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Asylum seeking victims of human trafficking in Ireland

Legal and practical challenges

Sponsored by the UN Global initiative to Fight Human Trafficking

*“Providing Legal Services to Migrant Women Suspected Victims of Sex Trafficking
in Ireland”*



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Introduction

The Immigrant Council of Ireland (ICI) received funding from the UN Global initiative to Fight Human Trafficking (UN GIFT) to provide legal representation to victims of human trafficking in Ireland. The ICI is a human rights organisation and a law centre in Ireland that specialises in provision of pro bono legal aid to migrants who have experienced human rights abuses. The ICI has invested in and developed an expertise in the provision of holistic legal representation for women and girls who have been subjected to human trafficking for sexual exploitation in the State. The ICI has a number of open legal cases that are at different stages of the Irish immigration and criminal investigation/prosecution processes. These cases involve women who have been trafficked to Ireland for the purposes of sexual exploitation, with many of them having been trafficked and exploited in other countries on route to Ireland. In the majority of cases, the clients¹ had filed an asylum application before or after being referred to the ICI for legal representation, and they are the focus of the present report.

It must be noted that the Legal Aid Board is an Irish statutory body entrusted with the provision of legal advice to possible victims of human trafficking in Ireland. However, full legal representation is limited only to victims who are called as witnesses in trials, where their sexual history is to be discussed at the request of the defence. The ICI law centre, on the other hand was in position through the UN Gift funding to provide full and holistic legal representation to victims of human trafficking covering the range of legal issues they face, such as immigration and asylum applications and hearings, witness statements with the police and potential application for non-prosecution and compensation when they arise in more advanced cases.

Ireland has ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Council of Europe Convention on Action against Trafficking in Human Beings, and has developed a National Action Plan² coordinated by the Anti Human Trafficking Unit within the Department of Justice and Equality. The State has criminalised trafficking in human

¹ Throughout the report a 'client' refers to any individual represented by the ICI law centre.

² <http://www.justice.ie/en/JELR/Executive%20Summary%20Document.pdf/Files/Executive%20Summary%20Document.pdf>

beings through the Criminal Law (Human Trafficking) Act 2008³ and has proposed legislation introducing rules on the identification of suspected victims of trafficking and on the granting and the withdrawal of designated residence permits for such individuals. In the interim period before the enactment of such legislation, the State has issued Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (Administrative Arrangements)⁴. According to these arrangements, the authorised authority entrusted with the identification of suspected victims of human trafficking in Ireland is the Garda National Immigration Bureau (Anti Human Trafficking Investigation and Coordination Unit).

The ICI has a number of concerns regarding the identification and treatment of victims of trafficking within the Irish State's current system. The rights of victims of trafficking in Ireland are not enshrined in legislation; but rather, laid out in the set of Administrative Arrangements referred to above. In this report, the ICI endeavours to highlight how a two-tiered system is implemented through these arrangements specifically regarding Recovery and Reflection periods and Temporary Residence Permits as well as general victim of trafficking assistance and protection that discriminate against asylum seeking victims of trafficking⁵. This document will cite the relevant Articles from the Council of Europe Convention on Action Against Trafficking in Human Beings (COE Convention) and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Protocol), which have been examined within the context of two case studies⁶ demonstrating the significantly different outcomes for victims properly identified and granted residency permissions and those denied identification and permissions because of their asylum-seeking status in the State. The full text of the relevant UN Protocol sections and Council of Europe Articles and notes from the Explanatory Report to the Convention are referenced at the end of the document.

³ <http://www.irishstatutebook.ie/pdf/2008/en.act.2008.0008.pdf>

⁴ <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>

⁵ For the purposes of this report, the term 'asylum seeking' victims of human trafficking, refers to individuals who have pending applications for international protection in the State and who are also detected as possible cases of human trafficking but not formally identified (by the State), and who are cooperating with the investigating authorities in the crime committed against them.

⁶ At the time of the writing of this report, the case studies represented open cases of the ICI law centre, therefore further information about them could not be enclosed.

