their own nationality and brought to the Gardaí, and in one case the woman went to the local family resource centre several times and then disclosed what was happening and they referred her to a refuge. The interviewees in front-line services describe the women presenting to them as profoundly traumatised, and manifesting similar levels of fear and distress to trafficked and prostituted women and women escaping domestic violence.

Anna presented as a young woman who cried a lot, had physical palpitations, recurrent and intrusive thoughts and she could not sleep at night. When she did sleep she had nightmares. She experienced suicidal thoughts and bouts of anger and depression.

Bella was terrified and very frightened initially. Her behaviour was very childlike and she gravitated towards children as she felt that she could only trust children. Her behaviour was very sexualized and a lot of her responses and negotiation skills were highly sexualized.

Clara was particularly vulnerable as she did not seem to understand or have the capacity to understand how she had been exploited. She did not trust state services as her first child had been taken into care which meant that she was afraid that her new child would also be taken from her.

Specialist services in Ireland provided a wide range of supports and interventions including provision of basic things such as toiletries and clothes, in-depth psychological support, safe accommodation and ongoing advocacy for welfare and housing, legal advice and advocacy. In one case where a woman was offered accommodation in a women's refuge, the refuge staff described the highly intensive work involved:

Frea was very distressed and fearful so we secured a translator[64] and carried out a needs assessment which took a long time as she was traumatized. Then we followed up with general medical care and maternity care

64. To be understood as an 'interpreter' in this particular context.

in the local hospital. We managed to secure emergency payments for her on compassionate grounds even though she did not fulfil the habitual residency condition. She was offered hostel accommodation in Dublin prior to being repatriated but her pregnancy was too far advanced for her to travel. We petitioned INIS to continue to support her financially while she remained in the refuge until her baby was born and they agreed. She returned home some months later to a mother and baby home.

In the rare case where it is possible for women to stay in Ireland in the long term the specialist service Ruhama provided an enhanced service of immediate intensive crisis support followed by access to education and training and support to move on to independent living in private rental accommodation:

We provided a one-to-one caseworker who worked very closely with Anna, building up a relationship of trust and supporting her to make a full disclosure to An Garda Síochána. Her caseworker referred her out to a number of other services for support (including sexual health and legal) and referred her into Ruhama's Education and Development Programme. Over a period of two and a half years she did English classes, computer classes, literacy classes, personal development and preparation for employment. We worked to secure welfare and private rented accommodation. When she first presented to the service she was completely subservient and unable to make decisions for herself following the multiple traumatic abuse she had suffered. She is now a confident, outgoing and assertive young woman, who is in control of her life and her future.

Women clearly have multiple needs which demands a complex response involving multiple agencies including medical and health care, welfare, sexual health services, rape crisis centres, and in many cases, interpreting services. Despite the lack of an overall policy or willingness by the state to respond to exploitation within the context of sham marriage, the service manager in an NGO praised the commitment of individual social workers, health professionals and Gardaí:

The social worker worked very hard on this case and went above and beyond because she felt the case was so volatile and the woman and her baby were very high risk. She arranged a multi-disciplinary case conference which was very useful as all stakeholders were able to state what they were doing in relation to the case.

The Garda response too was very positive and commendable. Her case was taken by female Gardaí and they were the first to interview her. They were very sensitive and empathetic which meant that the young woman felt she could talk. These Gardaí had previous experience of cases where sexual exploitation had taken place and in addition at least one of the Gardaí had specialist interview skills. As a result, the young woman felt that she was believed and supported so that she could tell her story more fully.

In one case, intervention was thanks to the alertness of the maternity hospital staff:

They noticed that she was controlled by the man accompanying her and that she could not communicate with him as they did not share the same language. They contacted the medical social worker and later the community social work team who gained her trust over a period of time and then intervened as they had serious concerns for her and the baby.

Despite this good practice of individuals, the failure of the state to afford any rights or entitlements for these

vulnerable women to protection, safety, appropriate accommodation or legal advice, was found to be deeply frustrating by the service providers. The four NGOs which provided case studies for this research are highly skilled and experienced in recognizing the indicators of trafficking, and believe there was ample evidence to have the women identified as victims of trafficking.

