

Project TRACKS - Identification of Trafficked
Asylum Seekers' Special Needs

Identification and Response to the Needs of Trafficked Asylum Seekers

Summary Report
National Focus Ireland

Working for **equality**



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PARTNERSHIP

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UNHCR Europe office, the French Office for the Protection of Refugees and Stateless persons (OFPRA), Amicale du Nid Rhône, UK Institute for Migration Research and the Human Trafficking Foundation are associated partners to this project.

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Executive summary

The project TRACKS aims to analyse the asylum-trafficking in human beings (THB) nexus through the prism of special needs of trafficked asylum seekers and to equip national asylum authorities and civil society organisations to tackle crosscutting issues (i.e. protection, housing, rehabilitation, psychosocial support as well as security). Indeed, international protection of these asylum seekers might be challenged by their very specific vulnerability.

Asylum seekers identified as victims of trafficking belong to the categories of vulnerable applicants within the European Union (EU). As such they are entitled to specific social and legal support and reception conditions, as well as from a procedure adapted to their needs. Taking on board and responding to such needs can best ensure that trafficking victims can benefit from international protection. Very few victims of trafficking applying for asylum are granted refugee status or subsidiary protection mainly because they have enormous difficulties to express their individual story: they are often under influence, are rarely aware of their rights and went through traumatic experiences. Their stories could be often encountered with mistrust on behalf of the authorities. Moreover, the asylum application can be used by criminal networks and traffickers exploiting victims to make sure they could legally stay on the territory. In those cases, the victims are given invented stereotyped asylum

stories they have to tell to the asylum authorities and support organisations. Therefore, issues of credibility and trust building are key to address.

How shall the asylum procedure be adapted and what kind of accompaniment shall be provided to these persons to enable their protection as early as possible? Among specific issues identified are housing, social and health support, legal and procedural support as well as cross-cutting issues such as security, trust building, stability and training of stakeholders.

Overall, the project is about formalising tailored, comprehensive and complementary accompaniment and support of victims of trafficking by a range of actors (i.e. regarding social and legal support, health, security issues, etc.) throughout the asylum procedure.

Main findings of the common consolidated report

Legal framework



The analysis of the legal framework applicable reveals that among Member States bound by **Directive 2013/33/EU laying down standards for the reception of applicants for international protection (Recast Reception Directive)** and **Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Recast Procedures Directive)**, i.e. *Cyprus, France, Italy and Spain*, transposition is uneven or has not occurred yet. *Ireland*, the *UK* and *Switzerland* are not bound by those Directives. Furthermore, only *Cyprus, France, Ireland, Italy* and the *UK* have transposed **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Anti-Trafficking Directive)** which also applies to the asylum context. Other legal frameworks which have an important bearing on the asylum-THB nexus are the **United Nation's Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol)**, the **Council of Europe's Convention on Action against Trafficking in Human Beings (CoE Convention)** and the **Convention and Protocol relating to the Status of Refugees (Refugee Convention)**.

Statistics and data collection



It is very difficult to collect harmonised and comparable data on victims of trafficking in human beings in the asylum process. Only in *Switzerland* are crosscutting data on asylum and THB centrally produced by one national authority: the State Secretariat for Migration. Nonetheless, the accuracy of the available data cannot be guaranteed yet and under- as well as mis-reporting is possible.

Detection of victims of trafficking in the asylum process



In most of the countries studied the assessment of whether the applicant is an applicant with special procedural or reception conditions' needs, foreseen by the Recast Procedures Directive and Recast Reception Conditions Directive, is rarely, or only partially conducted, which hinders the detection of victims of trafficking in the asylum process. Furthermore, *Ireland*, the *UK* and *Switzerland* are not bound by the above mentioned Directives.

Nevertheless, a judgement of the Swiss Federal Administrative Court of July 2016 has highlighted the State's obligation to identify asylums seeking victims of trafficking, which arises from Article 10 of the CoE Convention.

In practice, none of the countries studied provide an effective mechanism to identify asylum seekers with special needs. It therefore seriously harms the possibility for victims of trafficking to benefit from appropriate and timely support in the asylum process, both with regards to procedures and reception conditions.

Compatibility between National Referral Mechanism (and similar mechanism) and asylum systems



In *Cyprus, Ireland, Italy, Spain* and the *UK* detection of potential cases of trafficking by the asylum authorities has to systematically lead to the orientation of the applicant to the authorities competent for formally identifying victims of trafficking. The compatibility of rights and benefits attached to each status is very important. In all countries studied victims of trafficking and asylum seekers benefit from different rights and benefits. Good practices have been identified in *Italy* as well as in the *UK* where victims of trafficking seeking asylum have access to the rights and benefits of both statuses.

Procedural safeguards for victims of trafficking as a category of applicants with special needs



Most countries studied do not, or insufficiently, provide procedural safeguards for victims of trafficking. The three procedural safeguards most commonly foreseen by national legal framework studied and applying in theory to all vulnerable applicants are 1) the possibility for the authority competent for conducting the personal interview to prioritise the examination of the claim and thus the date of the interview because of the personal circumstances of the applicant; 2) the possibility for the applicant to ask for the asylum officer conducting the interview to be of the same sex and 3) the possibility for the applicant to be accompanied by a third party (or third parties) during the personal interview. However, in practice these safeguards might not systematically apply to victims of trafficking.

Dublin Regulation



In most countries studied, the individual interview foreseen by the Dublin Regulation, which provides a procedure for determining the Member State in which an application for international protection should be examined, is not conducted in an appropriate environment for detection or self-identification of victims of trafficking. In all countries studied, identification and reporting of victims of trafficking under the Dublin Regulation essentially rely on legal and social support organisations and/or self-reporting of victims themselves and do not preclude return to another Member State under the Dublin procedure. Indeed, in practice, being identified as a victim of trafficking does not have, or only rarely has, an impact on the Dublin procedure. In practice, none of the countries studied apply the discretionary clause foreseen in Article 17 to victims of trafficking.