1. Identification and the issuing of permits

Presently the authorised authority in the State, the Garda National Immigration Bureau does not identify women who are in the asylum process⁷ as possible victims of trafficking nor does it grant them a Recovery and Reflection period and Temporary Residents Permit despite their cooperation with the Gardaí⁸ in the investigation and prosecution of the trafficking crime and the presence of clear trafficking indicators. The State's rationale for this interpretation is that residency permits are only given to potential/suspected victims of trafficking when 'required', that is, when they are regarded as needing permission to be in the State. The State confers to asylum seekers temporary permission to remain in Ireland while their asylum applications are processed. Consequently, through the State's rationale, victims of trafficking in the asylum process do not 'require' an additional residency permit as they already have the most basic rights as asylum seekers.

The latest version of the Administrative Arrangements use the term “valid permission to be in the state” (section 10) in relation to individuals in the asylum process seeking identification as victims of trafficking and cooperating with the investigating/prosecuting authorities. This definition implies asylum seekers reporting human trafficking or detected as possible victims of this crime, already have valid permission to be in the State. Hence, there is no need to issue further permission nor to carry out a formal identification process in assessing whether or not reasonable grounds exist to believe that they are suspected victims of human trafficking. The State also argues that if asylum seeking victims of trafficking are formally identified and granted a Recovery and Reflection period/Temporary Residents Permit then this would allow them to work, and there would have to be a change to the present legislation prohibiting this right.

The Immigrant Council of Ireland makes the following points:

- The rights afforded to asylum seeking victims of trafficking versus other suspected victims of trafficking are not the same. Asylum seeking victims of trafficking have less access to safe and appropriate accommodation,

⁷ System of response to individuals who are applying for international protection in the State

⁸ Police officer in Ireland

education, training, work and the possibility of acquiring longer-term status in the State. Thus, the State operates a discriminatory system and consequently, contravenes Article 3 of the Council of Europe Convention.⁹

- Section 4 (1) of the Immigration Act 2004¹⁰, the legislation defining permissions to remain in the State, does not recognise asylum seekers. Thus, asylum seekers cannot be regarded as having permission to remain in the State.
- By not identifying victims of trafficking and immediately affording them a period of recovery and reflection, the State is not fulfilling its obligations under Council of Europe Article 13 and the corresponding Article 6(3) of the UN Protocol. This article mandates states to provide victims of trafficking time to make an informed decision whether to assist the competent authorities and, as the permit's title clearly suggests, with time to recover and reflect before the criminal investigative process.
- Those victims of trafficking who are in the asylum process are precluded from the benefits of a formal identification by the authorised authorities and from receiving any acknowledgement to the effect that they are 'suspected victims of trafficking' pursuant to the Administrative Immigration Arrangements, despite co-operating fully with the competent authorities.
- The ICI questions both the psychological impact of continuous co-operation with the police (particularly, providing statements) on victims of trafficking and the risk of victims of trafficking exposing themselves to the associated risks of participation in criminal investigations with no official recognition that they are regarded/identified as 'suspected victims of trafficking' in line with the international treaties, UN Protocol and the Council of Europe.
- It is of concern that represented clients who are in the asylum process but who are also cooperating in human trafficking investigations with the Garda National Immigration Bureau (without the benefit of being identified as suspected victims of crime), get little or no feedback as to whether the

⁹ Council of Europe Convention on Action against Trafficking in Human Beings, article 3. UN Palermo Protocol Article 14 Paragraph 2.
¹⁰ 4.—(1) Subject to the provisions of this Act, an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State (referred to in this Act as "a permission").

Gardaí are continuing to investigate, anticipating a prosecution etc, which obviously would be of assistance psychologically as well as making any further representations on their behalf in respect of an application for humanitarian leave to remain.