3.5.1 The response of the state in Ireland

The failure of the GNIB to recognise the clear indicators of trafficking being reported to them is perhaps not surprising given the overall ineffectiveness of the identification process in Ireland[65]. Despite the introduction of specific legislation, national structures and dedicated Garda and Departmental units to address trafficking in human beings, the Irish State has been consistently criticised for the failure to identify victims of trafficking by international monitoring bodies, as outlined in chapter 2. The majority of victims of trafficking in Ireland are denied the benefits of a recovery and reflection period because they are asylum seekers or EU nationals, as they are deemed to have existing permission to remain in the State. Therefore, as key informants commented, even if the women in this study were regarded as victims of trafficking, the fact is that as they are EU citizens, and therefore they would not have been formally identified as a victim of trafficking under the current AIAs.

It is important to note that where someone is regarded as a potential victim of trafficking, they can be offered protection, support and accommodation without being formally identified by the State. However, formal identification is critical for victims in establishing their entitlement to rights. Without formal identification there is no legal entitlement to recovery and reflection periods and temporary residence permits with all the legal rights accruing from these permits, including welfare support, accommodation, access to education and employment and long term residency rights. Furthermore, the placement of potential victims in the inappropriate and unsafe accommodation of direct provision hostels for asylum seekers has also been severely criticised in the international monitoring reports, as referred to in chapter 2. Consequently, one has to caution that even for those identified, the intervention and support from the State is unsatisfactory. In the few cases where women were regarded as at risk and in need of emergency accommodation it was the direct provision hostels that were offered as accommodation, leading in some cases to re-victimisation:

> *It can be very difficult to begin real work on a woman's confidence if she is living in direct provision. The fact that this young woman was an EU national and was housed in direct provision meant that she was potentially a further target for sham marriage and/or sexual exploitation (NGO service manager)*

> *In one case the Gardaí insisted that because of a perceived threat to her safety the young woman should be moved from our accommodation – single gender, walled, alarmed with gates that are locked at 10pm - to an open direct provision hostel – mixed gender. This was not suitable accommodation for this young woman (NGO service manager)*

The barriers created by the habitual residence condition for EU nationals referred to earlier mean that there is no entitlement to be placed in a women's refuge and receive a welfare payment. Once again some individual welfare officers will provide emergency payments on compassionate grounds, enabling refuges to offer accommodation and support for at least a period of time:

65. See the Irish High Court decision in P. v Chief Superintendent of the Garda National Immigration Bureau & Ors [2015] IEHC 222, as referred to above.

In this case the domestic violence refuges provided temporary shelter for the woman and her baby but because she did not have a payment they could not keep her indefinitely. In general, it is impossible to get a social welfare payment for women, despite their being EU citizens. I think that any woman/man who comes forward and says they are a victim of exploitation should be given a payment – at least while their complaint is being investigated. Surely a safe place to stay should be a priority for any victim-centred approach. (Anti-trafficking officer, Migrant Rights NGO)

It would appear that the response of the GNIB when questioned about their refusal to identify women as victims of trafficking was that because sham marriage was not specifically named in the trafficking legislation, consequently they had no remit to intervene in these cases. But even taking one instance where the woman was of very limited mental capacity, she had disclosed rape and sexual assault[66] and had clearly been brought to Ireland by organisers for exploitation, it is hard to understand why these were not identified as clear indicators of trafficking for sexual exploitation, regardless of the presence of sham marriage[67].

I believe that where the three main indicators of trafficking (UN Convention) are evident – movement, coercion, exploitation – then the woman should be immediately [provided] a recovery and reflection period and all rights under the Administrative Immigration Arrangements which would mean that she is given a social welfare payment. It is also critical that she would not have to go into direct provision, where her recovery is hindered. The State should follow the example of Women's Aid in Northern Ireland – where a number of units of accommodation are reserved for victims of trafficking in safe secure refuges and then at a later stage have access to private rented accommodation (NGO service manager)

The failure to identify the women as victims of trafficking and to provide long term shelter and welfare also resulted in no investigations being carried out[68], which as one interviewee says has serious consequences for other women:

Because the details of the exploiters (recruiter, transporter, and exploiter) were not taken seriously by Gardaí, this organized exploitation could potentially have harmed/trapped other vulnerable women who had less agency/autonomy than our client. The men in the house in Dublin had asked the woman to find other girls in her home country, and that they didn't need to speak English as well as she did. They were effectively asking her to be a recruiter. She refused. (Anti-trafficking officer, Migrant Rights NGO).

