



Trafficking for Forced Labour in Ireland and the United Kingdom: Issues and Emerging Good Practice

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Migrant Rights Centre Ireland
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Migrant Rights Centre Ireland

The MRCI is a national organisation working to promote justice, empowerment and equality for migrant workers and their families. MRCI is seeking to contribute to the creation of an intercultural society and in particular towards creating the conditions for inclusion of those migrant workers and their families who are at risk of poverty, social exclusion and discrimination.

MRCI's work is rooted in community work practice, which is based on the principles of social justice, equality and anti-discrimination. Through MRCI's Action Groups, the Migrants Forum and ongoing Campaign Groups, MRCI facilitates migrant workers to come together to identify shared issues, build power and take collective action for change.

MRCI actively mobilises and campaigns for concrete policy changes that affect migrant workers and their families. Strategic campaign areas include

- Workplace Rights
- Employment Permit Reform
- Combating Forced Labour including Trafficking
- Anti-Racism and Equality
- Regularisation of Undocumented Migrants

MRCI supports three worker action groups fighting to defend their rights and improve the conditions of workers in sectors where high levels of exploitation against workers exist. Groups include:

- Domestic Workers Action Group
- Restaurant Workers Action Group
- Agricultural Workers Association

The MRCI Workplace Rights and Irregular Migration Project teams advocate on behalf of individual migrant workers who experience exploitation in the workplace, including cases of forced labour and trafficking, and those who have become undocumented (irregular) in Ireland.

MRCI collaborates with organisations at local, national and international level on migrant worker issues, and works in solidarity with the community sector as a member of the Community Platform, a national coalition of 28 national organisations concerned with equality, anti-poverty and social inclusion. MRCI also works closely with the trade union movement to take action on areas of mutual concern.

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FOREWORD

Trafficking in human beings has attracted considerable public and political attention in recent years. With this attention has come greater awareness that trafficking for forced labour exists in every country including Ireland, where it has been identified in a variety of sectors including agriculture, construction, domestic work and restaurant work. During the last years, some high profile cases have shed light on the horrors of this extreme form of labour exploitation. In 2005, the plight of Turkish construction workers housed in prison-like accommodation, receiving low pay, subject to intimidation and the virtual theft of their wages into bank accounts in Holland, generated significant public debate about the gross exploitation of migrant workers in Ireland. In February 2004, the death of 23 Chinese cockle pickers in Morecambe Bay in the United Kingdom sparked discussion and action on labour exploitation and tougher penalties for exploitative employers.

And yet, while many initiatives have grown in response to these stark forms of labor exploitation, including within the framework of trafficking in human beings, there remains a vast gulf between the political response to trafficking and the reality of experiences of forced labour. Considerable weaknesses in addressing forced labour remain. They rest largely on the move away from a focus on exploitation and forced labour to solely focusing on trafficking concerns. This obfuscates the real problem of tackling the larger issue forced labour as a whole.

This approach has led to a critical situation where the issue of forced labour has become divorced from that of trafficking in human beings. Legislators, policy makers, crime prevention officers and practitioners now face the challenge of expanding the trafficking framework to incorporate victims of forced labour and affording them the same rights and protections as outlined under the Council of European Convention.

As a society concerned with upholding human rights, the over-reliance on the narrow framework of trafficking to tackle this issue in real terms remains alarming. If we are serious about eradicating the crime of forced labour including trafficking, the need for other complementary policy measures must be recognized and developed. A number of critical areas need to be addressed and the *Emerging Good Practice* section of this report maps some of the responses that have been effective in tackling forced labour including trafficking..

Ensuring the rights of undocumented migrants and finding solutions to regularise their status will ensure that this group is less at risk of exploitation and forced labour. Binding workers through guest worker and work permit systems creates the conditions for exploitation and attention needs to be given to balancing the needs of the economy with the rights of workers, while imposing and enforcing harsher penalties on employers who exploit their workers. In a time of recession, austerity and uncertainty, it is now more important than ever to uphold labour standards, promote decent work, enforce rigorously our labour laws and protect rather than ignore the most vulnerable in our societies.

Siobhán O'Donoghue
Director

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TRAFFICKING FOR FORCED LABOUR IN IRELAND & THE UNITED KINGDOM: ISSUES & EMERGING GOOD PRACTICE

Introduction

In Ireland and the United Kingdom, both countries have made significant progress in implementing legislation and policy initiatives in respect of extreme exploitation within the framework of trafficking in human beings. Non Governmental Organisations (NGOs) and International Non Governmental Organisations (INGOs) are working to support, empower and lobby with and for trafficked people. However, despite this progress, concerns have been expressed regarding the effectiveness of this work. It is still the case that few victims of trafficking for forced labour are officially identified and protected and few perpetrators are actually prosecuted and convicted. Although a range of protection measures have been put in place, some NGOs are questioning whether it is of benefit to be identified as a victim of trafficking, given the inadequacies of the provisions that are in place. Further concerns arise about responses being limited to the current counter trafficking framework alone, and not linked to labour market policies, or undocumented workers' rights and employment standards with the development of a specific focus on forced labour.

The aim of this report is to explore responses to trafficking and forced labour, and to identify good practice models and examples in Ireland and the UK. The research intends to contribute to more effective and efficient efforts in dealing with anti-trafficking initiatives by examining opportunities and critiquing institutional responses to the problem. The report also highlights key areas of concern in responding to trafficking and the broader issue of forced labour.

Methodology

MRCI participated in this research as a partner organisation in an EU-funded initiative coordinated by the Churches' Commission for Migrants in Europe (CCME). The project 'Going Beyond' seeks to explore the issue of trafficking for forced labour in five regions in Europe. The regions include (1) Italy and Spain, (2) Greece and Cyprus, (3) The Czech Republic

and Poland (4) Ireland and the UK, and (5) Romania and Moldova. MRCI is the regional focal point for Ireland and UK. The research sought to identify and map emerging good practice models in Ireland and the UK. If none were identified, the research aimed to highlight this, and to critique the institutional response to the problem and highlight key areas of concern in responding to trafficking and to forced labour.

The research was conducted using qualitative methods of semi-structured interviews and desk-based research. A total of 15 interviews and one round table discussion¹ were conducted with key individuals, from non-governmental and state agencies, who were directly involved in the area of human trafficking, migration, workers' rights and employment protection. The empirical work was supplemented by documentary analysis of trafficking legislation, state agencies, NGOs reports, press releases, conference reports and presentations. The research was carried out over a seven-month period from July 2009 to January 2010.

Methodological Limitations

Anti-trafficking initiatives in Ireland and the UK are relatively new, and may change as organisations' knowledge of trafficking evolves. Furthermore, financial constraints, changes and reductions in personnel could also impact on initiatives identified. Therefore, it is beyond the scope of the project to offer a definitive list of good practice models, emergent or otherwise. The aim is to identify effective responses which build on and go beyond existing practices, and to contribute to the identification, assistance and protection of trafficked people, with a specific focus on forced labour.

Definitions

Forced Labour

Forced labour is an extreme form of exploitation and is defined by the ILO as a situation in which

¹ A list of the organisations interviewed is contained in Appendix A

people enter work or service under false pretences and cannot leave it without punishment or the threat of punishment. It estimates that at least 12.3 million people live in situations of forced labour worldwide, some 360,000 in industrialised countries². The ILO also believes that forced labour is present in some form on all continents, in almost all countries, and in every kind of economy and that in times of economic and financial crises vulnerable workers, particularly migrants, are more exposed to forced labour.

