

*Submission to Joint Committee  
on Justice on the General  
Scheme of the Criminal Justice  
(Sexual Offences and Human  
Trafficking) Bill 2022*

Preliminary Observations

October 2022

Working for **equality**



## **INTRODUCTION**

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The Immigrant Council of Ireland Independent Law Centre (ICI) is an independent human rights organisation that promotes access to justice for migrants and their families, including Irish citizens, living in Ireland. More than 5,000 individuals are directly supported through our information, support and legal services each year. With over 15 years' experience as a frontline service provider across the broad spectrum of migration, residence and citizenship related applications, the organisation has significant insight regarding the issues affecting migrants and their families in the immigration system. The Immigrant Council has adopted as one of its organisational priorities specific actions in the area of anti-human trafficking. As an Independent Law Centre we provide legal representation, advice and information to victims of human trafficking. More broadly, we conduct research and engage in collaborative actions regarding the needs of survivors of trafficking in areas such as accommodation, gender specific support services, integration supports such as education and employment, training on the holistic support of survivors of human trafficking and other associated areas.

## **BACKGROUND TO THE PROPOSED LEGISLATION**

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This submission focuses exclusively on Part 3 of the General Scheme providing for the establishment of a revised National Referral Mechanism (NRM) for Victims of Trafficking.

The [EU Anti-Trafficking Directive 2011/36/EU](#) (the Directive), in which Ireland participates, provides for a holistic, non-discriminatory, human rights-based and gender specific approach to the identification and support of victims of human trafficking. Since the adoption of the Directive, the ICI has advocated for the enactment of legislation in Ireland to transpose the Directive and to provide for such an approach. As such, the ICI welcomes that the publication of the [General Scheme of the Criminal Justice Sexual offences and Human Trafficking\) Bill 2022](#) (General Scheme) is a step towards that objective. We believe that clearly setting out in legislation the operation of the NRM and the system of identification of victims of human trafficking will significantly enhance the investigation, prosecution, and prevention of human trafficking.

Reform of the existing NRM in Ireland is long-overdue. In 2015, the Irish High Court delivered judgment in [P v. Chief Superintendent of the Garda National Immigration Bureau & Ors \[2015\] IEHC 222](#). The case considered the existing administrative arrangements for the identification of and provision of supports to victims of human trafficking in Ireland and held that the Directive had not been adequately transposed into Irish law by those arrangements, which have been in place since 2008.

Following the judgment, the Immigrant Council of Ireland, in collaboration with the Migrant Rights Centre Ireland and Ruhama, made a submission to the Department of Justice in 2016 to support the establishment of an improved system of identification and protection of all victims of trafficking irrespective of their legal status or nationality, in accordance with

State's obligations, in particular the Directive. The principles set out in that submission (see Appendix 1), which we believe were shared by the Department of Justice, An Garda Síochána and other members of the current NRM, were also agreed upon by various NGOs and other relevant stakeholders, and reflected our considered view regarding the fundamentals that should underpin the NRM and any identification process to be developed in Ireland. The most important of those principles are that any system of identification and support must be non-discriminatory, efficient, accountable and transparent.

We note that these principles are set out clearly in the [OSCE/ODIHR 12 principles](#)<sup>1</sup> for effective NRM structures. However, we are concerned that the General Scheme does not take sufficient account of these well-established best practice principles in relation to the identification and support of victims of human trafficking and that there is an overall lack of clarity, as draft operating guidelines have not yet been published, which would enable all stakeholders to comprehensively consider and make recommendations regarding the proposed operations of the revised NRM.

### ***PRELIMINARY OBSERVATIONS ON THE GENERAL SCHEME***

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We welcome that a non-discriminatory and multi-agency approach has been incorporated into this draft. We are also pleased to see that it appears, in line with the provisions of Article 11(3) of the Directive, that victims of human trafficking are not required to cooperate with criminal investigations in order to receive the full range of assistance and entitlements. If this is the case, and the Department should clarify the position, this is a welcome and significant step forward from the current victim identification requirements.

However, overall, certain issues are still of considerable concern to us. When compared with the [OSCE/ODIHR 12 principles](#) for effective NRM structures, there are significant gaps in the General Scheme. In its current format we do not believe the goal of establishing a NRM that is underpinned by international best practice principles is met nor does it take account of previous submissions made by the Immigrant Council and other stakeholders to the Department.