- Under Section 21 of the 2011 Administrative Immigration Arrangements, change of status and leave to remain, a person who has assisted the Gardaí and has held a Temporary Residents Permit for three years can apply for a change of status, assumingly for leave to remain in the State on humanitarian grounds. Asylum seeking victims of trafficking, though, will not be able to accumulate this required three year period as they will not receive an initial Temporary Residents Permit. Thus, the opportunity for a durable residence solution in the State is diminished for asylum seeking victims of trafficking.
- With reference to the above point, it seems that an asylum seeking victim of trafficking cannot apply for a change of status under Section 4(7) of the Immigration Act 2004¹¹ because the victim never held permission under Section 4(1).
- There may be very negative impacts on a victim of trafficking by waiting for the refusal of her application for refugee status¹² and a subsequent notification of intention to deport pursuant to Section 3 of the Immigration Act 1999 or even a deportation order to be issued, before she becomes eligible to be identified as a suspected victim and granted a permission under the Administrative Immigration Arrangements.
- Immediate access to legal advice and intervention is critical to ensuring that all potential victims of trafficking can choose the most appropriate legal representation given the potential side effects of an asylum application and to ensure that there is no prejudice to the right to seek and enjoy asylum as provided for by Council of Europe Article 14(5).

¹¹ Immigration Act 2004 4(7) A permission under this section may be renewed or varied by the Minister, or by an immigration officer on his or her behalf, on application therefor by the non-national concerned.

¹² Note that out of the 2,192 applications for asylum processed in 2010, only 24 received a positive decision
<http://www.orac.ie/pdf/PDFStats/Monthly%20Statistics/2010/2010%2012%20December%20ORAC%20monthly%20report.pdf>

2. Accommodation for victims of trafficking in the asylum process

Direct provision accommodation provided by the Reception and Integration Agency (RIA) to asylum seekers is considered appropriate for victims of trafficking by the Irish government. The ICI wishes to highlight a number of reasons why this accommodation is *inappropriate* for victims of trafficking as they have already experienced highly traumatising human rights violations, including sexual exploitation and how the present Administrative Arrangements' deviate from the Council of Europe, Article 12(4) and UN Protocol Articles 6 and 7.

There a number of serious concerns relating to direct provision accommodation, highlighted by NGOs and recent reports¹³ including:

- The State contracted the care for residents to private operators, and the quality of care varies largely across the board.
- Victims have very little privacy; they have to share bedrooms with at least one and often two other strangers on rotation.
- The hostels are mixed gender and can leave already vulnerable young women with prior history of sexual abuse, open to further grooming and exploitation.
- There is evidence that the Reception and Integration Agency (RIA) hostels are targeted by men looking to buy sexual services, and these men have propositioned women outside the hostels.
- Accounts given by clients of the ICI indicate traffickers have used the asylum system for residency and accommodation while simultaneously trafficking victims.
- The Reception and Integration Agency's dispersal policy can result in re-locating victims to any part of the country, consequently, removing them from their established support network.

¹³ Free Legal Advice Centres (2009) "*One Size Doesn't Fit All: A Legal Analysis of the Direct Provision and Dispersal System in Ireland, 10 years on*"; African and Migrant Women Network AkiDwa(2010) "*Am Only Saying It Now: Experiences of Women Seeking Asylum in Ireland*"

- Due to the lengthy asylum process (taking on average two or more years), victims of trafficking who are not afforded the Administrative Immigration Arrangements are accommodated for two to four years in these asylum hostels.
- Long-term hostel residence hinders victims' recovery process and compounds mental health issues.
- Direct provision hostels do not allow victims to control their basic daily functions including food intake, clothing and toiletries. Suspected victims have reported it is difficult to eat the food provided and consequently, they have very little comfort or nutrition.¹⁴
- The lack of finance limits victims' options on how to spend their almost unlimited free time and their ability to form basic friendships with people outside the hostels.
- Living long term in hostels severely impacts on the rights of victims of trafficking to integrate into the community and to achieve any degree of social recovery.
- Victims of trafficking in the asylum process are denied access to vocational training and other education and employment options during the lengthy asylum process.
- Having regarded the asylum seeking victims of trafficking as 'legal' and therefore not needing a Recovery and Reflection period and a Temporary Residents Permit, the Irish state does not consider these same individuals 'legal' for the purposes of the implementation of the Council of Europe Article 12(4), which encourages States to provide routes to employment to legally resident victims of this crime.