According to Anti-slavery International, "almost all slavery practices, including trafficking in people and bonded labour, contain some element of forced labour"³. They cite that the vast majority of cases of forced labour are used by private individuals seeking to make profits from the exploitation of other people. Forced labour involves a complex set of dynamics. It involves unequal power relationships, where coercion is used to extract consent in a range of overt and subtle ways. People in situations of forced labour are frequently from minority or marginalised groups and often face multiple forms of discrimination in their respective societies. Gender, ethnicity and class are often key determinants in situations of forced labour.

Trafficking in Human Beings

Forced labour is most commonly discussed within the context of trafficking in human beings, as a subset of a wider problem. Consequently there is a need to comprehend the framework which has developed around human trafficking (THB) as it deals with forced labour. Just as in forced labour, THB also involves a complex set of dynamics, and is often difficult to prove beyond reasonable doubt. In addition, due to the complexity of individual cases and rigid definitions, identification of people in situations of trafficking for forced labour often becomes problematic.

Generally speaking, the UN's Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (often referred to as the Palermo Protocol) laid down

the foundations for international action against human trafficking. It contributed towards creating international consensus on our understanding of human trafficking. It defines trafficking as "the recruitment, transport, transfer, harbouring or receipt of a person by such means as threat or use of force or other forms of coercion, of abduction, of fraud or deception for the purpose of exploitation." The definition consists of three key elements:

- 1) The **action** of trafficking, which means the recruitment, transportation, transfer, harboring or receipt of persons.
- 2) The **means** of trafficking, which includes threat of or use of force, deception, coercion, abuse of power or position of vulnerability.
- 3) The **purpose** of trafficking, which is always exploitation. In the words of the Trafficking Protocol, Article 3 "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs."⁴

Although the UN definition marks important progress in developing international consensus on the definition of human trafficking, many commentators have pointed to the ongoing difficulties in drawing clear and consistent boundaries between human trafficking and migrant smuggling. It is often unclear whether a person is trafficked or smuggled at the beginning of his or her journey, as deception and exploitation may not be apparent until they arrive at destination. There have also been many cases of smuggled people experiencing exploitation and becoming indebted to their smugglers. This has led to suggestions that this discrete categorisation of 'trafficking' and 'smuggling' is artificial and unhelpful⁵.

It is important to note that the Palermo Protocol on trafficking is not a human rights instrument

² *The Cost of Coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at work (ILO: June 2009)

³ http://www.antislavery.org/english/slavery_today/forced_labour.aspx

⁴ UN Convention against Transnational Organized Crime, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children 2000, Article 3

⁵ Lee, Maggy (ed.) (2007) Introduction: Understanding Human Trafficking in *Human Trafficking*, UK: Willan Publishing : 11

and it has been argued that it is a strong basis for law enforcement but contains weak language on human rights protections and victim assistance⁶. At a recent conference organised by the International Organisation for Migration (IOM) it was pointed out that the definition of trafficking is so complex that it can be interpreted in many ways, depending on government policies or ideology⁷. Despite these difficulties, national legislation on trafficking in Ireland and the UK is informed by the definition as set out in the Palermo Protocol.

Anti-trafficking legislation, however, is in itself not sufficient to combat all forms of forced labour, as not all forced labour situations are the result of human trafficking. The ILO Convention No. 29 (Forced Labour Convention), ILO Convention No. 105 (the Abolition of Forced Labour Convention) and Article 4 of the European Convention on Human Rights (ECHR), impose obligations on the Irish and the UK States to protect people from slavery, servitude or forced or compulsory labour. This immediately presents a problem with using the trafficking framework alone, as it does not make provision for this.

⁶ Jordan, A (2002) The Annotated Guide To The Complete UN Trafficking Protocol. Washington: International Human Rights Law Group: 2-3

⁷ IOM International Conference on Trafficking May 2009
http://www.wunrn.com/news/2009/06_09/06_08_09/060809_trafficking.htm

IRELAND & THE UNITED KINGDOM

IRELAND

[National Legislation and International Conventions](#)

Until recently, Ireland had an inadequate legal framework for dealing with Trafficking in Human Beings. The Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006, while referring to trafficking, dealt with smuggling. Its main objective was to criminalise the act of smuggling or illegal entry of people into Ireland. The Criminal Law (Human Trafficking) Act, 2008, enacted in June of that year put into Irish law a definition of trafficking modelled closely on the UN's anti-trafficking Palermo Protocol. The main purpose of the legislation is to create offences criminalising trafficking in persons for the purposes of sexual or labour exploitation or the removal of their organs, and to provide severe penalties for anyone found guilty of committing the offences. A person found guilty of trafficking is liable to a maximum penalty of life imprisonment and, at the discretion of the court, an unlimited fine.

In addition to the trafficking legislation, other criminal legislation can be used to protect trafficked people, for example legislation on assault and false imprisonment. Furthermore the entire range of statutory employment rights and protections available in Ireland are applicable equally to non-Irish and Irish workers. The most relevant legislation in this area includes the Organisation of Working Time Act 1997, the National Minimum Wage Act 2000 and the Unfair Dismissals Acts 1997 to 2001.

The Irish government has ratified both the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children and the Council of Europe Convention against Trafficking in Human Beings. The establishment of the Anti-Human Trafficking Unit (AHTU), in 2008, was instrumental in this.

[Relevant Policy Initiatives](#)

The AHTU operates within the Department of Justice and Law Reform, and is exclusively dedicated to co-ordinating and facilitating the implementation of the national strategy to address human trafficking. In addition to

working closely with An Garda Síochána and the Irish Naturalisation and Immigration Service (INIS) it also engages with the NGO community working with trafficked people through a number of state-civil society working groups. It has published a National Action Plan to cover the period 2009-2012. The ATHU also replicated an UK awareness raising campaign called the 'Blue Blindfold' campaign, which used the slogan 'Don't close your eyes to human trafficking'.

The Minister for Justice and Law reform also established a High Level Interdepartmental Group on Combating Trafficking in Human Beings. The executive director of the Anti-Human trafficking Unit is a key member of this group. It includes representatives of An Garda Síochána and other relevant Departments and Offices. Its role is to draw up the National Action Plan to prevent and combat trafficking and to monitor its implementation.

A specialised Human Trafficking Investigation and Co-ordination Unit (HTICU) within the GNIB has been set up with responsibility for overseeing all investigations involving human trafficking providing advice, guidance and operational support for investigations. Its role also involves keeping statistics and monitoring trends in human trafficking in Ireland.

[National Referral Mechanism](#)

Protection measures are not included in the Criminal Law (Human Trafficking) Act, 2008, and limited protections will be contained in the forthcoming Immigration, Residence and Protection Bill. Administrative arrangements reflecting these provisions were introduced in June 2008 and will remain in place until the Immigration, Residence and Protection Bill is enacted. These arrangements in effect create a National Referral Mechanism (NRM) and identify An Garda Síochána as the 'competent authority'. A competent authority makes the decision on someone's status as a trafficking victim. They provide that a person, who has been identified by a member of An Garda Síochána, not below the rank of Superintendent in the Garda National Immigration Bureau (GNIB), who receives a 'Reasonable Grounds Decision', shall be granted permission to remain

lawfully in the State for a 60-day (extendable) recovery and reflection period. In addition, the arrangements also allow for the provision of a six-month temporary residence permit to allow the suspected victim⁸ to assist An Garda Síochána in relation to an investigation or prosecution. The granting of a temporary residency permit does not create any right to long term or permanent residence.

