

# Submission under Article 20 of Directive 2011/36/EU

Submission on the Progress made in the fight  
against trafficking in human beings in Ireland,  
under Article 20 of the EU Anti-trafficking Directive  
2011/36

Immigrant Council of Ireland  
5-20-2020

Working for **equality**



Immigrant  
Council of  
Ireland

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## 1. Introduction

The Immigrant Council of Ireland is a charitable non-governmental organisation (NGO) and an Independent Law Centre regulated by the Law Society of Ireland. We provide information, legal advice and representation to migrants and their families, while we prioritise vulnerable groups, in particular, migrant women experiencing gender-based violence and unaccompanied children. We provide legal services and lead integration and policy campaigns benefitting migrant women trafficked for the purposes of sexual exploitation (or any other type of exploitation that also involves sexual violence). We are gender-specific in our work and have accumulated extensive expertise in direct legal representation of trafficked women, of policy interpretation and strategic litigation in this area. We are also a preferred media commentator and a participant in various consultations, organised by the Irish Government and other national and international formats.

The Immigrant Council of Ireland is an active member of the EU Civil Society Platform on Human Trafficking and we support the essential work of the EU coordination office.

This submission is made under Article 20 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. It reflects on certain reporting points, which are relevant to the expertise of the Immigrant Council of Ireland and it presents our recent report to the Irish Oireachtas (Parliamentary) Committee on Justice and Equality's consultation in May 2019, focusing on Direct Provision and the International Protection Application Process<sup>1</sup> as a principle place for accommodation to victims of trafficking.

## 2. Overview of trafficking from Immigrant Council of Ireland's perspective, since the last report

The full extent of the problem of trafficking in persons in Ireland is hidden. While there was a slight change in trends, in that more men and respectively more victims of labour trafficking were officially identified in the most recent reporting year,

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<sup>1</sup> Joint Oireachtas Committee's full report: <https://www.oireachtas.ie/en/press-centre/press-releases/20191212-joint-committee-on-justice-and-equality-report-finds-direct-provision-not-fit-for-purpose-and-calls-for-fundamental-reform-of-flawed-international-protection-application-process/>

these statistics should be treated with caution. While trafficking for sexual exploitation continues to be a steady trend and a phenomenon spread throughout Ireland, trafficking for labour exploitation involves a few large operations uncovering tens of suspected trafficked persons (mostly men) at once and in one business. In that sense, trafficking for sexual exploitation in Ireland remains more pervasive, hidden and widely spread. This trend mirrors the situation in the other European countries.

Migrant women and girls are the main profile of victims of trafficking. They are primarily trafficked for sexual exploitation but also for exploitative marriages, domestic service and criminal activities.

While traffickers abuse the vulnerability of victims, the vulnerability itself is not a cause of exploitation and trafficking. Traffickers target existing market and customer driven demand areas. Therefore, the methods of traffickers will be greatly undermined by addressing such areas of high demand with regulations and standards, alongside behavioural change measures.

Trafficking into commercial sexual exploitation in Ireland requires a more complex response, involving efforts to change the culture of pervasive sexualisation, the commodification of women's bodies and the understanding of sexual consent separate from monetary exchange. For example, Ireland has legislation to address demand by penalising the purchase of sex in general and the purchase from trafficked victims in particular, which is an essential approach.

However there also needs to be a considered but urgent resolution focused on internet technologies (and internet providers) as they are a highly culpable driving force behind commercial sexual exploitation. For example Ireland, which has abolished by law advertising for the purposes of prostitution in print and broadcast media, is precluded from enforcing these same principles vis-à-vis online prostitution enterprises operating in the jurisdiction but registered abroad under foreign domains.

To improve our response to victims of trafficking in Ireland we must:

- **Ensure the rights of victims are protected in law**

The rights of victims of trafficking to identification and assistance remain problematic due to lack of legislature guaranteeing these rights. In the absence of such law, the importance of the Administrative Immigration Arrangement for Protection of Victims of Trafficking in Human Beings increases, leading to a range of issues. The Immigrant Council of Ireland together with other NGOs have insisted on the adoption of a comprehensive legal document over the years and

more recently in a joint submission to the Department of Justice and Equality's Second National Action Plan on Trafficking in Human Beings<sup>2</sup>.

- **Identification of victims**

The identification of victims remains elaborate, exclusive and problematic, which is a problem recognised in various evaluation reports as well as in the Irish Courts.

- **Funding legal support**

A major problem is the lack of funding for independent organisations providing comprehensive legal representation to victims of trafficking. The statutory legal aid is limited to legal advice, while the system for accessing rights is elaborate, non-automatic and requiring proactive legal service.