Flaws in the identification process have been recognised by all key stakeholders in Ireland and it is intended that a formal review process will be initiated[69]. All informants in this study, including the AHTU and the Gardaí have expressed their support for more effective mechanisms to be introduced:

We welcome a review of the identification process. We believe it is very important that there is a written set

66. It must be noted that further information in relation to any investigations into crimes different from human trafficking, such as rape and sexual assault, was not available in this case.
67. The weaknesses regarding the current identification of victims of trafficking were highlighted in Chapter 2. See endnote above.
68. It should be noted that an important limitation of the research arises in relation to the nature of the response of An Garda Síochána to allegations of serious criminal offences that are documented in this Report; notably in section 2.4. It is important to note that this research is confined only to examination of the question of investigation of potential offences of human trafficking and that even where individuals were not identified as victims of human trafficking that other serious offences may have been the subject of investigation by An Garda Síochána. Data limitations preclude the provision of any information in this regard as it was not possible to determine in almost all cases the nature of the investigation that were actually carried out.
69. See Appendix A List of Actions in the draft Second National Action Plan to Prevent and Combat Human Trafficking in Ireland 2015 available at: http://www.blueblindfold.gov.ie/ website/bbf/bbfweb.nsf/o/29C249CB6AC1762880257E760047573B/$File/Second%20National%20Action%20Plan%20-%20June%202015.docx

of procedures and protocols that works for all of us, especially the victims. This can include cognisance of the requirements of the new EU Victim's Directive which can be built into a new identification process. (Garda Inspector with responsibility for trafficking)

Recent developments also indicate a move towards a more victim-centred approach with the establishment of the Garda National Protection Services Bureau (GNPSB) which will have responsibility for the investigation of all sexual crimes including trafficking for sexual exploitation, and the bureau has a strong focus on the protection and support of victims. As part of Operation Vantage described earlier, a number of women have been identified as victims of exploitative sham marriage and as potential victims of trafficking. Ten cases involving Bulgarian and Lithuanian women have been referred to the Anti-Human Trafficking Team (AHTT) of the Health Service Executive. The Manager of the AHTT welcomes the referrals to the Unit and the recognition of the women as potential victims of trafficking. The women have a similar profile as previously described in the research, coming from impoverished regions, and in particular from marginalised ethnic communities. But she also expressed her concern regarding the extreme vulnerability of some of the women and the challenges facing them as a service in responding to their needs:

We are finding that many of the women have a mild intellectual disability so even trying to get them to understand that these men are using [them] her for immigration purposes, rather than that [they] are loved, is very difficult. We also have to be very sensitive in exploring the issues of sexual abuse and exploitation. And some women refuse to engage with the Gardaí, they just want to stay with the men. They have so few options at home, brought up in care, no family support, very few social services so even repatriation is not necessarily a solution. I worry that they are just falling through the cracks of every service and are highly at risk of being further exploited. (Manager of the WHS and the AHTT)

These recent developments indicate that there is an increasing recognition of the intersection of sham marriage, exploitation and trafficking in Ireland, the need for an enhanced and improved response by the state and, positively, that changes are already taking place in practice.

As noted earlier in the report, Operation Vantage was commenced in August 2015. Recent information provided by An Garda Síochána for inclusion in this report indicates that in excess of 50 persons have been arrested under Operation Vantage and are pending prosecution before the courts or removed from the State. It is further reported that the Operation has focussed on the disruption of the organisers and facilitators behind this process and a number of ongoing criminal investigations with other European agencies are underway. This process has been facilitated through the use of Eurojust and Europol and a number of State agencies. An Garda Síochána expressed recognition of the excellent working relationship with each European Embassy in Ireland who provide valuable assistance towards this Operation, in particular, the Latvian and Estonian embassy officials who have been a fundamental part of the progress to date.