The State has also put in place measures to assist suspected victims in their physical, psychological and social recovery. The Reception and Integration Agency (RIA) is providing accommodation to suspected victims referred by GNIB during the 60-day recovery and reflection period. This accommodation is the same as that provided to newly-arrived asylum seekers in a direct provision reception centre. Where possible, there will be a medical centre on site at the reception centre for those who wish to avail it. The personal allowance of €19.10 per week that asylum seekers receive is also available to potential victims of trafficking.

Free legal aid is available through the legal aid board and the Health Service Executive (HSE) has responsibility in the development of care plans. Referrals to services and agencies are made by an Garda Síochána. Access to financial and medical services is dependent on availing of RIA accommodation. Under the National Action Plan, the GNIB has an obligation to provide crime prevention advice to victims of human trafficking. Crime Prevention Officers meet with potential victims, provide security advice, and assess any potential risk. If they believe someone to be at risk they advise the Human Trafficking Investigation and Co-ordination Unit which decides what measures need to be put in place to protect the individual⁹.

Investigation and Convictions

In 2009, 68 incidents of human trafficking involving 66 persons were identified by An Garda Síochána. 52 of these incidents relate to possible offences under the Criminal Law (Human Trafficking) Act, 2008. Investigations are ongoing and are at various different

stages¹⁰. These figures refer to both trafficking for sexual exploitation and labour exploitation and are not disaggregated. It has not been possible to obtain figures for forced labour alone, however to date in Ireland no one has been convicted of trafficking for labour exploitation. The HTICU has forwarded a case to the Director of Public Prosecutions (DPP) in relation to trafficking for forced labour. The GNIB acknowledges that convictions and prosecutions are important, but believe their primary role is to remove people from dangerous situations. International and cross-border co-operation between police forces takes place regularly. For example, as a result of a joint investigation by Gardaí and Romanian police, three people in Romania were successfully prosecuted for trafficking for forced labour, firearms and money laundering offences. The head of the group was convicted for seven years and the other two members were each convicted for five years. The HTICU works closely with the United Kingdom Human Trafficking Unit (UKHTU) and through Europol they liaise with experts in this area throughout the EU.¹¹

Support and Empowerment of Victims

The MRCI is the sole organisation in Ireland dealing with people trafficked for labour exploitation¹². The problem has become an important focus of their work in the past few years. They undertook the first exploration into the existence of trafficking for forced labour in Ireland in 2006, with the publication in association with Dublin City University, *“No Way Forward, No Going Back, Identifying the problem of trafficking for forced labour in Ireland”*. At the time of publication MRCI highlighted the difficulties in identifying victims of trafficking for forced labour without legislation and specific protections in place.

MRCI advocates for, and together with, people who have been in situations of forced labour and who have been trafficked. They believe that responses that support a person's reengagement with society, building on existing skills, re-establishing self esteem are of central

⁸ The term victim is used in a legal sense (a victim of a crime); it does not deny or intend to negate the fact that people have agency and make choices, even under difficult circumstances.

⁹ GNIB Interview

¹⁰ Figures obtained from the AHTC

¹¹ GNIB interview

¹² There are a range of organisations that offer support to people trafficked for sexual exploitation such as Ruhama, The Sexual Violence Centre, Cork and The Immigrant Council of Ireland.

importance to rebuilding a person's life. The experience of MRCI is that, with the correct conditions, individuals who have experienced trafficking and forced labour are more than willing to engage in actions that seek to prevent trafficking and to support others in similar situations. MRCI's response is based on a community work approach which seeks to empower workers in these situations. They established the Domestic Workers Action Group, the Restaurant Workers Action Group and the Agricultural Workers Association to promote the participation of workers to redress the power imbalances often at play in these sectors of employment, sectors where forced labour and trafficking are prevalent.

Compensation

There are a number of methods of obtaining compensation available to victims in Ireland. The Criminal Justice Act 1993 sets out the power of the court to order an offender to pay compensation to an injured party. Suspected victims of trafficking may also take a civil action to obtain damages. In addition, people who have been trafficked for the purposes of labour exploitation can seek legal redress and unpaid wages through a number of state redress bodies which deal specifically with employment-related rights and entitlements¹³. These include the Labour Relations Commission (LRC), the Employment Appeals Tribunal (EAT), the Labour Court and the Equality Tribunal. Another means by which compensation is provided is through the Criminal Injuries Compensation Tribunal which administers a scheme called the Scheme of Compensation for Personal Injuries Criminally Inflicted¹⁴

MRCI has successfully utilised existing employment law to access redress for some victims for forced labour. For example, in 2008, a migrant worker from Pakistan was represented by MRCI at the LRC and awarded €116,000 in unpaid wages and compensation. Reference was made in the Rights Commissioner's recommendation to elements of exploitation in this case that amounted to

¹³ National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009-2012
<http://www.inis.gov.ie/en/JELR/Pages/National%20Plan%20to%20Prevent%20and%20Combat%20Trafficking%20of%20Human%20Beings%20in%20Ireland%202009>

¹⁴ Ibid

forced labour. However, a person's legal status can impact on their ability to access redress through these channels if their employment rights have been violated. This stems from the traditional position that, where the employee is not legally entitled to work, their contract of work is illegal and therefore unenforceable. This right to seek redress for undocumented workers is currently not legislated for, which in effect reinforces exploitation and forced labour. Furthermore the Irish Labour Inspectorate has recently indicated that they cannot or will not seek monies owed to undocumented workers.

UNITED KINGDOM

National Legislation and International Conventions

Until recently there were no specific anti-trafficking laws in the UK. There was no clear distinction between laws regulating human trafficking, smuggling migrants and prostitution. Traffickers were prosecuted under general criminal law related to living from immoral earnings and immigration offences. In 2003, the Government introduced the first statute in relation to human trafficking. The Sexual Offences Act 2003 established wide-ranging offences of trafficking of people into, within or from the UK for sexual purposes. Equivalent Scottish provisions are contained in the Criminal Justice (Scotland) Act 2003. The punishment for these offences is a maximum of 14 years of imprisonment. However, neither of these acts included any offences of trafficking for labour or other exploitation. In 2004 the Government enacted the Immigration and Asylum (Treatment of Claimants, etc) Act, which introduced new offences of trafficking for labour and other exploitation including organ removal or benefit fraud. Like the other trafficking offences it attracts a maximum penalty (on conviction on indictment) of 14 years imprisonment and/or a fine. There are also several provisions in the Children Act 1989 which are relevant to the prohibition of trafficking, and the investigation, prosecution and punishment of traffickers. The House of Commons Home Affairs Committee (2009) point out that the legislation is complex as it is not all gathered together in one statute¹⁵. Under

¹⁵ House of Commons, Home Affairs Committee, The Trade in Human Beings: Human Trafficking in the UK (2009)

the Immigration, Asylum and Nationality Act 2006, employers who employ 'illegal' migrants are subject to a civil penalty, or, if they knowingly employ 'illegal' migrants, a maximum penalty of two years' imprisonment and unlimited fine can be imposed.