The General Scheme does not make any reference to the existing [Administrative Immigration Arrangements for the protection of suspected victims of human trafficking](#) (AIAs). It is not clear if the AIAs will continue to operate, and if so whether they will be amended when the legislation is enacted or whether the Operational Guidelines will replace the AIAs.

In this submission, we highlight key issues to be addressed to in the legislation:

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<sup>1</sup> See the 12 Principles for effective NRM structures elaborated at pages 20-23 of National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons OSCE/ODIHR 2022, [https://www.osce.org/files/f/documents/f/5/510551\\_0.pdf](https://www.osce.org/files/f/documents/f/5/510551_0.pdf)

## **HEAD 12 – INTERPRETATION SECTION**

Part 3 of draft Scheme commences with **Head 12**, which relates to interpretation of relevant terms including definitions of types of ‘exploitation’, including sexual exploitation, labour exploitation, removal of organs and forced criminality. The definitions are in keeping with the provisions of existing legislation, namely the Criminal Justice (Human Trafficking) Act 2008 (2008 Act) and the Criminal Justice (Human Trafficking) (Amendment) Act 2013 (2013 Act). The General Scheme, however, only refers to the 2008 Act and the legislative drafters should ensure that the definition also cover the 2013 Act. With reference to Article 2(3) of the Directive and ‘exploitation’, the existing legislation represents only the minimum standard required and the ICI recommends that the legislation also defines ‘exploitation’ in sufficiently broad a manner to allow for new or emerging forms of human trafficking including coercion and commercial exploitation in the context of, for example, forced or ‘sham’ marriage, surrogacy, forced pregnancy, illegal adoption, etc.

We note that the 2008 Act and 2013 Act do not refer to ‘consent’ and nor does the General Scheme. Article 2(4) of the Directive provides that the consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where various means are used, to include ‘threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person’.

The interpretation section also defines a ‘Trusted Partner’ (TP) as a body or organisation that has been designated by the Minister for Justice to accept applications from victims of trafficking (VOTs) to be identified and to refer those applications to the Operational Committee (OC). This is further elaborated on in **Heads, 13, 14 and 17**.

## **HEAD 13 – COMPETENT AUTHORITY**

**Head 13** relates to the Competent Authority (CA) and provides that several Ministers (Justice, Social Protection and Children, Equality, Disability, Integration and Youth) and other State bodies, to include An Garda Síochána (AGS), the Child and Family Agency (Tusla), the HSE and Workplace Relations Commission, will form the CA. In principle, this together with the introduction of a role for Trusted Partners (see **Head 18**), is to be welcomed, as it moves sole responsibility for victim identification away from AGS/Minister for Justice, as is currently the case, and the multi-disciplinary approach has potential to greatly enhance the State’s ability to identify and support victims.

It is, however, not clear whether the list of bodies in the General Scheme is exhaustive or if others may be included, such as, for example, the International Protection Office with responsibility for processing protection applications, which is a body likely to receive applications for protection from individuals who have been, or are, or at risk of trafficking and which is obliged to carry out vulnerability assessments in respect of applicants.

**Head 13** does not elaborate further on membership or composition of the CA, whether it will be housed within a specific Government Department or a standalone agency with specialised staff seconded to it from the identified bodies, or whether there will be dedicated units within each of the identified bodies, etc. The legislation should clearly establish this, so that there is clarity where applications for victim identification may be received.

It is further recommended that the legislation specify the minimum qualifications and mandatory training required for staff appointed by bodies to the CA and also organisations designated as Trusted Partners (**Head 18**). Clarity on the professional skills/competencies and selection process of those who will be able to represent these CAs and TPs at the Operational Committee (OC) (see further below, **Head 15**) is needed ensuring that all members of the OC have relevant experience and knowledge of human trafficking and administrative decision making. Adequate funding and resourcing must be provided to the CAs and TPs to ensure they can carry out their duties with appropriate care and professionalism.

Recognising this and referring to the proposed Third National Action Plan on Trafficking, it is very important that all members of the OC, CA's and TP's are engaged in mandatory training for the effective implementation of the NRM, including training to recognise and counter child trafficking.