Identified special needs of victims of trafficking in relation to asylum procedures



- Need for building mutual trust;
- Need for information provision and legal support;
- Need for a specific and flexible approach as regards to time-scale;
- Need for a more victim-centred approach within the Dublin system;
- Need for specific guarantees during the interview, including a friendly environment; support from a lawyer and/or a psychologist; the possibility to express preferences for a same-sex interviewer and interpreter in certain cases; and reducing the number of interviews.

Access to international protection for victims of trafficking



A victim of trafficking might be entitled to be granted refugee status or subsidiary protection when there is a risk of persecution or serious harm in case of return to the country of origin. Hence, the access to a procedure for international protection shall be considered as one possible form of protection. In terms of level of protection, it remains unmatched and still offers the highest level of protection that an individual could be granted. To grant refugee status domestic courts have developed criteria for determining the meaning of 'social group', as well as other factors, in order to protect victims of human trafficking as members of such group. Among countries studied, only jurisprudences from *France, Ireland* and the *UK* have been found and analysed.

Reception conditions applied to victims of trafficking seeking asylum



None of the countries studied have a legal framework making it compulsory to adapt reception conditions for victims of trafficking within the asylum system despite the fact that in several countries, in particular *France, Cyprus, Italy* and *Spain*, reception conditions granted to vulnerable asylum applicants, who have special needs, must be adapted to meet the requirements of the Recast Reception Conditions Directive.

In practice, in the countries studied, reception conditions offered to applicants who are victims of trafficking widely differ from one to another. In *Ireland*, in the *UK* and in *Switzerland*, reception conditions offered to victims of trafficking who seek asylum are not tailored to their situation as victims of trafficking but follow general rules applicable to all asylum seekers. In *Italy* and in *Spain*, victims of trafficking who seek asylum tend to be accommodated in housing designed for victims of trafficking and receive tailored care and support to meet their specific needs. In *France* and in *Cyprus*, reception support provided to victims of trafficking who seek international protection tends to vary.

Identification of special reception needs of victims of trafficking seeking asylum



Based on the research conducted, it is apparent that victims of trafficking have similar reception needs, irrespective of the type of procedure in which they are. One distinction which cannot be overlooked, however, is in respect of the legal support available which must be tailored to the specific procedure they are in. Among asylum seekers on the other hand, victims of trafficking have specific reception needs, which need to be highlighted.

- Need for a safe space taking into consideration security, privacy, gender, presence of a child and mother care;
- Need for tailored mental health support;
- Need for being empowered including in favouring financial sustainability, autonomy in their daily life as well as prospects for the future (education; employment).

Joint recommendations

These recommendations are primarily addressed to governments of European countries studied for the purpose of the TRACKS project namely Cyprus, France, Ireland, Italy, Spain, Switzerland and the UK. Nonetheless, they more generally concern all national governments to whom the Palermo Protocol, the CoE Convention and the Convention and Protocol relating to the Status of Refugees apply – each of which is

applicable in Ireland. With regards to EU Member States in particular, the European Commission shall ensure that the relevant European Directives are fully transposed and implemented in an appropriate manner in order to guarantee that victims of trafficking who are seeking asylum are effectively detected, supported and referred to the relevant support organisation and/or mechanism.

1 **Set up or improve existing data collection systems on victims of trafficking seeking international protection** in order to better assess the scale of the phenomenon and improve the tailored support provided to victims of trafficking seeking international protection. This should be done in full respect for the principle of data protection and in cooperation with the civil society.

2 **Provide systematic and regular training as well as capacity-building and support activities to all relevant practitioners in the asylum system** in order to improve the identification of victims of trafficking seeking international protection as well as the identification of their special needs.

3 **Ensure sustainable, transparent and regular cooperation between relevant stakeholders**, including among others, state representatives at national and local levels, asylum authorities, asylum service providers and organisations providing support to victims of trafficking and/or asylum seekers. This will improve the support that should be provided to victims of trafficking in the asylum system and meet their special needs.

4 **Fully respect state parties' obligations derived from Article 4 ECHR and Article 10 of the CoE Convention to take action to detect victims of trafficking in the asylum process**, in order to be able to offer them the appropriate support and protection they should be entitled to.

5 **Fully guarantee the right to be formally identified as a victim of trafficking without prejudice to the right to seek and be granted international protection**, in accordance with Article 14(5) of the CoE Convention.

6 **Systematically assess the special needs of asylum applicants who are identified or are presumed to be victim of trafficking.**

7 **Grant victims of trafficking who are seeking asylum the rights they are entitled to as victims of trafficking** as soon as there are reasons to believe that they are victims of trafficking, irrespective of whether or not they have been formally and/or conclusively identified as victims of trafficking in the respective Member State.

8 **Effectively apply the necessary procedural safeguards to victims of trafficking who are seeking asylum**, including – but not limited to, those safeguards foreseen in the Recast Procedures Directive that should apply to asylum applicants identified as applicants with special needs.

9 **Effectively provide appropriate reception conditions meeting special needs of victims of trafficking who are seeking asylum**, as foreseen by the Recast Reception Conditions Directive in combination with the Palermo Protocol, the CoE Convention and the Anti-Trafficking Directive.

10 **Fully respect the right of victims of trafficking to be granted international protection**, in cases where there are relevant nexus to one of the Geneva Convention grounds, in particular the membership to a particular social group.

National Report-Ireland

Methodology

This report is based on information collected by the Immigrant Council of Ireland. The report reflects the legislative and policy frameworks as well as practices in Ireland.

Information for the report has been gathered using a common mapping questionnaire. The information for the common mapping questionnaire was collected through:

- Desk research conducted by the Immigrant Council of Ireland;
- Focus group meetings involving relevant stakeholders at a national level organised in Ireland, convened by the Immigrant Council of Ireland;

- Interviews and discussions with relevant stakeholders at national level;
- Semi-structured interviews with trafficking victims, who were identified by the Immigrant Council of Ireland law centre as having been through an asylum procedure. These interviews were conducted following a review of any ethical issues and based on the consent of those interviewed and on the basis of a confidentiality agreement developed for ensuring the privacy of those interviewed.

1.