The UK has signed and ratified the UN's Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (often referred to as the Palermo Protocol). The UK has also signed and recently ratified the Council of Europe Convention against Trafficking in Human Beings. This came into force on the 1st April 2009 and required a number of legislative, policy and procedural changes to be introduced to enhance existing arrangements, most notably relating to victim identification and protection.

Relevant Policy Initiatives

In October 2006 the United Kingdom Human Trafficking Centre (UKHTC) was established to provide a central point for the development of expertise and cooperation in relation to the trafficking of human beings. In March 2007 the Government launched its Action Plan on Tackling Human Trafficking. The purpose of the plan is to

1. Draw together all the work that is currently underway across government and other agencies on human trafficking
2. Identify gaps in existing work which require further consideration
3. Increase transparency and accountability on delivery of their objectives
4. Provide a platform for developing a more strategic and holistic approach to tackling human trafficking.

The action plan pointed out that up until then the main focus was on trafficking for sexual exploitation and there was a need to move beyond this and to focus on other forms of human trafficking such as child trafficking and trafficking for forced labour.

Many of the actions proposed in the Action Plan involve the UKHTC. The Centre brings together

<http://www.statewatch.org/news/2009/may/uk-hasc-trafficking-report-vol1.pdf>

staff and officers from the police, UKBA, Crown Prosecution Service, Serious Organised Crime Agency (SOCA) and social services. The UKHTC ran a 'Blue Blindfold' awareness-raising campaign which included posters on public transport and television advertisements. It used the slogan 'Don't close your eyes to human trafficking'. Its operational work is organised into five core working groups in the areas of victim care, prevention, research, learning and development and operations and intelligence.

National Referral Mechanism (NRM)

Having ratified the Council of Europe Convention, the UK was obliged to create a NRM. For the UK the competent authority is jointly the UK Border Agency (UKBA) for potential victims who are within the Immigration or Asylum systems, and the UKHTC where they are EU citizens. This process was put in place in April 2009.

Front-line professionals can refer individuals, in cases presenting indicators of trafficking, to the designated competent authorities, within five working days (this may be extended where necessary) and the competent authority will issue a 'Reasonable Grounds Decision'.¹⁶ If a positive decision is given the individual is granted a 45-day, extendable recovery and reflection period during which time they can access accommodation and supports (if not already in receipt of these) including legal advice, and will not be removed from the country if subject to immigration control. Before the end of the reflection period a 'conclusive decision' or a decision to extend the recovery period is made by the Competent Authority. Before the end of a reflection period, a trafficked person may be granted a renewable residence permit, a minimum of one year in duration, on one of two grounds; participation with a criminal investigation, or due to their personal circumstances. However, even if a positive conclusive decision is given there is no guarantee that a residence permit will be granted, and if it is granted there is no guarantee that it will be renewed.

The figures below refer to the number of referrals of potential victims of trafficking that

¹⁶ During this period the potentially trafficked person is entitled to access support services.

have been made to the NRM from 1st April 2009 to 31st December 2009.

Sexual Exploitation	Forced Labour and Domestic Servitude	Not Known
228	230	69

From the cases referred into the NRM, 85 have received positive conclusive grounds decisions. Of these 85 decisions, 30 have been granted a residence permit or other form of leave to remain and 40 are EU or British nationals whose stay in the UK is not subject to immigration control. In answering questions in a house of commons debate on human trafficking, the Secretary of State for the Home Department, Mr Wollas, MP said *“Tracking victims beyond the reflection and recovery period is limited if there is no longer a risk to their safety or health and they have the right to remain in the UK (UK and EEA victims in particular). This makes it difficult to confirm the numbers of voluntary returns in this category. There is currently no record of any enforced return of individuals conclusively found to be victims of trafficking returned to their own country”*.¹⁷

Investigation and Convictions

There have been very few convictions of trafficking for labour exploitation in the UK. There are difficulties for police and prosecutors in obtaining sufficient proof for such a complex criminal offence¹⁸. In some cases where it was not possible to get the required proof police utilised other legislation to get convictions.

The table below lists the numbers of people arrested and convicted of trafficking for labour exploitation since 2005.

Year	Arrests for Trafficking for Labour Exploitation	Convictions for Trafficking for Labour Exploitation	Appearance at Court but Not Convicted of Trafficking
2005	10	0	0
2006	11	0	4

¹⁷ House of commons debates 12th January 2010
<http://www.theyworkforyou.com/wrans/?id=2010-01-12c.309669.h>

¹⁸ Thompson, Katy (2007) A Summary of challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region, Occasional Paper Series Number 1 Austria: OSCE:

2007	28	1	3
2008	71	4	6
2009	82	2	2

The difference between number of arrests and appearances at court indicates that no further action was taken in that particular investigation, prior to the charge¹⁹.

Support Services for victims

The Poppy project²⁰ remains the sole dedicated service for women trafficked into sexual exploitation. This is currently funded by the UK government. In March 2009, the Government announced a further grant, part of which will be used to expand supported accommodation in London, Sheffield and Cardiff for victims of sex trafficking. The funding also enabled them to expand their services to include support for women trafficked into domestic servitude. The Poppy project has access to 54 beds in houses nationally. For other adults trafficked for forced labour there is support available through the UKHTC. The Migrant Helpline²¹ has been contracted to supply services to people trafficked for labour exploitation. However, NGOs often have to work with charities and churches to get emergency accommodation for potential victims. In its report into Human Trafficking in October 2006, the Joint Committee on Human Rights concluded, “there is clearly insufficient capacity in the system to provide shelter and specialist support services for the (victims) who need them, and we urge that capacity be expanded as a matter of priority” (para155). According to The House of Commons Home Affairs Committee (2009)²² report into Human Trafficking in the UK, the situation with regard to support services has not altered since the 2006 report.

Compensation

¹⁹ Figures obtained from South Yorkshire Police Website
<http://southyorks.police.uk/foi/disclosurelog/20090598>

²⁰ The POPPY Project was set up in 2003. It is funded by the Office for Criminal Justice Reform to provide accommodation and support to women who have been trafficked into prostitution

²¹ The Migrant Helpline is a charity that assists asylum seekers, refugees and vulnerable people who come to the UK to rebuild their lives.

²² House of Commons, Home Affairs Committee, The Trade in Human Beings: Human Trafficking in the UK (2009)
<http://www.statewatch.org/news/2009/may/uk-hasc-trafficking-report-vol1.pdf>

In the UK, trafficked persons have four different options to seek compensation, a compensation order in criminal proceedings, an application to Criminal Injuries Compensation Authority, civil litigation and in some instances before an employment tribunal. However, Anti-Slavery International points out that it is unlikely that trafficked people will receive any compensation for their injuries and suffering either from the trafficker or from the State because of the numerous practical and legal barriers they face. For example, *“a review of over 41 cases resulting in 95 trafficking convictions in the UK failed to uncover any cases where the court ordered the trafficker to pay compensation to the victim. Despite the fact that traffickers’ assets have been confiscated during police operations and through court proceedings, the criminal profits are not used to compensate victims for their injuries and suffering”*²³ In addition, undocumented workers are excluded from accessing the employment tribunals due to their irregular status. Anti-Slavery International believes that the UK policy provides little guidance for police, prosecution or the judiciary regarding the quest for compensation for victims of trafficking, and that it fails to grasp the practical measures needed to uphold a human rights and victim-centred approach.²⁴

²³ Lam, J and Skrivankova K (2008) *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*. Anti Slavery International: 1

²⁴ Ibid

KEY AREAS OF CONCERN IN IRELAND AND THE UK

The recent legislative and policy developments in both Ireland and the UK are evidence of the considerable momentum around trafficking as an issue. Yet against the background of these developments, concerns have been expressed regarding their effectiveness, particularly in relation to the difference between policy and practice. As will be illustrated in the sections below, our research identifies that there are still differing interpretations of what trafficking is, which leads to contradictions between the State and NGOs with regard to victim identification and preferred policy directions. There are also concerns that the consequences of trying to fit trafficked people into neat definitions of 'trafficked', 'smuggled' or 'simply exploited' will mean that some people will be identified as 'deserving victims of trafficking' and others as 'undeserving illegal immigrants'. NGOs argue that policies and practices should not only address the most vulnerable but must avoid making others more vulnerable.