Section 4: Conclusions

This national qualitative study reveals the prevalence of exploitative sham marriage in Ireland. Case studies and interviews indicate that a highly organised system of targeting, recruitment and exploitation of very vulnerable young women from EU countries has been pervasive for many years. The case studies provide some in-depth information of what women are being subjected to in the context of exploitative sham marriages. They have disclosed appalling stories of rape, sexual assault, physical and psychological abuse which have devastating consequences for their health and wellbeing. There is evidence that all the indicators of trafficking are present in many of the cases, including targeting of vulnerability, deception, movement, control and exploitation, yet these cases have not been identified as trafficking cases in Ireland. As stated in chapter 2 of this report, the identification system for victims of trafficking in Ireland is seriously flawed.

It is because of the persistent work of the Latvian Embassy over a number of years that this abuse of human rights was uncovered. Embassy officials have provided protection, support and financial help to these women when no help or protection was forthcoming from the Irish State. They brought these issues to the attention of authorities in Ireland with little effect and it is the work of their own services / NGOs and police forces they have relied on to provide support and, in many cases, identify these women as victims of trafficking. The Estonian Embassy states that it has followed suit in also raising these issues, and they have also worked with social services in their own country to intervene early and try to prevent this form of exploitation.

The NGO specialist services in Ireland have been at the forefront of responding to the needs of all victims of trafficking, and the case of women subjected to exploitative sham marriage is no different. They have delivered a wide range of supports to meet the complex needs of this vulnerable group of women. They are highly skilled in risk assessment, recognising the indicators of trafficking and understand the traumatic impacts of severe exploitation on the women presenting to them. However, the failure of the authorities to formally identify these women, as well as other EU citizens and asylum seekers, as victims of trafficking crimes, and to provide appropriate safe accommodation, especially for victims of sexual violations, continues to frustrate their efforts to deliver best practice responses. The current AIAs, in addition to excluding the EU nationals and asylum seekers, also operate exclusively for the purposes of investigating and prosecuting offences and not for the purpose of ensuring that all victims receive adequate protection and support regardless of co-operation with criminal investigations. Furthermore, the AIAs do not take the special needs and vulnerabilities of individual victims into account.

It is in the interest of the Irish State to prevent sham marriages but it is also the responsibility of the State to ensure the provision of early intervention to victims of any crime. Where crimes against the person have been committed in this jurisdiction it is incumbent upon the State, particularly under the EU Trafficking Directive, to ensure that victims of those crimes are given legal advocacy and representation to enable them to bring cases to court.

Early legal intervention has proven to be critical in enabling victims of trafficking and other crimes to access safety and protection and also to act as witnesses in criminal proceedings[70]. The perspective, knowledge

70. The Immigrant Council of Ireland leads on an EC ISEC funded programme on early legal intervention for victims of trafficking in five EU Member States, see: www.earlylegalintervention.eu

and information in the origin country and the destination country may be different, as currently in-depth disclosure for the vast majority of victims is taking place in services in the origin country.

However, there were a sufficient number of cases in Ireland where the evidence was clearly available. Embassies were systematically documenting the details of cases and presenting them to the Irish authorities and some women spent considerable periods of time in NGO support services to allow disclosure of exploitation and human trafficking indicators to be recorded. Yet this has not resulted in formal identification of women in these situations as victims of trafficking and little is known regarding any consequent investigation of the exploitation experienced. Investigations cannot happen if women have no recourse to protection and support services in Ireland which inevitably leads to the perpetuation of the exploitative scheme and abuse of women. Without victims remaining in Ireland to act as witnesses with the support of the State and the services, no prosecutions will be obtained and the recruiters and traffickers will remain at large and free to repeat the crimes.

Recent developments however, indicate a willingness to reform the overall response to trafficking in Ireland and in particular the identification process. Furthermore, the inclusion of human trafficking under the newly established Garda National Protection Services Bureau (GNPSB)[71] is very welcome, which makes it an opportune time to consider a more effective response to all victims of crime in Ireland including victims of trafficking and exploitative sham marriage.