#### **HEAD 14 – APPLICATION FOR RECOGNITION AS A VICTIM OF TRAFFICKING and HEAD 17 – IDENTIFICATION OF HUMAN TRAFFICKING BY THE NRM OPERATIONAL COMMITTEE**

**Head 14** provides that an application may be made by a person who believes that they have been, or is, or may be a victim of trafficking. The application can be made to Competent Authority (CA) or Trusted Partner (TP). Where the CA or TP receives an application and is satisfied that the application is a) credible and b) based on 'reasonable grounds', they must refer the application to the Operational Committee (OC) to determine the application. 'Reasonable grounds' to be considered include evidence that the person has been trafficked for purposes of exploitation; evidence that the person has been coerced by another person, including for purposes of forced labour, labour exploitation or prostitution; failure to pay minimum wage; evidence of deception by another person regarding the terms and conditions of employment, nature of employment and/or conditions of travel into State. This is stated to be a non-exhaustive list.

The General Scheme introduces an additional "credibility" test as to whether a person is a victim of human trafficking. In addition, there is inconsistency between **Head 14**, where credibility is referenced and **Head 17** (providing for the establishment of arrangements for the OC to identify VOTs using a multi-disciplinary and cross-agency team) decisions must be taken based on assessment on the balance of probabilities that the application is credible.

It is not clear why it appears that a more elaborate test than that currently applied by the Competent Authority (AGS) is provided for in the General Scheme and introduces a standard

that is not compatible with the Directive, which mandates in Article 11(2) that Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any human trafficking offences.

**Head 14(4)** refers to a non-exhaustive list of matters that may be considered by the CA or a TP when considering whether there are reasonable grounds for the purposes of recognising a person as a victim of trafficking and deciding to refer an application to the OC. The 'reasonable grounds' refer to 'evidence', as opposed to indicators of human trafficking. The legislation should not impose a higher standard than required by the Directive.

#### **HEAD 15 – NRM OPERATIONAL COMMITTEE FOR THE IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING**

**Head 15** relates to the Operational Committee (OC) and provides that each Competent Authority (CA) will be represented at the OC, as will Trusted Partners (TPs), and will make decisions on 'a collective basis in accordance with procedures agreed by the CAs'. No input from TPs is envisaged, which is questionable. The OC will agree frequency of meetings and interim arrangements to apply to applicants awaiting a determination, including provision of services. As drafted, the General Scheme does not provide any indication of acceptable timeframes for a decision. The intended operating guidelines for the OC have not yet been published, which would enable more informed commentary to be provided regarding the intended operating procedures. It is important that transparency in the formulation and implementation of the operating guidelines is maintained and that a clear and short timeframe for a decision is specified. It is also recommended that decisions are issued in writing and that there are clear timeframes within which to make further submissions and/or to submit an appeal. We note that an appeal process is not currently provided for, which is an omission.

#### **HEAD 16 – SHARING OF INFORMATION BY COMPETENT AUTHORITIES AND TRUSTED PARTNERS**

**Head 16** relates to the cooperation of Operational Committee members and the sharing of information relevant to the application and determination that the applicant is a victim of trafficking. Information may only be shared with consent of applicant and, if the applicant is a minor, the consent of the applicant's parent or guardian is required. The General Scheme provides that if there is no parent/guardian, Tusla will represent child's best interests. As current drafted, this Head gives rise to several important considerations.

The obligation to share information is stated to be without prejudice to any power or duty which the Competent Authorities may have to provide information to each other under any other enactment or rule of law, which is extremely vague. The legislation should be explicit regarding the use by any CA bodies any use of large-scale IT systems in the area of asylum, migration and border controls.

Additionally, how these provisions would work in practice is unclear, e.g., what if there is an identified parent of a child who does not consent or is not within the jurisdiction and/or is non-cooperative? A child applicant should not be prevented from pursuing an application under **Head 14** and regard must be had to the age, capacity and maturity of an individual applicant child to provide consent. For example, those aged 16 years and older could be deemed 'competent minors'. In this regard, we also note that Head 16 merely refers to a limited role of Tusla to represent a child's best interests in relation to the sharing of information. The General Scheme does not provide that all child victims of trafficking will have a legal guardian appointed to represent their interests, as is mandated by Article 16(3) of the Directive.