Victim Identification

The issue of identification is of fundamental importance. Without trafficked people being identified the whole issue of assistance and protection becomes redundant. One of the main problems in this area is the invisibility of the phenomenon of trafficking. Identification is the first important step in overcoming this invisibility. However, it is important to point out that many trafficked people do not always identify themselves as victims and many are not aware of the legal implications of the term. Therefore the onus of identification is on the institutions of the State and NGOs, not the trafficked person.

A key concern in both countries is the fact that victims continue to be seen first and foremost as undocumented migrants who may have legitimate exploitation claims but are often not seen as victims of a crime. Some NGOs believe that the National Referral Mechanism has the potential to act as a mechanism to detect migrants with an irregular status. Their concerns appear to be justified as in the UK there have been cases of people identified as trafficked by the competent authority yet

criminal cases were brought against them²⁵. This illustrates the lack of trust and dialogue between the competent authorities and those working with trafficked people. Many of the NGOs expressed concern that their key role in the identification process is not being recognised. In Ireland, the AHTU states that 'every effort' will be made by the GNIB to inform the Department of Justice within one month if they consider there are reasonable grounds for believing a person is a suspected victim of trafficking. However this is not a statutory obligation and persons assisted by MRCI who have been referred for identification have waited several months for a decision. The current lack of formal procedures impacts negatively on the effectiveness of the identification process.

NGOs have also expressed concern that the competent authorities are confined to members of the police force. In Ireland the competent authority is the GNIB and in the UK it is the UKBA and the UKHTC. NGOs have a key role in the identification process of a 'suspected victim' and the role of the police is more relevant at the prosecution stage of the process. In Ireland the MRCI has pointed out that, despite cases being identified and carefully documented using a complex set of indicators developed by the ILO and EU Commission, they are not being identified as suspected victims by the State. This has led NGOs to question the stated partnership and victim-centred approach within this process.

National Referral Mechanism (NRM)

In both countries NGOs expressed concerns regarding referring potential victims to the NRM. The uncertainty of the outcome of the process, together with the bureaucratic procedures surrounding identification and the poor level of support provided to victims, have led NGOs to question whether it was of benefit to be identified as a victim of trafficking. Indeed the often complex procedures of the referral system can be extremely stressful and create uncertainty for victims. Both countries are in the

²⁵ Westminster Hall debates 20 January 2010 UK Human Trafficking Centre <http://www.theyworkforyou.com/whall/?d=2010-01-20>

early stages of implementing their support structures and it is possible that some of the concerns expressed by those interviewed will be addressed in the future once they have been fully operationalised.

Another concern in Ireland is the lack of rationale provided by the GNIB in support of reasonable grounds decisions. This refers to the standard required by the competent authority to establish if a person is a suspected victim of trafficking. The MRCI believe that the GNIB require too high a level of evidence to satisfy this test in practice. In addition there is no appeal or remedy against a negative decision and no written decision is forthcoming.

While legal advice to potentially trafficked people is available in both countries, there are a number practical difficulties in the application of this advice and support. In Ireland the Legal Aid board has been mandated to provide information and advice to 'potential' and 'suspected' victims. However representation is not available throughout the criminal investigation and prosecution process. Care plans are being put in place to address the needs of individuals, however in Ireland this is new, and NGOs feel that this needs to be kept under review. A further concern in the Irish context is access to quality employment and social supports which have not been implemented at a national level.

In the UK there is also access to legal advice and while there are solicitors who are experienced in immigration law, a trafficked person may not come into contact with one. The NGO Anti Slavery International states: *"For example, you might have trafficked people who have been using false passports they very often get advice from criminal (law) solicitors who advise them to plead guilty and that will mean you just go to prison for 6 months. It is a very difficult thing to go backwards and get a person recognised as being trafficked. There are some very good solicitors and lawyers and support for victims of trafficking but you have to be lucky enough to get access to one and very often they have to undo the damage the poor legal advice given in the first place. It is very serious."*²⁶

Despite NGOs' calls for protection systems to be put in place they are concerned with how the procedures have been implemented. There is also no certainty regarding the outcome of entering the NRM. Even if someone receives a positive outcome at the conclusive decision stage, there is no guarantee that they will receive a residence permit or if they do receive a residence permit that it will be renewed. NGOs also point out that when a person comes out of a situation of entrapment and exploitation, as well as being very frightened, they are often extremely damaged, both physically ill and suffering from a variety of psychological conditions. They need time, space and a safe environment to recover. In Ireland groups working with both victims of trafficking for sexual exploitation and forced labour believe current housing provided to 'potential' and 'suspected' victims, by the Reception and Integration Agency (RIA) (also used by persons seeking to be recognised as a refugee, under the 'direct provision' scheme), to be inadequate and unsuitable. A recent report by the Free Legal Advice Centres analyses the direct provision and dispersal system and details massive shortcomings in the system. Entitled, *One Size Doesn't Fit All*²⁷ the report notes that the Department of Justice and Law Reform (DJLR) has contracted out the responsibility of providing full board accommodation for direct provision residents to private operators, who view it as a profit-making exercise rather than a crucial service for people in a complex process that requires sensitivity, adequate resources and sufficient staff support. The report views the scheme as a system that tends to dehumanise people. It finds that *"much of the system of direct provision and dispersal needs substantial overhaul in order to meet the international human rights standards to which the State has committed itself before the community of nations"* (p: 12).

Furthermore, if NGOs take on to arrange more suitable accommodation, this results in the victim being ineligible for other support such as medical, financial etc. as the provision of these is conditional on the acceptance of direct provision. This leaves the trafficked person in an extremely vulnerable situation. In addition, many NGOs and INGOs suggest a longer

²⁶ Anti-Slavery International interview

²⁷ FLAC (2009) *One Size Doesn't Fit All*, A legal analysis of the direct provision and dispersal system in Ireland, 10 years on, Dublin: FLAC:

reflection period is needed and the granting of temporary residence permits should not be conditional on co-operating with criminal investigations.

Effective Participation and Cooperation

Many Non Governmental Organisations (NGOs) and International Non Governmental Organisations (INGO) in Ireland and the UK are participating in various interdisciplinary working groups set up to examine and make recommendations concerning the formulation, implementation and delivery of national and international strategies to combat human trafficking. However, NGOs from Northern Ireland are not represented in any mainland UK working groups and believe their concerns and expertise are not recognised.²⁸

Initially, NGOs participating in these working groups believed the approach to be a positive step. On the one hand it recognised the responsibility of the state to take action against traffickers and support trafficked victims, and on the other it acknowledged that NGOs and INGOs have insights and capabilities that keep the interests of trafficked people to the fore.