3. Official Data

The Council of Europe and the UN Protocol impose an obligation to identify and record the number of victims of trafficking within a state. In Ireland, the uncertainty

¹⁴ Asylum seekers live in large mixed gender hostels(or caravan camps), they are served food three times a day in a canteen on the premises, and they are being given €19.10/week for private expenses. This system is called Direct Provision

surrounding the terms 'potential victim of trafficking' and 'suspected victim of trafficking' creates valid questions as to who is actually identified as a suspected victims of trafficking within the meaning of the Convention, who cooperates in criminal investigations/prosecutions and who is beyond any doubt a victim of trafficking. The inconsistency in Ireland's use of these terms has created an extremely elaborate system that disregards the intent of the international treaties and leads to uncertainty for victims, legal practitioners, advocates and service providers. This inconsistency is further compounded by the situation regarding asylum seeking victims of trafficking and the different treatment of asylum seeking victims of trafficking and those formally indentified suspected victims of trafficking, as described above. This situation raises a number of issues in relation to:

- The interpretation and recording of the terms 'potential' victims of trafficking, 'suspected' victims of trafficking, and simply a 'victim of human trafficking crime' in Ireland.
- Official records of those identified as victim of trafficking.¹⁵
- Records of those within the asylum process who are informally referred to as 'potential' victim of trafficking or formally identified as 'suspected' victim of trafficking.

The impact insufficient numbers of identified victims of trafficking has on the Irish State's capacity to proceed with criminal prosecutions for trafficking offences.

4. Victims' of trafficking engagement with the criminal justice system

The ICI has a number of concerns in relation to the engagement of victims of trafficking with the criminal justice system with reference to Article 30 of the Council of Europe and respectively UN Protocol Article 5. These include:

- Numerous 'informal' interviews with the Gardaí prior to the victim of trafficking giving an official statement.
- Exposure to self-incrimination and lack of legal protection in this regard.

¹⁵ For example, in 2010 only three VOT for sexual exploitation has been formally identified and granted a R&R while more than 50 individuals, including children cooperated in criminal investigations in human trafficking for sexual exploitation <http://www.justice.ie/en/JELR/AHTU%202010%20Annual%20Report.pdf/Files/AHTU%202010%20Annual%20Report.pdf>

- A solicitor may apply for immunity from prosecution only with respect to formally identified 'suspected victims of trafficking'.
- Legal representation in criminal proceedings is limited to cases where the victim's sexual history will be discussed in Court.
- Inadequate protection of a victim's identity in identity parades, as this procedure presently requires the victim of the crime and the offender to be in the same room during identification.
- Ambiguity in how the identification process of a victim of trafficking intersects with criminally charging a buyer, as it is unclear whether victims must be officially identified as victims of trafficking for the criminal case to proceed.

5. Lack of Compensation

It appears that there is no possibility of applying for victim compensation unless the Gardaí officially recognise the individual as a victim of trafficking, further discriminating against those in the asylum process. Once victim identification has been done, there should be a specific compensation route for victims of trafficking as per the Council of Europe Article 15 and UN Protocol Article 6(6). In Ireland, compensation can only be obtained through either the Criminal Injuries Compensation Board, excluding compensation for 'pain and suffering', or the order of a criminal or civil court. There is no recognition, as per the Explanatory Memorandum of the Council of Europe that in practice the trafficker or his assets may rarely be found and therefore the State should take steps to guarantee the compensation of victims of trafficking by establishing a fund and programmes for social assistance¹⁶.