Related to the above and, fundamentally, the General Scheme does not provide for a child specific NRM. Nor has particular attention been paid to child-specific provisions concerning identification and application for recognition as a VOT. The best interests of the child should not merely be represented but must be the primary consideration as per the Directive (Article 13 provisions on assistance, support and protection measures for child victims of trafficking and Article 16(2) regarding Member State's obligation to shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child) and Ireland's obligations under the UN Convention on the Rights of the Child (UNCRC). We note that **Head 19** sets out that in the case of a child VOT, access to child protection services of the Child and Family Agency is to be provided for. In this regard, the adequacy of age assessment procedures for migrant children under the Childcare Act 1991 (as amended) must be provided and we note the current lack of published guidance regarding age assessment procedures. We further note that children that children provided with services under the Childcare Act 1991 (as amended) are allocated a social worker; a social worker is, however, not a legal guardian.

#### **HEAD 18 – DESIGNATION BY ORDER OF TRUSTED PARTNER**

**Head 18** relates to applications by organisations to be recognised as a Trusted Partner, which can include NGOs, charitable organisations, etc. that support or provide services to VOTs. The draft provisions also enable the Minister to refuse such an application and to revoke designated TP status, provisions which are reasonable but would benefit from greater clarity regarding timeframes for dealing with applications and the grounds upon which applications may be refused and/or designated status revoked, as well as the procedures for processing relevant applications.

As stated above, providing for the introduction of Trusted Partners and a multi-disciplinary approach is welcomed and has potential to greatly enhance the State's ability to identify and support victims. Whilst **Head 18(2)** sets out the particulars that an organisation or seeking trusted partner status must set out when applying, which includes matters relating to the nature and type of services provided by the organisation or body, the numbers of persons to whom services were provided by the organisation or body, etc. similar considerations relating to **Head 13** apply and it is recommended that the legislation specify the minimum qualifications and mandatory training required for staff of Trusted Partners that would have a role in the Operational Committee. Head 18 does not deal with the

critical issue of adequate funding or appropriate remuneration of staff of Trusted Partners with a role in the Operational Committee to ensure that Trusted Partners may carry out duties effectively, efficiently and with necessary professionalism. The legislation should also address issues relating to confidentiality of service users of Trusted Partners and potential conflicts of interest.

## **HEAD 19 – ACCESS TO SERVICES BY VICTIMS OF HUMAN TRAFFICKING**

**Head 19** relates to access to services by victims of trafficking (VOT) and provides that where Operational Committee determines that a person is a VOT, the person shall be accepted into the NRM. It is then the responsibility of the CA, acting individually or collectively, to ensure provision of an ‘appropriate care package’ to include but not limited to – social welfare, accommodation (there is specific reference to Direct Provision ) or local authority, health, civil legal aid, education, training and employment opportunities, child protection services (if a child), info and advice regarding rights as a VOT (but not limited to same) and repatriation (if desired).

Article 11 of the Directive is extremely instructive regarding the services to be provided to victims and the legislation should reflect same. As noted above already, Article 11(2) of the Directive mandates that Member States must take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to human trafficking offences. Further, Article 11(3) provides that Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial (as is currently required under the existing AIAs, which are referred to above in our preliminary observations). Article 11(5) requires that the assistance and support measures shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims’ subsistence through measures such as the provision of 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. Finally, Article 11(7) requires that Member States shall attend to victims with special needs, where those needs derive, in particular, 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.

Head 19 does not make any reference to access to any recovery and reflection period nor to providing access to residence permission for non-EEA nationals or provision of information relating to the possible granting of international protection, as may be required in some instances.

Where a person is recognised as a VOT the HRC that is generally applied to social welfare applicants must be set aside. Additionally, the “nationality” test that is applied in consideration of applications for local authority housing must also be set aside.



We are especially disappointed that the General Scheme refers to Direct Provision in the context of accommodation, which it is submitted is not in compliance with the appropriate or safe accommodation or gender specific approach required by the Directive. We remind the Committee of the recommendations of the [Catherine Day Advisory Group report](#) with regard to appropriate accommodation for victims of trafficking (see recommendation 4.11), as well as the stated [commitments](#) of the Government to end Direct Provision generally and is in direct contradiction of the human rights and victim centred approach set out in the draft Third National Action Plan on Combatting Human Trafficking. We recommend that reference made to ensuring appropriate and safe accommodation for VOT within new NRM as a matter of priority and recommend that references to Direct provision are removed.

**Head 19** includes reference to civil legal aid services and note that there are presently restrictions under the Civil Legal Aid Act 1995 that exclude provision of services in respect of certain issues or before certain tribunals and bodies dealing with social welfare appeals, housing, employment and equality rights, etc. The legislation giving effect to the NRM should amend the 1995 Act to ensure that victims of trafficking are not excluded from receive advice and representation to obtain necessary redress and/or for the purpose of claiming compensation, as provided for by Article 12(2) of the Directive.