Introduction

Within the overall population of asylum seekers, it is recognised by the EU that there are applicants with special needs, arising both from their past experiences and particular characteristics.¹ These relate to *inter alia* the procedures for processing claims for international protection and the conditions of reception centres where asylum seekers are often placed during the asylum process. Included among the categories of asylum seekers with such special needs are victims of trafficking. At the same time, there is recognition that *all* victims of trafficking have specific needs, arising in part from the trauma they have likely suffered as a result of their trafficking experience.² Overlapping with the above, these include the need for certain protections during interviews by State authorities, plus safe and appropriate accommodation. This report focuses on the Irish response to the needs of asylum seeking victims of trafficking.

The focus of the report is further informed by the special needs of certain categories of trafficking victims who are considered particularly vulnerable. Article 11 (7) of the Anti-Trafficking Directive recognises such needs as deriving “from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered”. Similarly, the European Commission’s study on the Gender Dimensions of Trafficking in Human Beings highlights the gender-specific special needs of victims who have suffered sexual exploitation.³ Recognising that women and girls trafficked for the purpose of sexual exploitation represent a majority of those identified in Europe and Ireland, the report has a particular focus on women and girl asylum seeking victims of trafficking who have suffered sexual exploitation.

The purpose of this national report is to analyse the procedures and practices of Irish authorities with regard to the response to asylum seeking victims of trafficking *vis-à-vis* asylum procedures and reception

conditions. Overall, the report seeks to establish the extent to which the approach currently followed in Ireland meets the above stated needs of asylums seeking victims of trafficking, specifically with regard to the asylum process and their reception. The report forms part of the wider TRACKS project on the special needs of asylum seeking victims of trafficking.

The scope of this report is victims of trafficking in the asylum process. Regardless of the ground upon which their asylum claim is made, all victims of trafficking seeking protection may have specific needs, distinguishing them from other categories of asylum seekers. Consequently, the research focuses on all victims of trafficking in the asylum process, irrespective of their grounds for claiming international protection.

Past work in the area has identified gaps in the treatment of asylum seeking victims of trafficking in Ireland (specifically with regard to their identification, the issuing of residency permits, and their accommodation).⁴ This previous work focused in particular on the treatment of asylum seeking victims of trafficking from the perspective of their rights and benefits as victims of trafficking. The present report, while taking account of such rights, focuses on this category of trafficking victim primarily from the perspective of their entitlements as asylum seekers with special needs. As will be seen, however, there are a number of overlaps between those rights and entitlements.

A central finding of the report is that the established policies and practices in Ireland fail to meet the identified needs of trafficking victims who are claiming asylum. In order to address these shortcomings, there is a need for new legal provisions, policy, and practices, as well as operational support, guidance and training of stakeholders. In addition, there is also a need for stronger and more comprehensive cooperation between relevant stakeholders at national level.

1. Recast Reception Conditions Directive
2. Anti-Trafficking Directive, Article 11
3. European Commission, Study on the Gender Dimension of Trafficking in Human Beings (2016) http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings_final_report.pdf

4. Immigrant Council of Ireland, Asylum Seeking Victims of Human Trafficking in Ireland : Legal and Practical Challenges (2011) https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/asylum_seeking_victims_of_human_trafficking_in_ireland_1.pdf

2.

Legislative context

At European level, there are a number of Directives which concern human trafficking, asylum procedures, reception conditions, and the special needs of crime victims. These include the Anti-Trafficking Directive, the Recast Procedures Directive, the Recast Reception Conditions Directive, and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Rights Directive).

The Anti-Trafficking Directive contains a number of important provisions relating to the protection, support and assistance of victims of trafficking. Article 11 (5) of the Directive requires that Member States provide victims with “appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate”. The information covered in this Article includes that on the availability of international protection. The Directive further requires Member States to attend to the “special needs” of certain categories of trafficking victims. Such needs can arise from the serious physical, psychological, or sexual violence that a trafficking victim has suffered. In addition, the Directive recognises the need for special protection measures for victims of trafficking during criminal proceedings, including the modification of interview procedures to reduce the risk of secondary harm. The Victims' Rights Directive similarly includes a number of provisions aimed at avoiding the re-traumatisation of victims of crime during interviews, including that, wherever requested, such interviews should be conducted by an interviewer of the same gender as the victim. Although the latter provisions are not immediately applicable to interviews during the asylum process, they are relevant to the special needs of victims of trafficking. Moreover, neither Directive distinguishes between asylum seeking victims of trafficking and those not in the asylum process with regard to the availability of the above measures.

Almost identical measures can be found in the CoE Convention which Ireland ratified in 2010. Importantly, the CoE Convention states that the rights contained therein are “without prejudice to the right to seek and enjoy asylum” and thus it should be open to victims of trafficking to benefit from assistance and support while claiming international protection.

The Recast Procedures Directive and Recast Reception Conditions Directive contain a number of provisions relevant to victims of trafficking. Trafficking victims have been defined as a category of asylum applicants with special needs by Article 21 and Article 2(k) of the Recast Reception Conditions Directive. Article 22 of the Recast Reception Condition Directive requires that Member States first assess whether or not asylum seekers are applicants with special needs and identify the nature of such needs. Those needs have to be taken into account when Member States provide the applicant with reception conditions. The Recast Procedures Directive requires that Member States put in place special procedural guarantees for applicants with special needs, arising from *inter alia* their characteristics or the nature of a harm they have previously suffered. In particular, the conditions for the personal interview and the length of the procedure – whether the examination of the claim is prioritised or not and whether the claim is examined under an accelerated procedure or not – are key aspects of the asylum procedure that can be adapted to the applicant's needs. Ireland, however, has opted out of the Recast Procedures Directive and Recast Reception Conditions Directive and thus is not bound by the above provisions.

Conversely, Ireland has opted into the Anti-Trafficking Directive and Victims' Rights Directive; on the basis of which it has assumed certain responsibilities towards victims of trafficking with special needs, as outlined in the introduction. The above measures are indicative of the steps Ireland can take to address the needs of those victims during the asylum process.

The main piece of legislation concerning asylum in Ireland is the International Protection Act (IPA), adopted in 2015 and commenced on 31 December 2016. With respect to the special needs of asylum applicants, the Act only recognises the special needs of child asylum seekers, extending limited procedural safeguards, including that the asylum interview is carried out “by a person who has the necessary knowledge of, and competence to take into account, the special needs of persons who have not attained the age of 18 years”. In addition the final report on the application must, similarly, be prepared by someone with the necessary knowledge of the special needs of persons who have not attained the age of 18 years. Therefore there are no provisions in Irish law which requires that authorities recognise and respond to the special needs of trafficking victims, in the

context of the asylum process or with regard to reception conditions.