¹⁶ Paragraph 198 of the Explanatory Memorandum to the CoE Convention states "there is rarely full compensation whether because the trafficker has not been found, has disappeared or has declared himself bankrupt." Paragraph 15(4) of the Convention therefore requires that Parties take steps to guarantee compensation of victims. The means of guaranteeing compensation are left to the Parties, which are responsible for establishing the legal basis of compensation, the administrative framework and the operational arrangements for compensation schemes. In this connection paragraph 4 suggests setting up a compensation fund or introducing measures or programmes for social assistance to and social integration of victims that could be funded by assets of criminal origin

6. Recommendations in relation to asylum seeking victims of human trafficking:

- Identification procedures should be carried out in relation to all individuals, who may be victims of human trafficking, including those who are seeking asylum in the State.
- The outcome from the identification process should be communicated to the person and her/his legal representatives, as soon as a Garda officer of the required rank decides that there are reasonable grounds to believe the individual is a suspected victim of human trafficking, regardless of the fact that they are in the asylum process.
- In cases of positive identification, a recovery and reflection permit should be granted together with (or instead of) the above communication, as an acknowledgement that the same person is identified as a suspected victim of human trafficking in line with the adopted identification procedure in Ireland.
- The intended provision of article 7b of Section 139 of the Immigration Residence and Protection Bill 2010, which allows for the concurrent running of the recovery and reflection permit with other existing permits should be implemented.
- Specialised accommodation should be offered to individuals going through a recovery and reflection period, especially in cases where they have been subjected to multiple sexual abuse and commercial sexual exploitation, in order to allow them privacy and safety needed for their recovery. The practice of housing victims seeking asylum who cooperate in criminal investigations in the centres for direct provision should be abolished, as it denies privacy and severely limits the choice of food, personal items, free time leaving little scope for social recovery.
- Temporary residence permits should be granted to all suspected victims of human trafficking, who are willing to cooperate in criminal investigations regardless of the fact that they seek asylum in the State. If necessary, the asylum process should be suspended for those who cooperate in criminal investigations, in order to avoid the stress of the assessments and the secondary victimisation through a repetition of traumatic accounts.
- Durable solutions should be provided to suspected victims who have been cooperating in criminal investigations that are not discriminatory to those of them who seek asylum in the State.
- Comprehensive legal aid should be offered to victims of trafficking in order to ensure the best level of rights' protection and personal outcomes for the individual on matters related to immigration status, immunity from prosecution and compensation, which could lead to increased quality of witness statements and testimonies.

- The problem of data collection, arising from the fact that victims of trafficking in the asylum process currently cannot be identified as 'suspected' victims of human trafficking should be addressed

Relevant International treaty Articles and notes from the explanatory report to the issues raised above as well as domestic legislation.

I. Council of Europe convention on Action Against Trafficking in Human Beings

Article 3 – Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Explanatory Report

64..... difference of treatment is discriminatory if it 'has no objective and reasonable justification'

65. Since not every distinction or difference of treatment amounts to discrimination.....and the law of most if not all Council of Europe member states provides for certain distinctions based on nationality concerning certain rights or entitlements to benefits..

67. Article 3 refers to "implementation of the provision of this Convention by Parties". These words seek to specify the extent of the prohibition on discrimination. In particular, Article 3 prohibits a victim's being discriminated against in the enjoyment of measures – as provided for in Chapter III of the Convention (this includes Articles 10-17) – to protect and promote their rights.

69. Thus Article 3 of the Convention might be contravened..... if the measures provided for in those articles were implemented differently in respect of particular categories of person (for example, depending on sex, age or nationality) and the difference in treatment could not be reasonably justified.

Article 12 – Assistance to victims

1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;

2 Each Party shall take due account of the victim's safety and protection needs

Article 12 – Assistance to victims (4)

4 Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.

Explanatory Report

166. Paragraph 4 provides that each Party is to adopt the rules under which victims lawfully resident in the Party's territory are allowed access to the labour market, to vocational training and to education.....these measures are desirable for helping victims reintegrate socially and more particularly take greater charge of their lives. However, the Convention does not establish an actual right of access to the labour market, vocational training and education. It is for the Parties to decide the conditions governing access... the words "lawfully resident" refer, for instance, to victims who have the residence permit referred to in Article 14 or who have the Party's nationality. The authorisation referred to need not involve issuing an administrative document to the person concerned that allows them to work.