- **Gender-specific accommodation**

Trafficking in human beings in Ireland is not recognised as a form of gender-based violence and not included in the National Strategy on domestic, sexual and gender-based violence. The state continues to accommodate trafficked victims in centres designated for asylum seekers, in spite of criticism from national NGOs, including the Immigrant Council and other international monitoring bodies. These centres are unsuitable for victims, especially female victims of trafficking for sexual exploitation, as they are mixed-gender, lack privacy, and the level of care required for victims of trafficking is not provided.

- **Compensation for victims**

There is a distinct lack of viable avenues for compensation for the majority of trafficking victims, particularly those affected by trafficking for sexual exploitation.

### 3. Which specific measures have been taken in order to address trafficking for sexual exploitation, and make this a priority?

The Immigrant Council of Ireland identifies several developments in the reporting period as amounting to intensified efforts to address trafficking for the purposes of sexual exploitation. These are outlined below.

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<sup>2</sup> Joint Submission to the Draft Second National Action Plan on Trafficking in Human Beings (2015) <https://www.immigrantcouncil.ie/sites/default/files/2017-10/AT%202015%20Joint%20Submission%20on%20DJE%20draft%20National%20Action%20Plan%20on%20Trafficking.pdf>

In the first place, this is the adoption of the Criminal Law (Sexual Offences) Act 2017, which is a comprehensive legislation addressing the issue of demand for commercial sex. The State worked in partnership and consulted with civil society in the process. Part 4 of the Act provides for two new offences of paying for sexual activity with a prostitute and paying for sexual activity with a trafficked person, with this latter offence carrying a penalty of up to five years' imprisonment and/or an unlimited fine. The Act also removes those who offer their services as a prostitute from the existing offences of soliciting for the purpose of prostitution. The Act contains new important provisions for grooming of children for sexual exploitation, which similarly contribute to the reduction of demand that could foster trafficking in human beings.

Various awareness raising initiatives and research commissioned for informing the efficient implementation of this legislation are also under way, which contribute to the progress.

In the second place, the State signals the upcoming adoption of two important steps: the expected appointment of an independent national rapporteur on trafficking in human beings and the potential establishment of a women-specific shelter for victims of trafficking recovering from sexual exploitation. The Immigrant Council of Ireland is of the opinion that when (if) implemented, these steps will contribute to the progress in the fight against trafficking in human beings and especially to victim's rights and protection.

Finally, the individual care planning for victims by the Health Service Executive remains a positive practice within the statutory national referral mechanism and subjects to the limitation established by policy. Regular trainings are organised for law enforcement with input from specialist NGOs, which has a positive impact on the cooperation between investigation and civil society in the fight against human trafficking.

4. How has trafficking in human beings been addressed in the context of international migration, taking into account patterns such as the disproportionate targeting of women and girls trafficked for the purpose of sexual exploitation? Please elaborate on the results and impact.

There seems to be a lack of recognition of migration and gender as important aspects of trafficking in human beings, as a result the disproportionate targeting of women and girls trafficked for sexual exploitation is not sufficiently addressed. The administrative policy outlining the approach to identification and immigration status of migrant victims of trafficking is outdated and has been repeatedly criticised for introducing different entitlements and rights to victims of trafficking in the asylum process. The gender-neutral approach to accommodation of victims of trafficking does not indicate that account of the trafficking of migrant women and girls for sexual exploitation has been taken. Absent from the National Strategy on gender-based violence are the forms of violence affecting migrant women, such as forced marriages and trafficking for sexual exploitation. The Immigrant Council of Ireland, as the only non-governmental law centre providing specialised legal services to migrant women and girls trafficked for sexual exploitation, have not been funded by the State.

## 5. What efforts has been made to ensure that all victims identified are provided with assistance, support and protection appropriate to their sex, age and the consequences of the specific forms of exploitation they have been subjected to?

The policy document regulating identification and rights of victims of trafficking is outdated. The Immigrant Council of Ireland submits that the protection of victims of trafficking suffers because of the lack of a clear legally-binding document. We have made repeated calls for a comprehensive policy document for all victims, EU citizens and third country nationals alike, as a blueprint for future law, in which the immigration provisions take a secondary position.

The need for comprehensive legal assistance to victims of trafficking, based on early legal intervention and gender-specific approach is evident through our services. The complex navigation of rules and rights emerging in the absence of clear legally-binding policy, makes the involvement of a specialised solicitor essential for victims. Yet, the state-funded legal aid offers only legal advice, while an independent legal service such as the Immigrant Council of Ireland Law Centre is not subsidised by the State.