For victims of trafficking originating from outside the EU, the Administrative Immigration Arrangements provide an avenue for temporary legal residency in the form of a 60 day recovery and reflection period and renewable six month temporary residence permit. A range of support and assistance measures available to victims of trafficking during this time are outlined in guidelines provided by the Department of Justice Anti-

Human Trafficking Unit (AHTU).⁵ As will be discussed below, however, asylum seeking victims of trafficking are delimited from some of the most important measures – a practice which has been criticised in consecutive reports on Ireland by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA). At the same time, none of the available measures are specific to the special needs of asylum seeking victims of trafficking, including with respect to their reception conditions.

3.

Scale

Ireland is primarily a destination country for victims of trafficking. Between 2012 and 2016, there were 311 victims detected by or reported to the Gardaí. The largest proportion of victims was female (197) and the majority were subjected to sexual exploitation (200). The greatest number of victims exploited in Ireland originated from other EU Member States (121), although a significant proportion came from outside the EU. Over this period, for example, there were 50 victims who originated from West Africa, particularly Nigeria. With regard to asylum seeking victims of trafficking,

there are a number of sources which reveal the number of victims of trafficking seeking asylum in Ireland. Figures contained in the annual US TIP Reports on victims of trafficking in the asylum procedure, as well as data shared by the Irish Office of the Refugee Applications Commissioner (ORAC) give an overview of the number of victims of trafficking seeking asylum in Ireland.⁶ ORAC provided information on the number of times they notified the AHTU and the Gardaí, of potential victims of trafficking. At the time of writing, data for 2016 was not available.

	2010	2011	2012	2013	2014	2015
Victims of trafficking in the asylum process according to the US TIP Reports	39 ⁷	N/A	2	8	6	7
Number of asylum seekers notified by ORAC	15	12	9	10	8	7
Number of victims of trafficking detected ^{8, 9}	78	57	48	44	46	78

5. Guide to Procedures for Victims of Trafficking in Ireland <http://www.victimsofcrimeoffice.ie/en/vco/Humantraffickingguidelines.pdf/Files/Humantraffickingguidelines.pdf>

6. With commencement of the International Protection Act 2015 on 31 December 2016, ORAC was abolished and responsibility for the investigation of applications for international protection was transferred to the new International Protection Office (IPO).

7. The 2011 US TIP Report providing figures on 2010 refers to 50% of detected victims of trafficking being involved in the asylum process. 8. These figures are from the AHTU.

9. It should be noted that the majority of the victims of trafficking in recent years in Ireland have been EU citizens who are ineligible to apply for asylum. In addition many victims refrain from seeking asylum in order to gain the right to avail of the formal identification and the ensuing services.

4.

Detecting victims of trafficking in the asylum process

In Ireland, any third country national entering the State who declares that they intend to seek asylum is required to report to the International Protection Office (IPO) in order to have that claim processed (which replaced ORAC which was responsible for processing asylum claims up until 31 December 2016).

The asylum process in Ireland commences with a preliminary interview. Depending on whether they present themselves at the borders or directly at the office of the IPO, the preliminary interview will now be either conducted by an Immigration Officer or a designated official of the IPO. Based on information provided by the then existing ORAC, the majority of applicants present at the office of the asylum authority.

The purpose of this interview, which is provided for under Section 13 (2) of the IPA, is to establish *inter alia* whether the person wishes to make an application for a declaration for refugee status and, if so, the general grounds upon which the application is based, the identity of the person and their nationality, transport and route taken to reach Ireland as well as the legal basis for entry into or presence in the State. The interview is also used as means of determining whether the application for asylum is admissible, as per Section 21 of the IPA. Those who have already been granted international protection in another EU Member State, or a country outside the EU, are not permitted to claim asylum in Ireland and their claim will be deemed inadmissible at this stage. The IPA specifies the interview shall be conducted in the presence of an interpreter where necessary and possible.

At this stage of the asylum process applicants should identify any special needs *vis-à-vis* the asylum interview (or the asylum procedure). This includes whether they have a preference as to

the gender of the interviewer/ any interpreter present. Where a female interviewer is requested for the personal interview, it is internal policy that it is always granted; however, due to the fact most asylum seekers do not realise this is an option, few requests are made.¹⁰ The same applies regarding a female only interpreter. Where victims of trafficking self-identify at this stage of the process, the Gardaí and AHTU will be informed.¹¹

Where a claim is deemed admissible, the applicant will receive a Temporary Residency Certificate, which is evidence the person has applied for asylum. The applicant must then complete a detailed Application for International Protection Questionnaire within a specified timeframe, currently set at 20 working days.¹² Given the importance, complexity and length of the questionnaire, it is generally recommended that applicants seek legal advice when completing their application.¹³ Assistance from the Legal Aid Board is possible at this stage.

Following submission of the above questionnaire, the majority of applicants are required to participate in a personal interview, which is carried out by an international protection officer. If a gender issue such as human trafficking or other gender based violence is highlighted in the questionnaire completed by the applicant or in their preliminary interview, a female interviewer will usually be assigned to that case. Section 35 (8) of the IPA establishes a number of grounds based on which the personal interview can be dispensed with, including that the “*applicant is unfit or unable to be interviewed owing to circumstances that are enduring and beyond his or her control*”. The interview takes place in a language that the applicant is reasonably expected to understand and is able to communicate in. The purpose of the interview is to give applicants an opportunity to fully explain the basis of their

claim for international protection. Applicants should provide any evidence or documentation to support their claim at this stage of the process. Section 35 (6) of the IPA entitles applicants to have a legal representative present at the interview, though this rarely occurs in practice. Moreover, the representative cannot interject during the interview, though they can provide information at the start or end of the interview.¹⁴

In certain cases, an application for international protection may be prioritised, including the likelihood that an application for protection is well-founded, based on the prior submission of a Medico-Legal Report or owing to the country of origin (e.g. Syria, Eritrea, Iraq, Libya, Afghanistan, Iran, Somalia), or owing to the health of the applicant. Such prioritisation only relates to the scheduling of interviews and does not pre-determine the outcome of the process.¹⁵

The State has established a legal aid service for all asylum seekers, which they can avail of on voluntary basis and free of charge. The legal aid to asylum seekers is separate from the legal aid to victims of trafficking, discussed in greater detail below, within the state legal service. Applicants can seek legal assistance and advice from the Legal Aid Board in support of their application; advice in relation to the completion of the International Protection Questionnaire; assistance in preparing for personal interview; and legal representation if they are required to appeal a negative decision to the International Protection Appeals Tribunal (IPAT). Applicants are entitled to engage private lawyers as well, who could accompany them at any stage of the procedure but most would not have the funds to do so.