#### **HEADS 20 AND 21 – PROHIBITION ON DEPORTATION OF VICTIM OF TRAFFICKING AND NON-PROSECUTION**

**Head 20** provides for a specific prohibition on deportation for immigration offences committed whilst being trafficked while an application for VOT is under consideration or after a positive decision has been issued by OC under **Head 17(1)**. **Head 21** reflects principle of protection from prosecution and provides that provides that a person cannot be prosecuted for their role in their own trafficking. These Heads need to be drafted to ensure compliance with the requirements of Article 8 of the Directive; victims of human trafficking should be protected from prosecution or punishment for involvement in criminal activities such as, for example, the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators.

#### **CONCLUSION**

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In summary, although we welcome its publication and the commitment by Government to bring forward legislation, the General Scheme is disappointing when compared with the wide range of material that is available, both in Ireland and internationally, that clearly sets out the best practice principles that should inform the legislative framework establishing the revised NRM to support and identify victims of human trafficking.

As currently drafted, the General Scheme appears to be lacking significantly with respect to what is required to deliver a robust effective NRM to identify and support victims. It

should be assessed with reference to the [OSCE/ODIHR Handbook](#) (2nd Ed., 2022), in particular the 12 principles of an effective NRM structure reference above and, in particular, access to recovery and reflection; the best interests of children; non-conditional on cooperation with criminal investigation/prosecution; non-punishment; and non-detention; social inclusion and criminal justice/redress.

We welcome the opportunity for continued engagement with Joint Committee as the legislation is developed.

**Ends.**

**Appendix 1:**

**Discussion Document: In consideration of an Identification and Protection**

**Process for of Victims of Human Trafficking.**

**Submitted to: The Anti Human Trafficking Unit, Department of Justice & Equality**

**From: The Immigrant Council of Ireland, the Migrant Rights Centre Ireland and Ruhama.**

**Date: June 2016**

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## **A. Purpose**

The purpose of this document is to support the establishment of a system for the identification and protection of all victims of trafficking in human beings regardless of their legal status or nationality, in accordance with the State's obligations under the Constitution, the European Convention on Human Rights 1950, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000, the Council of Europe Convention on Action against Trafficking in Human Beings 2005, and Directive 2011/36/EU. Increasing the rates of identifications is a key concern primarily for victims and also to measure trends of trafficking within the country. The identification procedure in this context is understood as not contingent on a police investigation and/or an immigration permission being granted. For example, a person may wish to return home or not formalise their complaint. In such circumstances, identification in itself is critical for accurate recording of this crime.

## **B. Underpinning Principles**

**The NGOs submitting this document for consideration of the AHTU, and other stakeholders, are in agreement that the principles set out below should underpin any identification process developed in Ireland**

**Non-discrimination:** All victims should be identified regardless of their immigration status or nationality, including persons from the EU and persons seeking asylum. This would ensure that victims have the right to make an application for asylum and for a Temporary Residence Permissions (TRP) concurrently. At the moment victims do not have this right and so a two tier system exists whereby victims who are granted a TRP can access private accommodation and the right to work among other rights while an asylum seeker who is a victim of trafficking must reside in direct provision and can't access the labour market. Adhering to the principle of non-discrimination would ensure that the right to seek and enjoy asylum does not impede on the granting of TPR and the corresponding rights.

**Accountability:** Ensure that early-identification is a low threshold based on a credible suspicion which triggers the positive obligation towards the victim in a speedy and efficient manner.

**Efficiency:** Identify all victims with equal speed and consistently ensuring the identification process is time-bound with all decisions issued without delay. For example, all suspected victims identified for the purpose of receiving a recovery & reflection period within 7 days. This would ensure that the early identification procedure doesn't produce long delays.

**Inclusivity:** Include a range of stakeholders as decision-makers in the identification process. Stakeholders should also include first responders. Non-governmental organisations should be formally included in the decision making structure.

**Transparency:** Ensure that the decisions relating to the identification process are issued in writing to the victim and their legal representative.

**Independence:** Apply an independent appeals process to the identification process to ensure all negative decisions within the identification procedure relating to Reflection and Recovery Periods, Temporary Residence Permission (TRP), Renewals and/or revocation of TRP can be challenged.