Yet co-operation has presented a range of challenges for many NGOs engaged in this process. NGOs in both countries had concerns related to the effectiveness of participating on various government working groups. NGOs and INGOs believe that their expertise and recommendations are not being considered and that their contributions are not taken as seriously as that of the police or other state organisations. This is creating frustration and disillusionment with the process. There is a belief among some actors that trafficking consultations and roundtables are simply a forum for stating positions.

NGOs however believe that the working groups should be an opportunity to develop trust between the differing groups, an opportunity to review operations on the ground, facilitate the evaluation of anti-trafficking initiatives and monitor the differences between policy and practice. NGOs and INGOs need to see that their co-operation results in the implementation of meaningful strategies that reflect their input

and expertise. Otherwise, they believe their involvement allows the State to claim that cooperation is taking place while in reality it is simply ineffective interaction.

The Intersection of Immigration Control and Criminal Investigations

In both countries NGOs expressed concerns regarding referring potential victims to the NRM and question whether immigration officials should be involved in both the identification and investigation process. As their role involves enforcement of immigration offences it could create a conflict of interest. Some NGOs believe it would be better if forced labour and trafficking issues were situated outside of immigration control: *“A referral to them is effectively a referral to the immigration authority. That can work for some people but it can be risky for other people. ...there is a risk that referral could in the long-term lead to their removal from the UK”*²⁹

In a recent debate in the UK parliament³⁰ it was pointed out that there were cases of people identified as trafficked by the competent authority yet criminal cases were brought against them. The MP Mr Anthony Steen highlighted the case of a Vietnamese boy aged seventeen. He received a positive, conclusive-grounds decision in which the competent authorities identified him as a victim of trafficking. He received a 45-day reflection period but at the end of that time he was charged by the Crown Prosecution Service (CPS) and subsequently convicted and sentenced for cannabis cultivation. The fact that he had been trafficked was irrelevant. Mr. Steen believes that a pattern is now well established with the CPS totally ignoring and treating as irrelevant the decision of the competent authorities and, by implication, denying the existence or legality of the Council of Europe convention.

Lack of Convictions

Although both countries have introduced legislation against trafficking for forced labour the reality is that few victims are identified and protected and few perpetrators are actually

²⁸ Law Centre of Northern Ireland Interview

²⁹ Kalayaan interview

³⁰ Westminster Hall debates 20 January 2010 UK Human Trafficking Centre <http://www.theyworkforyou.com/whall/?d=2010-01-20>

prosecuted and convicted. To date, in Ireland there have been no convictions for trafficking for forced labour and in the UK there have been seven. However, it has to be acknowledged that the legislation is relatively new in Ireland and cases are difficult to detect due to the hidden nature of the crime. Limited resources further impacts on prosecutions and convictions. Additionally the MRCI believe that the narrow interpretation of the legislation, which excludes forced labour and the high reasonable grounds requirement also creates problems with potential convictions. The lack of adequate supports and guarantees of protection are also a considerable factor in limiting the choices for victims who may otherwise come forward.

In the UK the Commons Home Affairs Committee has identified numerous reasons for the low conviction rate, including the brutality of traffickers – many victims are too frightened to testify – and the difficulty of proving trafficking offences; the authorities sometimes press alternative charges such as money laundering or false documentation. In Ireland, An Garda Síochána have also sought prosecutions using other offences when it was not possible to use the trafficking legislation³¹.

Co-operation is happening at international level: regular meetings are held between the relevant parties in Ireland and the UK to discuss issues of common concern in relation to human trafficking. Recently a joint police trafficking investigation between Ireland and Romania resulted in the prosecution of four people in Romania for trafficking for the purpose of labour exploitation. But co-operation at national level needs to be developed to the same level as occurs internationally.

Many NGOs believe that the low rate of prosecutions for trafficking contributes to the confusion about the incidence of trafficking, and leads to an underestimation of the severity of the problem.

[Lack of Analysis of Anti-trafficking measures](#)

A number of comprehensive policy responses to trafficking have now been put in place in Ireland and the UK. These include national action plans, specialised national bodies,

awareness-raising campaigns and cooperation with civil society and international and intergovernmental organisations. While these are important developments, there is little evidence that these developments are curbing this crime and little evidence that greater numbers of trafficked people are being identified and protected. As a result, many of those interviewed believe that there is a need to evaluate strategies and efforts to combat trafficking and analyse whether they comply with the Palermo Protocol and the Council of Europe Convention. This would involve a level of openness and accountability that has not been always present to date. Many NGOs recommended the appointment of National Rapporteurs, working with government but independent of them, who would monitor the effects of the implementation of legislation and policy developments.

[Limitations of the Legislation](#)

NGOs point out that any legislation, convention, or protocol will only be effective if those concerned implement the letter *and* spirit of the legislation. Despite new legislation, NGOs are aware of many individuals without adequate protections. In the Irish context, MRCI believes that the trafficking definition, as set out in the Palermo Protocol, presents many difficulties as it is both vague and restrictive. They believe that, when it came to developing legislation and in setting out agreed procedures for referral of identified victims of trafficking for forced labour, there was a tendency to go for the narrowest interpretation.

MRCI point out that anti-trafficking legislation alone is not sufficient to combat all forms of forced labour, as not all forced labour situations are as a result of human trafficking. In Ireland, the Criminal Law (Human Trafficking) Act 2008 offers little to support the identification of potential victims of trafficking for labour exploitation, and it concentrates on criminalising trafficking rather than the protection of victims.

Increasingly MRCI comes across people in situations of forced labour and those who do not fit the narrow interpretation of the 2008 Criminal Law Human Trafficking Act. This Act however can be interpreted to allow forced labour to be a crime due to the broad definition of trafficking contained in the Act. To date however the Irish

³¹ AHTU interview

authorities have not stated whether they agree with this interpretation and there have been no prosecutions using this interpretation.

The UK has recently accepted that their existing criminal laws do not provide effective protection and penalties for servitude and forced labour. As a result of a campaign led by Anti-Slavery International and Liberty they have amended legislation to introduce the criminal offences of forced labour and servitude.³² In Ireland MRCI and Irish Congress of Trade Unions (ICTU) argue that the Irish law in its current form is not being interpreted and implemented to deal with forced labour and servitude clearly and dissuasively. They argue that, if Ireland is to be fully compliant with International obligations, it requires a broader use of the Criminal Law (Human Trafficking) Act 2008.

Compensation

NGOs argue that the existence of methods of obtaining compensation is not enough. Specific measures are needed to ensure that they are accessible to trafficked people. Furthermore, the effectiveness of legal remedies is also dependent on the provision of comprehensive support services to trafficked persons. A trafficked person who has been severely traumatised will not have the emotional ability to present a clear and consistent account of their experiences in a legal setting. Access to physical and psychological support services and an appropriate period of time to recover play an important role in enabling a trafficked person to access redress³³.

Conclusion

The above concerns highlight shortcomings in both the UK and Irish governments' responses to human trafficking. In conducting this research, it was clear there are very committed individuals in various statutory bodies. Their work and dedication have a positive impact on trafficked people and those working to protect them. The challenge is to infuse institutions with the attitudes of these committed persons to ensure a consistent approach in dealing with

trafficking and forced labour when these individuals move on. Compounding much of this work is the fact that many of these statutory agencies (and NGOs) are working with reduced resources. A lack of resources committed to the protection of victims as well as to detection and identification will prevent adequate responses.