71. The Garda National Protection Services Bureau will be responsible for the investigation of sexual crime against adults and children, domestic violence and trafficking for sexual exploitation.

Section 5: Recommendations

To provide the wider context, this research report has necessarily outlined information regarding the overall regulation of sham marriage and human trafficking in Ireland. However, the recommendations outlined below are specifically and exclusively focused on the issue of exploitative sham marriage where there are indicators of trafficking.

Reform of the identification process for victims of trafficking in Ireland

It is recommended that the review of the identification process for victims of trafficking is carried out with utmost urgency. It is also recommended that the renewed arrangements will lead to the following process:

- When a designated first responder/agency/Garda identifies a person as a potential victim of trafficking, including victims of exploitative sham marriage, the person would be immediately referred to a designated specialist support service where a risk and needs assessment would be carried out.
- The person should also have access to appropriate emergency accommodation, especially for victims of sexual abuses, in-depth support and legal advice at the earliest opportunity.
- Where the first responder provides reasonable grounds to suspect that the person has been trafficked, a referral should be made under the National Referral Mechanism (NRM) for a recovery and reflection (R&R) period, conferred regardless of the immigration status or the nationality of the victim. This would include EEA nationals and asylum seekers, and it should involve the issue of a residence permit where such is required. This R&R should be issued within five days enabling the service/agency to offer on-going protection and support.
- The purpose of the R&R period is to allow time for the persons involved to recover from their traumatic experience and to take an informed decision about the future, including whether they wish to co-operate with the authorities and police in Ireland. If they wish to do so they should be referred to the Garda National Protection Services Bureau (GNPSB) and accompanied to make a statement.
- If during those interviews the GNPSB believe there is evidence to trigger an investigation, or in cases where the personal circumstances linked to age, health, pregnancy, nature of abuse and trauma require that the person remains in Ireland, the person should be formally identified as a victim of trafficking by way of written communication to the victim and her legal representative.
- As an alternative to GNPSB, a referral should be made to a panel of accredited experts who would be able to formally identify a person as a victim of trafficking crime, where a submission to this effect has been made by the victim or her legal representative.

- In the case of a victim who does not have permission to be in the State, including asylum seekers, then they should be issued with a temporary residence permit to ensure they are granted the full set of rights and supports designated to trafficked victims in the State, including the right to private residence, vocational training and work.

Provision of supports to victims of other crimes against the person

In the case where there is insufficient evidence of trafficking but there is evidence that crimes against the person have been committed including, assault, sexual assault and rape, the person should be acknowledged as a victim of crime and provided with appropriate supports for the exploitation experienced. Similar arrangements need to be in place as for victims of trafficking, which allow for that person to remain in Ireland and have access to support and welfare for the duration of the investigation. In the case of EU citizens, the habitual residence condition needs to be waived in order for that person to have access to refuge provision, private rented accommodation and welfare support.

Resources for first responders

The work with victims of trafficking and exploitative sham marriage is complex and resource intensive. It is essential that service providers have sufficient resources to provide best practice responses including appropriate safe accommodation and a wide range of supports. Early legal intervention by specialist legal practitioners must also be resourced as such intervention is critical for victims to access their rights and entitlements and to enable successful prosecutions.

Training for General Registrars and immigration officers

Special training for General Registrars and immigration officials is needed to enable better identification of suspected victims, including in recognising subtler forms of exploitation such as may occur within exploitative sham marriages and to ensure that the implementation of law and administrative procedures in respect of marriages and the processing of residence applications by third country nationals generally are applied in a proportionate and non-discriminatory manner.

Bilaterals/police/NGO co-operation between the origin states and Ireland

International human rights provisions highlight the importance of coordination and inter-agency mechanisms for tackling trafficking, based on partnerships between public authorities, law-enforcement agencies and NGOs. There should be cooperation between the Member States to monitor this and other emerging trends, to identify victims of trafficking and other crimes, to provide appropriate supports and to develop effective law enforcement responses and measures to prevent exploitation. In order to facilitate the informed nature of this necessary inter and intra states cooperation, the EUROSTAT report should pay special attention to emerging and less recognised forms of exploitation in trafficking, such as the one occurring in the context of marriage, and respectively, efforts should be made at the EU level to gather statistical information capturing these new trends with a view to informing timely prevention.