In practice, most asylum seekers navigate the completion of the application form and the personal interview without legal representation.¹⁶ As a result it is very likely many will not have disclosed they are a victim of trafficking (some victims might not be aware they are a victim of trafficking) and/or will

not understand that it can form the basis or part of the basis of their asylum application. The issue of trafficking often only arises at the appeal stage at the IPAT (formerly the Refugee Appeals Tribunal) when the appellant has legal representation.¹⁷

On the basis of the findings of the preliminary interview, the completed questionnaire, the personal interview and any relevant documentation, including country of origin information, the officer prepares a report on the application which will incorporate a recommendation on whether or not refugee status should be granted as well as the reasons for this recommendation. The officer will look at past persecution and fear of future persecution as well as the option of available state protection in the country of origin and the option of internal relocation in making his/her decision.

The ORAC did not have any data on how many victims of trafficking were granted asylum on the basis of their trafficking experience. However none of those who alleged they were victims of trafficking to ORAC, and whose cases were finalised in 2015 or 2016, were granted asylum¹⁸. While there are some published decisions at RAT level which outline issues such as a victim of trafficking being a member of a particular social group and decisions which address the grounds for persecution, there is no such detailed information for first instance decisions. The RAT decisions are described in greater detail below.

The above process is the same for victims of trafficking claiming asylum. There are no specific procedural safeguards or provisions at any stage of the asylum procedure, to identify and refer potential victims of trafficking.¹⁹ Likewise, there is no assessment of specific needs with regards to reception conditions conducted. There are safeguards which trafficking victims can avail of at this stage of the asylum process; however, this is difficult to realise in practice. As stated above, people can request the gender of an interviewer,

14. Irish Naturalisation and Immigration Services International Protection Office, Information Booklet for Applicants for International Protection (2017) <http://www.ipo.gov.ie/en/IPO/InfoBookletNew.pdf/Files/InfoBookletNew.pdf>

15. International Protection Office and UNHCR, Prioritisation of Applications for International Protection under the International Protection Act 2015 (2017). http://www.ipo.gov.ie/en/IPO/Prioritisation_of_International_Protection_Applications_IPO_UNHCR_Notice_2017.pdf/Files/Prioritisation_of_International_Protection_Applications_IPO_UNHCR_Notice_2017.pdf

16. Information from TRACKS Project Focus Group, 19 May 2016.
17. Stated by a member of the then RAT, Information from TRACKS Project Focus Group, 19 May 2016.

18. Email correspondence with ORAC, 24 June 2016.
19. As previously noted, however, it is open for victims to self-identify during the asylum process.

10. Information from TRACKS Project Focus Group, 19 May 2016.
11. Correspondence with ORAC, 24 June 2016.
12. Irish Refugee Council, Information note on the new single procedure process for international protection applicants (2017) <http://www.irishrefugeecouncil.ie/news/information-on-the-new-single-procedure-process-for-international-protection-applicants/5356>

13. Irish Naturalisation and Immigration Services International Protection Office, Information Booklet for Applicants for International Protection (2017) <http://www.ipo.gov.ie/en/IPO/InfoBookletNew.pdf/Files/InfoBookletNew.pdf>

although in practice this rarely occurs. Where victims have a medical condition, and a medical certificate, they may be able to avail of accelerated procedures. Yet this may not benefit trafficking victims who may require additional time to prepare an asylum claim owing to an existing condition such as post-traumatic stress disorder (PTSD), commonly caused in cases of sexual exploitation.

A particularly vulnerable group of trafficking victims are children. Children are often not in a same position to navigate complicated asylum procedure, while the pain and trauma caused by the trafficking experience can create further difficulties. In recent years, there is a pronounced risk of trafficking of children in Europe as many of the unaccompanied minors travelling to Europe are extremely vulnerable to trafficking. It is therefore highly desirable to correctly and speedily identify child victims of trafficking through asylum procedures. The International Protection Act contains a number of safeguards relating to the personal interview of unaccompanied minors which may contribute towards the increased detection of child victims of trafficking.

The identification of victims of trafficking in the asylum process is complicated in cases involving the Dublin Regulation. In Ireland, asylum seekers processed under the Dublin Regulation are required to complete a questionnaire, from which an interview is conducted. The nature of the questionnaire offers limited opportunities for victims to disclose information which would indicate they may be a victim of trafficking. Likely owing to the above, few victims of trafficking are identified in the Dublin Regulation. As a result, in Ireland identification and reporting of victims of trafficking under the Dublin Regulation essentially relies on legal and social support organisations and/or self-reporting of victims.

The actual application of the Dublin Regulation will depend on the circumstances – where there is a claim of trafficking in Ireland, any transfer will be suspended until there is an investigation. Where the trafficking claim relates to another country covered by the Dublin Regulation, it is still possible for the victim to be transferred.²⁰ Where this occurs, the victim can be given details of an NGO in the other EU country and vulnerability and medical issues may be mentioned to the responsible Member State, which has occurred in some cases.

²⁰. See for example Decision No 1737621-D3AP-16 from the RAT.

5.

Asylum procedures and national referral mechanism

The process for seeking asylum is distinct from that for the formal identification of trafficking victims; there are two separate procedures and a person cannot participate simultaneously in both. This is a concern because, as previously noted, the concurrent operation of these procedures should “*be without prejudice to the right to seek and enjoy asylum*”, as per Article 14 (5) of the CoE Convention.