**Access to rights: Suspected** Victims should have access to early legal intervention to assess all options, including whether or not to cooperate in a criminal investigation. In addition, a letter should be sent to all victims, without delay, listing all their entitlements without discrimination to their nationality. For example, the right to material assistance, social welfare assistance, private rented accommodation, training and employment, medical and psychological care, and any other rights should be listed. This document will be an important support for EU national who often can't access their rights due to the Habitual Residence Condition.

Victims of trafficking who are EEA nationals should not be subject to the Habitual Residency Condition in order to facilitate their equal access to rights and entitlements in relation to third country nationals.

**Participation:** Ensure that the participation of victims in the criminal investigation is not mandatory and that it is not a condition for the right to remain in the country or to access their rights. Victims often fear retaliation and fear their traffickers. They also often suffer from Post-Traumatic Stress Disorder and other debilitating stress and are incapable of taking part in an investigation. Their rights should not be conditional on assisting in an investigation as is the current situation.

**Do no Harm:** Ensure this principle is adhered to at all times so that victims are not re-traumatised in the identification procedure. Ensure that victims do not give

numerous accounts of their experience to be identified and ensure that stakeholders work together to avoid re-traumatisation.

**Non-punishment Principle:** Strenuous efforts must be made, from the point of first contact by statutory authorities, to ensure that victims of trafficking are not criminalized for activities which they were required to undertake by traffickers.

## C. Key Provisions

- a. **Legal Advice:** The Legal Aid Board shall grant legal advice to a person who is an alleged victim of a trafficking in human beings in accordance with section 26(3B) of the Civil Legal Aid Act 1995 (as inserted by section 3 of the Civil Law (Miscellaneous Provisions) Act 2011).
- b. **International Protection:** Nothing in any identification arrangements shall affect the right of any person to claim international protection in the State pursuant to the Refugee Act 1996 or the European Union (Subsidiary Protection) Regulations 2013. The fact that a person has claimed or availed of international protection in the State shall not affect his or her entitlement to identification or protection in accordance with such Arrangements.
- c. **Assistance and Protection:** A person identified as suspected victim of trafficking in human beings or as a victim of trafficking in human beings, as the case may be, shall receive:
  - appropriate and safe accommodation,
  - material assistance,
  - necessary medical treatment including psychological assistance, counselling and information,
  - translation and interpretation services where appropriate,
  - legal advice and representation,
  - appropriate protection on the basis of an individual risk assessment,
  - Permission to remain in the state, if required

- Waving of the Habitual Residence Condition for EU nationals

Where a child is identified as suspected victim of trafficking in human beings or as a victim of trafficking in human beings, as the case may be, an individual assessment of the special circumstances of the child victim shall be performed, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. A child identified as suspected victim of trafficking in human beings or as a victim of trafficking in human beings, as the case may be, shall have access to education within a reasonable time.

## **D. Potential Stages of identification**

The following section outlines "Stages of Identification" but does not represent a formal proposal by the submitting NGOs. These potential stages highlighted are drawn from NGOs own suggestions and from a number of examples from other EU jurisdictions. Each stage requires interrogation by all stakeholders to ensure that no 'unintended consequences' may arise that would negatively affect victim rights. We present them as a starting point from which we feel a better identification process can evolve with the input of other stakeholders including the AHTU, Garda Siochana and legal professionals. It is noted that, in particular, the question of whether to establish a 'conclusive decision' stage requires careful consideration.

The NGOs submitting this document further acknowledge that there is an evaluation of the UK Human Trafficking Identification pilot procedures and recommend that development of an Irish process for identification should take into consideration the findings of this evaluation in order to learn from the successes, and potential shortcomings of this example.

### **Stage One: Support and Assistance**

This stage is where a suspected victim is referred to the first responder or the first responder comes in contact with the suspected victim. A range of supports may need to be implemented at this point to support the suspected victim to leave the exploitative situation such as ongoing contact with the person to build their confidence and trust to leave, arranging for the person to leave safely, liaising with An Garda Siochána for back up support to ensure the suspected victims can leave safely and/or collect their belongings, and transporting the person to safe accommodation.

### **Stage Two: Referral and identification by first responder**

Entry to the identification and protection system is by way of referral to the Anti-Human Trafficking Unit.