Data and further research

To assist evidence-based policy making and evaluate the effectiveness of law and administration, the Irish authorities should collect and publish data annually on the number of visa and residence permit applications made, the number of visa applications and residence permits granted and refused as well as on the reasons for refusals; any such data should be disaggregated by showing nationality, gender and age of the applicants and their family members.

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Appendix 1: List of Participants

The authors wish to thank the following for their participation in the research, for facilitating interviews, providing data and documenting case studies.

Embassy representatives

Embassy of Latvia

Embassy of Estonia

Embassy of Lithuania

Embassy of Portugal

Non-Governmental Organisations

Ruhama

Adapt Domestic Abuse Services

Immigrant Council of Ireland

Doras Luimní Migrant Advice Centre

State agency representatives

Residence Division, Irish Naturalisation and Immigration Service

Women's Health Service and the Anti-Human Trafficking Team, Health Service Executive

Garda National Protective Services Bureau

Anti-Human Trafficking Unit, Department of Justice and Equality

We would also like to sincerely thank Rada for sharing her personal experience of exploitative sham marriage.

Appendix 2: Template for documenting case studies

Case number:

Organisation:

Profile of the woman

- Age
- Nationality (or region)
- Background
- Vulnerability/risk factors (such as poverty, raised in care, learning difficulty, mental health issues, history of sexual abuse, lone parenthood)
- Level of understanding of the English language

Direct recruitment

- How was the woman recruited?
- Did she meet the recruiters?
- Did she know them already?
- Were they organized do you think and had they recruited other girls/women?
- What motivated her to agree to come to Ireland?
- Did she know it was a sham marriage?
- Was she told who she would be marrying?
- What was she promised? (Including money (or other gifts etc.) new life, job.)

Online recruitment

- Does online recruitment differ from recruitment in real life as described above?
- Who organised the online recruitment and posted advertisements online and/or groomed the victim into accepting a (sham) marriage?
- In what language were the advertisements written?
- Where are the advertisements posted? Are they shared also via social media?

Transportation/travel

- How did she travel to Ireland?
- Who paid and booked her tickets?
- Did she travel independently or was she accompanied?
- Was she met at the airport? By whom?
- Or what instructions was she given on where to go after arrival?

Life in the destination country and exploitation

- What happened after she arrived in Ireland?
- Where was she brought to/accommodated?
- Did she meet her future husband?
- What nationality was he?
- Were there other men in the accommodation?
- Did she immediately feel vulnerable/frightened /threatened?
- Did she tell anyone?
- How long was she in Ireland before the planned marriage?
- Was she subjected to any forms of exploitation prior to the marriage or after the marriage and what indicators of human trafficking and /or exploitation were disclosed? Can you please specify in detail if there was:

- Physical and psychological abuse
- Sexual violence, rape and sexual assault by the proposed husband/other individual men
- Commercial sexual exploitation and prostitution
- Domestic servitude and labour exploitation
- Threats to her or her family
- Economic violence (e.g. taking loans in her name, controlling the use of or access to money, debt bondage)?
- Freedom of movement limited/passport taken away
- Preventing contact with their family and friends

The sham marriage

- Who organised the wedding?
- Do you think there was systematic organization of many girls/women?
- Where was the wedding organised?
- Did she feel forced/pressurised to marry?
- Were false documents produced at the registrar's office?
- Was she asked any questions by the registrar?
- What happened after the wedding?
- Did she receive any money promised?

The men

- Were they already resident in Ireland?
- Do you know their legal status?
- Do you know their income level?
- Was his/their purpose immigration/residency in Ireland?

- Was the purpose sexual exploitation? (or both above)
- Do you know if the man/men paid a third party?
- Who do you think profited financially from the sham marriage?