Victims of trafficking in Ireland are identified and assisted through the existing national referral mechanism (NRM). A NRM is a structure aimed at identifying, protecting and assisting victims of trafficking in human beings, through referral, and involving relevant public authorities and civil society. The NRM in Ireland is responsible for the formal identification of presumed victims of trafficking. Within the NRM, it is the Gardaí who are formally responsible for identifying presumed victims of trafficking.

Where a victim of trafficking is identified in the asylum process they are systematically referred to the Gardaí. According to the existing administrative policy, it is the Garda National Immigration Bureau (GNIB) which is the competent authority responsible for identifying victims of trafficking in Ireland, on the basis of a reasonable grounds determination.²¹ This is based on an investigation conducted by the Human Trafficking Investigation and Coordination Unit (HTICU) of the Garda National Protective Services Bureau (GNPSB), and involves *inter alia* a series of interviews with the victim. Formerly, the HTICU was located within GNIB. This has recently changed, as the unit now operates as part of GNPSB. In spite of this change, GNIB is still the competent authority responsible for identifying victims.

Presently, the most significant impediment for victims of trafficking seeking asylum is their ineligibility to be formally identified by the competent authority. The above mentioned identification procedure is envisaged only in case of third country nationals who require a permission to be in the State. Asylum seekers, and by extension victims of trafficking among them, are deemed to have such a permission and therefore are excluded from formal identification. Consequently, they are not granted a recovery and reflection period and will often engage in a number of interviews with the HTICU while assisting them in the investigation of their trafficker(s). They are, however, able to access other forms of support and assistance within the NRM, including accommodation and medical assistance.

If that victim wishes to claim asylum – owing to the distinction between the formal identification procedure and the asylum process – they must also participate in the required personal interview and will most likely have to discuss their trafficking experience again. In such circumstances, there is no communication between the formal identification process and asylum process. Consequently, victims must undergo numerous interviews, increasing the likelihood of suffering secondary harm as a result of having to repeatedly recall traumatic events.

²¹. Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking <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>

6.

Rights and benefits

Based on the Administrative Immigration Arrangements, formally identified victims of trafficking can be granted a recovery and reflection period for 60 days. During this time they must decide whether they wish to cooperate with the Gardaí in the investigation into their alleged trafficker(s). Where they cooperate, they are granted a renewable temporary residency permit for six months. These permits provide the legal basis for the victim to remain in Ireland and access to a number of important support and assistance measures. During their temporary residency permit, for example, they have the right to legal advice, accommodation, material assistance, medical care, work and training, and education.

As previously stated, victims who wish to remain in the asylum process cannot be formally identified as victims of trafficking and thus cannot benefit from all of the above support and assistance measures. Rather, they have the same rights and benefits as other asylum seekers. As a result, they must remain within the Direct Provision system, discussed in detail below, and can only receive a limited allowance of €19.10 a week, and are unable to access education programmes or work. This arrangement may change as a result of the judgement in *N.H.V v Minister for Justice and Equality and ors* in which it was found that an absolute ban on the right of asylum seekers working was unconstitutional. The Government has been given six months to respond to the judgement.²² Thus, depending on the Government's response, asylum seeking victims of trafficking may soon gain the right to work in certain circumstances.

Within the current arrangement, however, when an application for asylum is made, the individual automatically loses his/her rights to be formally identified as a suspected victim of human trafficking, which further deprives the individual of the right to receive a recovery and reflection period or temporary residence permit, private accommodation, and access to training or work.

²² *N.H.V v Minister for Justice and Equality and ors* (2017) IESC 35 <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/bba87f6e90ea3c5d80258130004199fe?OpenDocument>

This position puts victims of trafficking in the asylum process at a considerable disadvantage in comparison to formally identified victims of this crime and can discourage them from applying for international protection and thus contribute towards the low number of reported victims of trafficking seeking asylum.

“I had to decide if I go for trafficking or asylum, I had to talk to the guards. It was not easy to choose. I wanted to keep everything [all the options]. Because if I don't get the answer, what should I do! I did not know anything.” – R

In its two Reports on Ireland's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings the GRETA has recommended the authorities revise the relevant regulations to allow asylum seekers as well as European Economic Area (EEA) nationals and Irish nationals to be formally identified as victims of trafficking. Similarly, the Immigrant Council of Ireland has, on numerous occasions, called on the Irish Government to identify all victims without prejudice to their immigration status or nationality.

7.

Procedural safeguards and the treatment of asylum seeking victims by authorities

A key finding of the TRACKS project is the importance of procedural safeguards in the asylum process and their applicability to the situation of trafficking victims. Such safeguards can help victims traverse the asylum process. These include the availability of information and advice; having an application prioritised; exemptions from the asylum interview on the basis that the applicant is unfit or unable to be interviewed; the possibility of requesting an interviewer/ interpreter of the same sex; and the option of being accompanied by a third party during the interview. In order for such safeguards to be applied to the asylum process, a needs assessment must be conducted.

Equally important is the need to establish trust with asylum seeking victims. A number of those interviewed for the TRACKS project reported a perceived lack of trust from authorities. This lack of trust often related to the age assessment of asylum seeking victims of trafficking. One interviewee described how they would be met with scepticism or outright doubt when telling State officials about the situations they had escaped from. In one particularly worrying case, the applicant was aged 16 when she was trafficked into Ireland. She had been given a forged passport by her traffickers which stated she was 30, and had previously been forced to claim asylum with this document in Italy. Despite her insistence she was a minor, the State service official dealing with her case did not believe her and placed her in a Reception and Integration Agency (RIA) accommodation centre for adults, pending her deportation back to Italy. Furthermore, the girl was pregnant as a result of sexual abuse and exploitation. Once her child was born, both she and her infant were deported to Italy. It took the intervention of an NGO along with legal aid from an NGO law centre to bring this young girl back to Ireland. When the State finally acknowledged that she was indeed a child, she, along with her baby, were placed in a suitable foster home. Although the eventual outcome of this girl's story was positive, the ordeal she endured as a victim of trafficking in Ireland, as a result of a lack of trust from asylum authorities, highlights the importance of establishing trust with applicants. It further highlights the need for adequate procedures for

assessing the age of applicants for international protection.