³² This campaign will be discussed further in the report under the heading Good Practice Developments

³³ Lam, J and Skrivankova K (2008) *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*. Anti Slavery International p.1

EMERGING GOOD PRACTICE DEVELOPMENTS

This section of the report does not provide an exhaustive list of initiatives but maps out some developments that can be described as effective responses that have the potential to improve the quality of life for vulnerable people in both forced labour and trafficking situations. Many of these developments are recent and may change and evolve due to financial constraints and changes or reductions in personnel. Cuts in funding and financial constraints can jeopardise the work of NGOs and state agencies. An assurance of sustained funding is needed for both groups so that victim assistance and protection measures can continue and good practice initiatives can develop.

There is a diversity of organisations and institutions responding to human trafficking, and cooperation between them is not without its challenges. Each has their own goals, values and understanding of what constitutes trafficking and how to respond to it. For example, it can be difficult to overcome institutional differences and to agree common goals and objectives. It is therefore not surprising that cooperation was identified as a key means of responding to the challenges of achieving good practice, and is a recurring theme throughout the research in relation to tackling the complexity of human trafficking. Finding ways to effectively cooperate and the establishment of mechanisms for collaboration has, to date, been an effective approach.

GOVERNMENT RESPONSE

[UK Home Affairs Committee](#)

The House of Commons has appointed the Home Affairs Committee with the task of examining the expenditure, administration, and policy of the Home Office and its associated public bodies. In 2008, it undertook an enquiry into human trafficking and invited written and oral evidence from a wide range of relevant groups and individuals. In May 2009 the Committee published a report, *"The Trade in Human Beings: Human Trafficking in the UK"*

The Committee pointed out that the difficulty in getting prosecutions for trafficking has led to the "Al Capone" approach, where suspected traffickers are charged for lesser crimes such as "living on immoral earnings". However, they believe the problem with this approach is that the lesser sentences these crimes attract may not allow time even for their victims' immigration status to be determined, let alone for them to safely re-establish themselves in the UK or their home country. The Committee identifies major gaps in awareness and training within the UK Border Agency, despite the best efforts of some staff, which it believes must be addressed. It was also disturbed to hear anecdotal evidence of a lack of awareness about trafficking and its effect on victims among immigration judges and pointed out that there is also a pressing need for training of judges.

NGOs were supportive of the workings of this allparty committee. They believed it was a good method of analysing how policies were working on the ground. The report helped to maintain interest in the issues and highlighted concerns of those working with trafficked people. It brought about an element of transparency and accountability. However, it was pointed out that members of such committees need to have a genuine interest in human trafficking as it is an issue that is not necessarily going to win votes.

[Statistics on National Referral Mechanism](#) [Published](#)

The UKHTC is now the official authority for compiling statistics on victims of trafficking who are referred to the UK authorities. There have been some criticisms that the information provided is not sufficiently detailed to assist efforts for ensuring victim protection, such as the recording of administrative removals, deportations, voluntary departures and removals to 'safe' third countries³⁴. However, the statistics for the National Referral

³⁴ Witkin, Rachel, (2009) Return of trafficking victims to countries of origin, Side Event Report "Human Rights Protection in the Return of Trafficked Persons to Countries of Origin", Human Dimension Implementation Meeting 1 October 2009 Warsaw
http://www.osce.org/documents/odihr/2009/12/42013_en.pdf

Mechanism, which are published each quarter, contain a wide range of information relating to the age, nationality, gender, type of exploitation and who referred the potential victim of trafficking into the NRM (first responder).

In an interview with the UKHTC, it was acknowledged that NGOs are reluctant to refer clients into the NRM. They accept NGOs will need to have greater trust in the system and believe their willingness to openly publish figures will allow for progress in this area to be monitored. This openness could go some way in improving the relationship between the UKHTC and NGOs and INGOs. In addition, other information on the Centre's activities can be obtained using the Freedom of Information Act. However, on a worrying note, it was recently decided that UKHTC will be merged into the Serious Organised Crime Agency (SOCA). Mr Anthony Steen MP believes this will impact on its capacity to achieve its objectives and also points out the SOCA are exempt from freedom of information registration, because it handles security issues. *"Following the centre's absorption into SOCA, however, any suggestion that it can achieve any of those objectives must be seriously questioned, and the possibility of its being independent has been shattered for ever. It will be neither independent, nor able to deliver the goods; it will be lost in a huge organisation of 4,000 staff".*³⁵

[UKHTC focus on Trafficking for Labour Exploitation](#)

Initially, the efforts of the UKHTC were focused mainly on trafficking for sexual exploitation. In their National Action Plan they have committed to move beyond this and devote increased attention to trafficking for forced labour. In an interview with the UKHTC it was outlined how the emphasis on trafficking for forced labour was working in practice. They ran a pilot operation and learned a lot about the differing needs of the victims. *"You are probably taking away their livelihood and their accommodation and the support their families are relying on. There is probably going to be larger number and this requires us to know where we are*

*going to house them and look after them. There can be different injuries, and traumas and males and females and even family groups"*³⁶. Following on from the pilot operation, Operation Ruby was launched in 2008. The extent of the co-operation and co-ordination needed for an operation of this nature can be seen from the following information. There were 9 different organisations involved; 200 staff; 8 arrests and 60 migrant workers interviewed.³⁷ The UKHTC are preparing a best practice guide as a result of what was learned from operation Ruby. This is a 'living document' that will be updated as their knowledge about trafficking for forced labour increases.

From the statistics published on the UKHTCs website it is clear that the increased focus on trafficking for forced labour is resulting in greater numbers being identified. From April 2009 (the start of the NRM) until December 2009, the number referred for sexual exploitation was 228 (including minors), for forced labour and domestic servitude the figure was 230 (including minors).

[Role of the Gang Masters Licensing Authority \(GLA\)](#)

The GLA is a government agency set up to protect workers from exploitation in agriculture, horticulture, shellfish gathering and food processing and packaging. GLA chairman Paul Whitehouse believes that they started off with a tough approach to regulation and are determined to continue in that manner. An independent analysis of the work of the GLA by the Universities of Liverpool and Sheffield shows their tough enforcement approach makes for effective regulation. It is a model of regulation that really works. The report concluded that licensing has been an appropriate tool to regulate labour providers, that agency workers are now better placed because of government regulation and that the GLA is an effective and efficient regulator.³⁸ The GLA stepped up its fight against those who abuse workers with the launch of Operation Ajax in June 2008. The operation was set up to

³⁵ Westminster Hall debates 20 January 2010, UK Human Trafficking Centre <http://www.theyworkforyou.com/whall/?d=2010-01-20>

³⁶ UKHTC interview

³⁷ SOCA interview

³⁸ Press release by GLA on the 2nd Report of the on the performance of the GLA by the University of Sheffield and University of Liverpool http://www.gla.gov.uk/embedded_object.asp?id=1013507

increase the GLA's activities with an 18 month programme of unannounced raids.