Identification of victims & assistance

- How did the woman seek help?
- Did she seek help herself or was she identified by an agency as at risk?
- Who referred her to you?
- Can you describe the impact of this experience on her?
- Can you describe the response you made?
- What other agencies responded/were involved?
- What were the difficulties in providing an effective/sufficient response?
- What was the outcome for her?

Improved response in Ireland

- What do you think worked well in the response by agencies/the State to this woman?
- What do you think could have been done differently in this case in Ireland which would have improved the outcomes for this woman?
- Any other information or comments you would like to include

Appendix 3: Case Study of Interviewee

"Rada" is a Latvian national. She grew up in a small town in Latvia. She was sexually abused by a close relative from age 6 to 16. A social worker at her school in Latvia found out and informed Latvian police. She was taken into care and placed with a foster family in Latvia at that point. At age 17 she gave birth to a son, who was placed in care also.

When Rada was 19, a Latvian acquaintance, "Jane", who was living in Ireland, encouraged her to move to Ireland. Rada was told she would have a job, money, and a place to live in Ireland, but that she would have to marry a man in a "business marriage". The man, "Joe", agreed to pay Jane to "get him a wife", and Jane arranged to have Rada transported to Ireland. Joe was to pay Jane 1000 and Rada 4000. He never paid either of them any money.

Rada traveled to Ireland in September 2008 for the purpose of marrying Joe and the marriage took place in July 2009. When Rada arrived, Joe took away her passport, did not provide her with a job or money as promised, and kept her locked up in the house most of the time.

On arrival in Ireland, Rada was taken to a house, which had multiple men living in it, including Joe. At least two of Joe's friends raped her shortly after she arrived in Ireland. Between her arrival and July 2009, Rada was moved between several addresses and subjected to sexual violence and physical and emotional abuse by Joe as well as his friends. One of Joe's friends raped Rada many times over the months she was held captive by them. She was often not fed properly and would eat leftovers that she could find in the house.

After the civil marriage in July 2009, Rada was moved to a new house with her husband where she was locked in the bedroom for 6-7 hours a day, and never left the house for at least one week.

A concerned citizen became aware of her situation and offered to help her get out. Rada agreed and left with the woman, who took her to the Gardaí. The Gardaí asked if Rada wanted to report the men for abuse, but she declined initially out of fear.

A friend of the concerned citizen brought Rada to Dublin where she was put in contact with an NGO for support. Representatives from the NGO accompanied Rada to report what had occurred to An Garda Síochána and to make a statement. Rada made an official statement over the course of four interviews in the period December 2009 to February 2010. During the interviews she gave a detailed account of the above, including identities of the perpetrators and descriptions of the houses where she was kept and where the abuse occurred. The Gardaí took Rada to the area where she had been kept to see if she could remember and identify any of the homes or locations where she had been held and where the abuses took place. She was able to identify and locate most of them. Rada was provided with temporary accommodation at a Direct Provision Reception Centre for asylum-seekers. Rada subsequently secured work herself in another part of the country and moved there in 2010.

In November 2014, a request was made on Rada's behalf by another NGO to find out further details of the

investigation into Rada's case. The NGO was informed that there was a 'criminal investigation of 'various alleged crimes' and that a file was referred to the DPP. However, an order of no prosecution was made. Rada received no further information and no reasons were provided.

Since Rada has made great progress in rebuilding her life and finding happiness. She is in a stable relationship with a new partner, with whom she has a young child born in 2012. She enrolled in further Adult Education for the 2012/2013 academic year. With NGO supports, she was able to access accommodation in 2011 and has been receiving social welfare since 2013.

An initiative of the Latvian Ministry of Interior

'Preventing human trafficking and sham marriages: a multidisciplinary solution'

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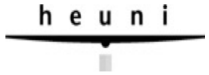
Partners:



Associate Partners:

Published by:
Immigrant Council of Ireland
2 St. Andrew Street
Dublin 2, Ireland
Information Helpline: +353 1 6740200
Admin: +353 1 6740202
Email: admin@immigrantcouncil.ie

Website: www.immigrantcouncil.ie

Immigrant Council of Ireland
Independant Law Centre