“I think the Government should please help the girls who are trafficked, trafficking is very difficult. It's not the way they say that people come here to tell lies, it's not everybody that comes to Ireland to seek asylum tells lies. Some of them are saying the truth. And some of them need help.” – C

Many of the above mentioned safeguards are enshrined in the Recast Procedures Directive. However, as stated previously Ireland has not opted in to that Directive. Yet, in spite of this, there are a number of safeguards in place which can apply to asylum seeking victims of trafficking. These relate to the gender of the interviewer/ interpreter; the availability of information and legal advice; the possible exemption of applicants from interviews on medical grounds; and the availability of accelerated procedures. The extent to which these safeguards respond to the special needs of asylum seeking victims of trafficking in practice is, however, questionable.

For example, the stage of the process at which victims must identify any special needs, including when they can make requests about the gender of their interviewer/ interpreter, is during the initial stages likely before they would have sought advice and thus they may be unaware of this right. Further, there is no screening process or needs assessment conducted which could establish the presence of special needs. At the same time, the application of accelerated procedures can be to the detriment of victims of trafficking, who may need additional time to prepare for the asylum interview, likely owing to the psychological impact of their trafficking

experience. On the other hand, the time taken to assess asylum applications was found to be a source of distress for victims of trafficking in asylum process.

During this period, victims reported they were interviewed on numerous occasions as part of the asylum process and any Garda investigation into their trafficker(s). The length of time taken for the asylum claim and Garda investigation had degenerative effects on the mental and physical health of victims interviewed. Those interviewed for the TRACKS project reported feelings of hopelessness as they waited for a decision regarding their application, all while living in direct provision, in some instances for years at a time. This was compounded by a lack of communication on developments in their cases, highlighting the need for more effective communication with victims.

"I'm not sure if it was just for me, or all of the other women, but for me it took so long. I almost gave up. Because I didn't have enough feedback from them with my case, I was close to giving up. I remember I tried to take my own life twice when I was in direct provision. Just because it was taking so long. I didn't know what's going to happen to me. And at least it would deal with me quicker. I know they have to carry out their investigation but in my case it was definitely too long." – R

On a positive note, those interviewed were generally pleased with the interpreters provided for police interviews – several women mentioned how helpful and supportive they had been. While the police were criticised for failing to provide victims with information about their cases or feedback, as individuals the women found their face-to-face interactions with police officers to be largely positive, professional and conscientious of the women's status as victims of trafficking. When in contact with police, each woman reported there was always at least one female officer present. They also stated that care was always taken by the police to maintain their privacy in RIA accommodation centres.

8.

Human trafficking and international protection

In situations where it has been found that a country of origin is unable to offer protection to a victim of trafficking, and where internal relocation has been found to be unsuitable, a number of victims have been granted international protection on the basis of their trafficking experience. This is highlighted by some recent cases which went before the former RAT. In these cases, the RAT accepted, in the first place, that female victims of trafficking are capable of being considered a distinct social group. Relying on a decision of the Cour Nationale du Droit d'Asile in France the RAT found that trafficked persons sharing a similar background or who are perceived as a distinct group by society; should be considered as a distinct social group, as required by the 1951 Convention Relating to the Status of Refugees. This has included women trafficked from a particular region of Nigeria, Edo, who suffered similar harms, arising from their trafficking experience, and also women trafficked from that region, who do not have effective family ties.²³ The negative view held by local communities of such women has further been found as a ground for considering them as belonging to a distinct social group.²⁴

The RAT further accepted the risk of retaliation and re-trafficking upon return as grounds for finding an applicant will face persecution if returned to their home country. This is in circumstances where State authorities are unable to offer protection and internal relocation is not possible. In such cases, the RAT found it necessary to go beyond general information on the applicant's country of origin, to consider their individual circumstances. In one such case, it was found that as traffickers in Nigeria are known to go to extreme lengths to target those who escape without having paid their 'debt', and due to the fact the applicant had escaped in such circumstances, there was a well-founded fear of persecution. In this case, the RAT further found that as the applicant had never had normal employment, she would have limited opportunities if returned to Nigeria, and thus would likely be exposed to the risk of re-trafficking. This further contributed towards the RAT finding there existed a well-founded fear of persecution. Consequently, she was granted international protection.²⁵

9.

Reception conditions

The importance of appropriate accommodation and reception standards for both victims of trafficking and asylum seekers is recognised throughout the international and European legal framework on these issues. This extends to issues of healthcare and opportunities for reintegration.

In Ireland, asylum seeking victims of trafficking are accommodated in the same reception centres as the general population of asylum seekers. Once an applicant lodges an application for asylum they are referred to RIA. RIA is responsible for the provision of reception services to asylum seekers and operates a

system of dispersal using privately contracted hostels around the country. However, the system was not devised as an accommodation solution for victims of trafficking to *inter alia* remove victims from their traffickers. Consequently, the reception conditions offered to victims of trafficking seeking asylum are not tailored to their specific situation but follow general rules applicable to all asylum seekers. The approach to accommodating victims in Ireland is problematic when considered in the context of the reception needs of trafficking victims. This point is expanded upon below in relation to the different needs identified in the international and European legal framework and through the work of the TRACKS project.

23. Decision No: 1707072-ASAP-15 and Decision No: 1658864-ASAP-14

24. Decision No: 1658864-ASAP-14

25. Decision No: 1658864-ASAP-14

A. Privacy

In the first place, the accommodation centres lack privacy. Victims live in mixed accommodation, sharing their room with other asylum seekers, which is problematic on a number of levels. In particular, it is a source of distress for victims. Asylum seeking victims interviewed as part of this project complained about the lack of privacy to reflect and recover on their own terms due to the limited space and proximity to strangers, as well as concerns about their private legal documents being read by their roommates when they were away. Moreover, owing to the particular situation of asylum seeking victims of trafficking, and the harms they have likely suffered, practical issues such as noise levels in shared accommodation can exacerbate pre-existing mental health issues.