Article 12 – Assistance to victims (6)

6 Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

Explanatory Report

168....under Article 12(6) of the Convention, assistance is not conditional upon a victim's agreement to cooperate with competent authorities in investigations and criminal proceedings.

169. Some Parties may decide - as allowed by Article 14 - to grant residence permits only to victims who cooperate with the authorities. Nevertheless, paragraph 6 of Article 12 provides that each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

Article 13 – Recovery and reflection period

1 Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.

Explanatory Report

172. Article 13 is intended to apply to victims of trafficking in human beings who are illegally present in a Party's territory or who are legally resident with a short-term residence permit.

175. The reflection and recovery period provided for in Article 13(1) should not be confused with issue of the residence permit under Article 14(1). Its purpose being to enable victims to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities, the period, in itself, is not conditional on their cooperating with the investigative or prosecution authorities

Article 14 – Residence permit

1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

- a) the competent authority considers that their stay is necessary owing to their personal situation;

b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

Explanatory Report

182. The two requirements laid down in Article 14 (1) for issue of a residence permit are that either the victim's stay be "necessary owing to their personal situation" or that it be necessary "for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings". The aim of these requirements is to allow Parties to choose between granting a residence permit in exchange for cooperation with the law-enforcement authorities and granting a residence permit on account of the victim's needs, or indeed to adopt both simultaneously.

183. Thus, for the victim to be granted a residence permit, and depending on the approach the Party adopts, either the victim's personal circumstances must be such that it would be unreasonable to compel them to leave the national territory, or there has to be an investigation or prosecution with the victim cooperating with the authorities. Parties likewise have the possibility of issuing residence permits in both situations.

Article 14 – Residence permit

4 If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.

5 Each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Explanatory Report

189. The object of Article 14(4) is to ensure that a Party granting, under paragraph 1, a residence permit takes that into account when the victim requests another kind of residence permit. Where a victim applies for another kind of residence permit, paragraph 2 encourages Parties to have regard to the applicant's having been a victim of trafficking in human beings. However, it does not place any obligation on the Parties to grant another kind of residence permit to persons who have received residence permit under paragraph 1.

190. Paragraph 5 is a particular application of the principle provided for in Article 40 (4) of

the Convention:

Article 40 (4) *Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, thing in this Convention including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.*

Article 30 – Court proceedings

...each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

- a) the protection of victims' private life and, where appropriate, identity;*
- b) victims' safety and protection from intimidation,*

Explanatory Report

309. Use of audio and video technology for taking evidence and conducting hearings may, as far as possible, avoid repetition of hearings and of some face-to-face contact, thus making court proceedings less traumatic.

310. In addition to possible use of audio and video technology for avoiding traumatic or repeat testimony, it should be pointed out that victims can be influenced by the mental pressure of being brought face to face with the accused in the courtroom. To give them proper protection it is sometimes advisable to avoid their being present in court at the same time as the accused and to allow them to testify in another room. Whether it is the accused or the victim who is moved from the courtroom, video links or other video technology can be used to enable the parties to follow the proceedings. Such measures are necessary to spare them any unnecessary stress or disturbance when they give their evidence; the trial therefore has to be organised in such a way as to avoid, as far as possible, any unwelcome influence that might hinder establishing the truth or deter victims and witnesses from making statements.

Article 10- identification of victims

Explanatory Report

134. *The identification process provided for in Article 10 is independent of any criminal proceedings against those responsible for the trafficking. A criminal conviction is therefore unnecessary for either starting or completing the identification process.*

Article 15 – Compensation and legal redress

3 *Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.*

4 *Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.*

II. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children - Relevant Sections:

Article 5 – Criminalization

1. *Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.*

2. *Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:*

(a) *Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;*

(b) *Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and*

(c) *Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.*

Article 6 - Assistance to and protection of victims of trafficking in persons

1. *In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.*

2. *Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:*

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. *Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:*

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. *Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.*

5. *Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.*

6. *Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.*

Article 14 - Saving clause

1. *Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention*

and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.