A major setback in the anti-trafficking response in Ireland is the lack of appropriate safe shelter for victims of trafficking for sexual exploitation (gender-specific shelter) and the use of asylum hostels for their accommodation (direct provision system). While the Immigrant Council of Ireland strive to provide the best possible

legal advice to women, we are afraid that following consultation they return to a very unsafe environment, where they continue to be at risk of trauma, disclosure and re-victimisation, including re-trafficking.

During this reporting period, the ongoing problem with unsafe mixed gender accommodation of trafficked victims within Direct Provision hostels for asylum seekers came into a discussion at a theoretical and consultative level. A parliamentary Joint Oireachtas Committee on Justice and Equality undertook a review of the Direct Provision system with a view to recommending alternative arrangements for asylum seekers in general. The Immigrant Council used this opportunity to provide a written submission and oral representation in the committee sessions on victims of trafficking, reminding that these vulnerable individuals are also accommodated in the Direct Provision centres.<sup>3</sup> As a result of our intervention, the Joint Oireachtas Committee on Justice and Equality issued the following recommendation:

*18. In recognition of the particularly acute trauma experienced by victims of human trafficking, gender-specific accommodation, with additional appropriate and tailored supports and services, should be provided for those identified as victims of trafficking and sexual abuse. In the interim, priority should be given to designating private, non-shared rooms to trafficked people who have been sexually abused.*

It must be noted that the main points of our submission were previously presented to the Anti-Human Trafficking Unit in the Department of Justice and to the head of the Reception and Integration agency, operating the direct provision system, which did not result in a response or feedback of any kind.

As of the date of submission, a safe gender-specific shelter for trafficked women has not been established. Victims of trafficking in the International Protection system are not treated in accordance with the EU Reception Conditions Directive (2013/33/EU), requiring the identification and addressing of their special needs.

6. What effort have been considered in order to criminalise those who use services provided by victims of trafficking? Please elaborate on the results and impact.

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<sup>3</sup> link to the ICI report: <https://www.immigrantcouncil.ie/sites/default/files/2019-11/2019SubmissiontoJOConVictimsofHumanTraffickinginDirectProvision.pdf>

A major step in criminalising those who use services provided by victims of trafficking has been achieved by the adoption of the Criminal Law (Sexual Offences) Act 2017, which is a comprehensive legislation addressing the issue of demand for commercial sex. The State worked in partnership and consulted with civil society in the process. Part 4 of the Act provides for two new offences of paying for sexual activity with a prostitute and paying for sexual activity with a trafficked person, with this latter offence carrying a penalty of up to five years' imprisonment and/or an unlimited fine. The Act also removes those who offer their services as a prostitute from the existing offences of soliciting for the purpose of prostitution. The Act contains new important provisions for grooming of children for sexual exploitation, which similarly contribute to the reduction of demand that could foster trafficking in human beings. Various awareness raising initiatives and research commissioned for informing the efficient implementation of this legislation are also under way, which contribute to the progress.

7. Which measures have been taken for the early identification of victims of trafficking through national referral systems, including asylum systems? Please elaborate on the results and impact.

The identification and assistance has not changed dramatically since the last reporting period, and the main challenges remain valid. That the identification procedure is still delegated to law enforcement, results in conflicts between the obligation to enforce the law and to identify victims for the purposes of protection and non-penalisation. The specialised NGOs have no formal involvement in this process, and also victims who are seeking asylum or who are EEA nationals are excluded from formal identification as the procedure is conditional on nationality and immigration status. The Irish High Court has issued a ruling against the State's law enforcement agency deeming the identification procedure inadequate.<sup>4</sup> No substantial efforts have been made to change identification in Ireland, even though the Second National Action Plan to Prevent and Combat Human Trafficking in Ireland (2016) identifies this as a priority.

8. What measures have been taken to ensure tools are in place for victims to access compensation,

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<sup>4</sup> P. v. Chief Superintendent Garda National Immigration Bureau, the Director of Public Prosecutions, Ireland and the Attorney General, 2013/795.

including appropriate training and capacity building of relevant professionals?

There is a distinct lack of viable avenues for compensation for the majority of trafficking victims, particularly those affected by trafficking for sexual exploitation which is the prevalent form of the crime. To our knowledge, no victim of sexual exploitation has received compensation in Ireland. The existing avenues puts victims trafficked for sexual exploitation at a disadvantage, and there is no commitment in the Second National Action Plan to Prevent and Combat Human Trafficking in Ireland to improve access to compensation beyond improving access to guides on the current system for compensation.

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