"I was going through a tough time. I was really depressed. And I was on medication. I didn't sleep. Sometimes when you have somebody in the room, they can talk all night and you want to sleep or sometimes in the morning they turn on the light early, they would be talking and sometimes they want to bring their friends in. So it's just like, too much." – R

B. Mixed accommodation

Most asylum seeking victims of trafficking are accommodated in mixed accommodation centres, where the kitchen and common areas are shared by male and female residents. This arrangement is particularly unsuitable for victims of trafficking who have experienced sexual exploitation, as this quotation below illustrates:

"It bothered me that there were men. Me, I'm very shy kind of. After what happened to me, you know I don't know. I feel less confident. About myself. Like I am worthless.[inaudible] I did not feel safe. Men were hitting on me." – R

Following recent changes, there is now a single sex accommodation centre for women asylum seekers in Kerry. Owing to the remoteness of the centre and the lack of specialised services in the local vicinity, however, it has been questioned whether it is entirely appropriate for female victims of trafficking.

C. Safety

Concerns have been raised over the safety of these centres for victims of trafficking. It was reported by those interviewed that the constant coming and going of people in centres, at all times of the day and night, can undermine a victim's feeling of safety.

D. Social relationships

At the same time, the use of shared accommodation creates difficulties for asylum seeking victims of trafficking in building relationships with others in the asylum process. Many of those interviewed for the TRACKS project expressed feelings of unhappiness at having to share their rooms with people who would disappear after a few weeks and never be heard from again. This undermined their ability to develop meaningful bonds with their fellow asylum seekers.

E. Medical care

Medical care for asylum seeking victims of trafficking is an area which was generally commended by those interviewed for this report. In particular, the practical support and advice offered by the Health Service Executive Anti-Human Trafficking Team was seen as extremely helpful by asylum seeking victims. There are issues around the availability of mental health services for such victims. This, however, is the same for the general population in Ireland, and there are no indications that asylum seeking victims are at any

greater disadvantage in this regard. Difficulties can emerge for asylum seeking victims as a result of the dispersal policy practiced by RIA, discussed in greater detail below.

F. Daily life autonomy

Within the centres, victims have very little autonomy. In general, victims have no access to cooking facilities which can encourage independent living and empower victims in their daily life. Rather, they are provided with a number of set meals and are unable to cook for themselves. In addition, the dispersal policy practiced by RIA, wherein victims can be moved throughout the country, means victims can be removed from their existing support network. At the same time this creates difficulties with respect to victims' access to healthcare, particularly with regard to their mental health. Although asylum seeking victims receive a medical card and are treated the same as Irish citizens possessing the same; those providing specialist psycho-social support to victims are generally based in Dublin. Moreover, victims of trafficking are currently unable to work or attend education course. Rather, they are required to live on a weekly allowance of €19.10 and have access only to English language courses. This approach can have an adverse effect on the ability of trafficking victims to regain the agency they lost throughout their ordeal and thus recuperate from their experience.

G. Food and nutrition

The issue of food and nutrition in the wider asylum system has been previously highlighted in other research, but it is particularly relevant to victims of trafficking, as they are kept in the first reception centre far longer than other asylum seekers. There are issues around the suitability of the food provided. In some instances, asylum seeking victims of trafficking have reported having to buy their own food from their small weekly allowance.

"The food in the hostel is not great at all. So I used the €19.10 to eat. I live on noodles. I buy packs of noodles with the money. That's what I ate most of the time." – A

At the same time, the inflexibility of the food schedule was criticised by many of those interviewed. For example, in one accommodation centre, dinner was served at 5pm. A victim in this centre reported that she suffered from insomnia as a result of her experiences as a victim of sex trafficking and the sheer length of time her case was taking. Owing to the strict food schedule in place in the centre, the victim was forced to keep the food from dinner to eat at night, to avoid hunger in the early hours of the morning when she couldn't sleep. If there were facilities for residents to cook for themselves or even prepare sandwiches or other snacks, this would have addressed such issues.

H. Reintegration

As stated elsewhere in this report, there are no opportunities for reintegration of trafficking victims who are in the asylum system. Victims of trafficking in the asylum process do not currently have the right to work and are denied access to vocational training during the lengthy asylum process which can compound already existing mental health problems and does not help prepare them for future integration and recovery. Victims of sex trafficking, who have been charged with sexual offences and or immigration offences prior to their identification as victims, cannot get their criminal record expunged and suffer disadvantages in relation to seeking employment in the future in addition to other problems.

10.

Recommendations

The following are a list of recommendations specific to the Irish national context, which are based on the research conducted for the TRACKS project. These are measures which could be taken so that the Irish authorities are better placed to identify and respond to the special needs of asylum seeking victims of trafficking.

→ **Formally identify victims of trafficking in the asylum process.**

→ **Give victims of trafficking in the asylum process equal access to same rights and benefits as other formally identified victims.**

→ **Provide legal representation to asylum seekers prior to the Appeals stage, in order to encourage self-identification of victims of trafficking in the asylum process.**

→ **Ensure ongoing and effective training for border guards and IPO staff conducting the initial interview. Such training should be focused on topics including human trafficking and the special needs of victims, as well as other forms of gender based violence and child victim protection issues.**

→ **Provide a comprehensive set of safeguards for vulnerable asylum seekers.**

→ **Conduct needs assessments of asylum seekers, in order to determine the presence of any special needs.**

→ **Ensure asylum seekers are routinely informed of the possibility of having an interviewer/ interpreter of the same sex.**

→ **Ireland should opt in to the Recast Reception Conditions Directive and Recast Procedures Directive.**

→ **Adopt safe and gender specific accommodation to cater to the needs of victims of trafficking, including asylum seeking victims of trafficking.**

Provide victims of trafficking with single room accommodation, particularly during the recovery and reflection period.

Ensure a healthy and nutritious diet for residents in accommodation centres.

Provide access to cooking facilities for residents to improve their daily autonomy.

→ **Ensure adequate training for staff in RIA centres so they adapt their services to victims of trafficking accordingly and with a view to playing a role in the identification of possible victims of trafficking in the asylum process and so they can assist victims in their recovery and reintegration.**

→ **Increase opportunities for reintegration for asylum seeking victims of trafficking.**

In the context of implementing the N.V.H judgement, provide asylum seeking victims of trafficking with access to education, vocational training, and the employment market.



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