- A referral shall be in the form prescribed for that purpose by the Minister.
- A referral may be made, in relation to an applicant, by –
  - a. the applicant himself or herself,
  - b. a legal representative of an applicant, or
  - c. a first responder [from a list of first responders to be agreed]
  - d. Support organisations
- No referral shall be made or received without the consent of the applicant. However, the consent of an applicant who is a child shall not be required; however, where the referral is made by a Support Organisation, the views of the child in respect of the referral shall be specified in the referral.
- Where the age of an applicant is uncertain and there are reasons to believe that the applicant is a child, the applicant shall be presumed to be a child.

There needs to be flexibility here and certain agencies may need to have a role here for the first stage referral. For example, if a suspected victim needs to be referred during out of office hours, An Garda Síochána may need to be involved to arrange accommodation.

### **Stage Three: Reflection and Recovery Period**

#### **1. Granting of Reflection and Recovery**

Where a referral is made to the Anti Human Trafficking Unit by the first responder, a Deciding Officer shall make a decision within twenty-four hours from the receipt of the referral as to whether there are reasonable grounds to believe that the applicant is a suspected victim of human trafficking. The Deciding Officer shall, in reaching his or her decision, have regard to –

- a. the referral form,

- b. any material accompanying the referral,
- c. the Garda Síochána Opinion, if any, and
- d. where the applicant is a child, the best interests of the child and child victims identification guidelines

The Deciding Officer shall, in reaching his or her decision –

- a. observe the principles of constitutional justice and fair procedures in, and
- b. apply the Delphi and ‘Dignity’ Indicators. [Note: the ILO and ‘Dignity’ indicators refer to Labour and Sex trafficking respectively. it is recommended that consideration be given to whether there is a benefit to developing identification indicators with due regard for other particular mechanisms of different forms of THB, including organ removal.

Where the Deciding Officer is satisfied that there are reasonable grounds to believe that an applicant is a suspected victim of trafficking in human beings, the Deciding Officer shall formally identify the applicant as a suspected victim of trafficking in human beings.

Where an applicant is formally identified as a suspected victim of trafficking in human beings the Deciding Officer shall notify the applicant in writing of his or her identification, and shall also so notify –

- the applicant’s legal representative, if any,
- where the referral was made by a Support Organisation, the organisation.

A notification in writing shall –

- a. invite the suspected victim to contact the appropriate service provider for assistance and protection, and
- b. be accompanied by a list of such providers, including their contact details.



## 2. **Refusal of Reflection and Recovery Period**

Where the Deciding Officer is not satisfied that there are reasonable grounds to believe that an applicant is a suspected victim of trafficking in human beings, he or she shall notify the applicant in writing of his or her decision, and shall also so notify -

- a. the applicant's legal representative, if any,
- b. where the referral was made by a Support Organisation, the organisation.

A notification shall include the reasons for the decision.

## 3. **Review of negative reasonable-grounds decisions**

Where an applicant receives a notification under he or she may apply to have the decision reviewed by a Review Officer within 30 days of the notification (this might be referred to as "an application for a review").

An application for a review shall be in the form prescribed for that purpose by the Minister.

An application for a review may be made, in relation to an applicant, by -

- a. the applicant himself or herself,
- b. a legal representative of the applicant, or
- c. a Support Organisation.

No application for a review shall be made or received without the consent of the applicant.

The consent of an applicant who is a child shall not be required, however, where the application for a review is made by a Support Organisation, the views of the child in respect of the application for a review shall be specified in the application.

The Review Officer shall carry out a review of the Deciding Officer's decision and shall –

- affirm the decision, or
- set aside the decision of the Deciding Officer and substitute his or her own decision.

The Review Officer shall, in reaching his or her decision, have regard to –

- a. the referral form,
- b. any material accompanying the referral,
- c. the Garda Síochána Opinion, if any,
- d. the decision of the Deciding Officer,
- e. the application for a review,
- f. any material accompanying the application for a review, and
- g. where the applicant is a child, the best interests of the child and identification guidelines.

The Review Officer shall, in reaching his or her decision –

- a. observe the principles of constitutional justice and fair procedures and
- b. apply the Delphi and 'Dignity' Indicators [and any other such indicators as may be developed & agreed, specific to other forms of human trafficking]

Where the Review Officer is satisfied that there are reasonable grounds to believe that an applicant is a suspected victim of trafficking in human beings, the Review Officer shall formally identify the applicant as a suspected victim of trafficking in human beings.

Where an applicant is identified as a suspected victim of trafficking in human beings the Review Officer shall notify the applicant in writing of his or her identification, and shall also so notify –

- a. the applicant’s legal representative, if any,
- b. where the application for a review was made by a Support Organisation, the organisation.

A notification shall –

- invite the suspected victim to contact the appropriate service provider for assistance and protection, and
- be accompanied by a list of such providers, including their contact details.

Where the Review Officer decides to affirm the decision of the Deciding Officer, he or she shall notify the applicant in writing of his or her decision, and shall also so notify –

- a. the applicant’s legal representative, if any,
- b. where the referral was made by a Support Organisation, the organisation.

A notification shall include the reasons for the decision.

#### **Stage Four – Conclusive Decision by a Committee under the auspice of AHTU through Multi-Stakeholder Panels.**

- 1. Request for a conclusive identification decision [As noted above, This section warrants very particular consideration to assess the pros and cons of conclusive identification; taking learning from examples in other jurisdictions who use such an approach as to its benefits to victims]**

Where an applicant is identified as a suspected victim of trafficking in human beings by a Deciding Officer or a Review Officer, the Anti-Human Trafficking Unit shall –

- a. convene a Conclusive identification Committee in respect of the applicant, as soon as may be after the decision is made, and
- b. request from the Committee a conclusive identification decision.

A Conclusive Identification Committee shall have three members and shall consist of –

- a. an official of the Anti-Human Trafficking Unit of not below the grade of [?GRADE] who shall act as Chairperson of the Committee,
- b. an official not below the grade of [?GRADE] of –
  - i. the Health Service Executive where the suspected victim is above the age of 18 years, or
  - ii. the Child and Family Agency (TUSLA) where the suspected victim is a child, and
- c. a person nominated for the purpose by a Support Organisation/NGO representative at the invitation of the suspected victim, or where no such person has been nominated, a person who is a member of the Conclusive Identification Committee Panel.

The Minister shall establish and maintain a panel of not more than ten persons from the persons nominated and appointed for such term and on such conditions as the Minister determines (in these Arrangements referred to as the “Conclusive Identification Committee Panel”).

A request for a conclusive identification decision shall be in the form prescribed for that purpose by the Minister.

## **2. Conclusive identification decision**

A Conclusive Identification Committee shall make a based on whether there is credible suspicion that the suspected victim is a victim of trafficking in human beings as soon as may be from the receipt of the request for a conclusive identification decision.

A Conclusive Identification Committee shall, in reaching its decision, have regard to –

- a. the referral form,
- b. any material accompanying the referral,
- c. the decision of the Deciding Officer,
- d. the application for a review, if any
- e. any material accompanying the application for a review, if any,
- f. the request for a conclusive identification decision,
- g. where the applicant is a child, the best interests of the child, and child identification guidelines
- h. any other relevant material.

The Conclusive Identification Committee shall, in reaching its decision-

- a. observe the principles of constitutional justice and fair procedures, and
- b. apply the Delphi and 'Dignity' Indicators [and any other such indicators as may be developed & agreed, specific to other forms of human trafficking]

The Conclusive Identification Committee shall reach its decision on the basis of a majority.

The Conclusive Identification Committee shall formally identify the person as a victim of trafficking in human beings.

Where a person is formally identified as a victim of trafficking in human beings in accordance with the Conclusive Identification Committee shall, within seven days, notify the person in writing of his or her identification, and shall also so notify –

- a. the applicant's legal representative, if any,
- b. where the referral was made by a Support Organisation, the organisation, and
- c. the Anti Human Trafficking Unit.

Where the Conclusive Identification Committee is not satisfied that a person is a victim of trafficking in human beings, the Committee shall within seven days, notify the person in writing of his or her identification, and shall also so notify –

- a. the applicant's legal representative, if any,
- b. where the referral was made by a Support Organisation, the organisation, and
- c. the Anti Human Trafficking Unit.

A notification shall include the reasons for the decision.

Receipt of a notification shall not, of itself, affect the identification of a person as a suspected victim of trafficking in human beings.

A suspected victim of trafficking in human beings who receives a notification referred to in paragraph 52 may request that the Anti Human Trafficking Unit convene another Conclusive Identification Committee.

Where a request is made by a suspected victim of trafficking pursuant to paragraph 55, the Anti Human Trafficking Unit shall convene another Conclusive Identification Committee

where new elements or findings arise or are presented which add to the likelihood of the person being identified as a victim of trafficking in human beings.