The authority has memoranda of understanding (MoU) with a variety of government departments and state agencies including UKHTC, UKBA, SOCA, National Minimum Wage Enforcement Team and HM Revenue and Customs. They believe these agreements have created a framework for exchanging and collating vital intelligence which has focused the GLA's and other agencies operational work. They hope to expand this framework by establishing a protocol with the trade unions.

There have been calls for an extension of GLA's role to cover licensing to all labour providers, particularly in the sectors where it is known there are a higher proportion of vulnerable workers. The sectors of most concern are construction, hospitality and cleaning services. Currently, however, the UK government does not intend to extend licensing but to prioritise effective enforcement of the existing law³⁹.

LOCAL GOVERNMENT RESPONSE

Bristol City Council and Bristol Coalition against Trafficking

In Bristol a number of organisations have come together with the aim of developing a coalition based approach to combating human trafficking including NGOs, academics, Bristol City Council (BCC) and the Bristol Legacy Commission⁴⁰. As a result of their collaboration, BCC is developing a number of actions. The Council has appointed a person to coordinate its work in this area and supported the opening of a Bristol Migrant Rights Centre, modelled on the MRCl and its approach to responding to the issue of forced labour and working with victims. BCC also aims to free up housing stock to NGOs working on the ground to provide assistance to victims of Human Trafficking and build on its knowledge and responses in this area. The Bristol approach recognises that partnership working is the key to adequately address this

³⁹ House of Commons, Home Affairs Committee, The Trade in Human Beings: Human Trafficking in the UK (2009) <http://www.statewatch.org/news/2009/may/uk-hasc-trafficking-report-vol1.pdf>

⁴⁰ Bristol City Council (BCC) established the Bristol Legacy Commission in June 2008 to take forward the work started during 2007 as part of the anniversary of the abolition of the transatlantic slave trade.

complex and difficult issue, and to make recommendations which exploit the strengths and resources opened up by their collaborative activity.

POLICING RESPONSE

Embedding Trafficking in Core Policing

In both countries, efforts have been made to extend knowledge of human trafficking throughout the police forces rather than confine training to specialist units. In the UK, recruits are now required to complete a Trafficking Awareness Module as part of their training. This was developed by the UKHTC and covers awareness of the different types of trafficking, key indicators of trafficking, correct approach for dealing with potential victims of trafficking, the NRM and key contacts. In Ireland, a training course has been designed by An Garda Síochána, assisted by the International Organisation for Migration (IOM) and the UK Human Trafficking Centre. The aim of the course is to alert operational personnel within An Garda Síochána to the existence of the phenomenon of trafficking and to empower them to identify victims so as to provide for their wellbeing and to ensure initiation of criminal investigations where appropriate. Members of the Police Service of Northern Ireland (PSNI) have attended this training and the Head of the UK Human Trafficking Centre has presented at each of these training courses emphasising the international and cross-border co-operation between police forces. A total of 350 Gardaí have been provided with this training, and 700 probational Gardaí have received awareness raising training as part of their final phase of training. In addition, the HTICU are now extending this training to the Garda Reserve⁴¹. NGOs with experience and expertise in this area also contributed to the training, an acknowledgement of the vital role they play in responding to trafficking in human beings.

Metropolitan Police Human Trafficking Unit

The Metropolitan Police Human Trafficking Team was set up in 2007 to respond to reports of trafficking of people. They have built up a positive relationship with NGOs due to the sensitive approach officers demonstrated in

their work with trafficked people. This sensitivity and expertise helped officers earn the trust of victims and encouraged them to tell their stories in court. However, the unit is to be shut down due to lack of funding. Many campaigners have reacted with dismay to the news, believing the unit is essential to the fight against human trafficking and that it is one of the best of its kind in tackling this crime. Amnesty International UK, along with other campaign organisations, wrote to the Metropolitan Commissioner outlining their concerns: *“People trafficking is a difficult crime to detect and combat, and there’s a danger that transferring responsibility for combating trafficking to other police teams will mean that hard-earned expertise will be lost within the police. There’s also the danger of over-focusing on the fight against trafficking for sexual exploitation, with trafficking into forced labour and domestic servitude being forgotten. Instead of closure, what we need to see is the Human Trafficking Team bolstered and fully supported, with NGOs and other agencies helping in this fight.”*⁴²

NGO and INGO RESPONSE

[UK Anti-Trafficking Monitoring Group](#)

An example of how anti-trafficking measures can be analysed can be seen with the formation of The Anti-Trafficking Monitoring Group.⁴³ This coalition formed in May 2009 to examine the first year of the implementation of Council of Europe Convention on Action against Trafficking in Human Beings (ECAT) in the UK. They published a report in May 2010 to submit to the independent and impartial Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). The monitoring group includes organisations that work with people trafficked for labour and sexual exploitation. Their partnership in this project is an example of how co-operation can ensure that a diversity of voices are heard and their report has the possibility to highlight any differences between policy and practice, and point out any unintended consequences of the implementation of the Convention. It is also an example of how NGOs and INGOs with limited

funding can, through co-operation, produce a strong body of evidence which will contribute to increasing understanding of the level of protection and assistance available to all trafficked persons in the UK.

[Domestic Workers Action Group \(DWAG\) - Ireland](#)

The Domestic Workers Action Group (DWAG) was established by Migrant Rights Centre Ireland in 2004, as a collective response to the number of domestic workers, predominantly migrant women from non-EEA countries, presenting themselves to the MRCI Drop-In Centre with employment complaints. This included receiving below minimum wage, working excessively long hours, receiving no breaks, no holidays, feeling under threat and generally under-valued. The cases became more complex over time and revealed many incidences of trafficking for domestic servitude in this sector. The DWAG was set up to empower migrant domestic workers to campaign for improved protections and standards in this type of employment and ultimately to bring about positive change.

As part of their collective action for change, the DWAG have in the past and are currently organising a number of campaigns. They were involved together with trade unions the establishment of a Code of Practice for Protecting Persons Employed in Other People’s Homes. The group is also spearheading the campaign to waive diplomatic immunity in respect of labour violations in embassies. In November 2010, the Irish Labour inspectorate began a campaign of inspections in private homes where domestic workers live and work. This was as a direct result of the DWAG campaign in this area. DWAG are also part of the global campaign for the development of an *ILO Convention on Domestic Work*.

[Community Work – MRCI Approach to Combating Forced Labour](#)

A community work approach is used in this work to ultimately bring about social change. This approach is generally understood as a process that is concerned with the redistribution of power in society. Community work is informed by a particular set of values and

⁴² http://www.amnesty.org.uk/news_details.asp?NewsID=18442

⁴³ Group members are ; Amnesty International UK, Anti-Slavery International, ECPAT UK, Helen Bamber foundation, Immigration Law Practitioners’ Association, Kalayaan, POPPY Project, TARA Project and UNICEF UK.

practice principles which result in a conscious, reflective way of working for change. These core values include; empowerment, collective action, participation, social justice, equality and anti-discrimination.⁴⁴ It is an effective way of working with disempowered people by creating reflective and critical spaces to take action on the issues that affect them as individuals, and is also ultimately concerned with action to change structures and systems of oppression in society. It is a powerful way of working with individuals to collectivise their experiences and has been an effective way of engaging workers in sectors which are most at risk for forced labour and trafficking. Enabling participation is a key concern in this work, which means supporting individuals, groups and communities to develop an analysis of their own experience. This is particularly relevant for domestic workers who have been in situations of forced labour and who have trafficked. Through this process individuals are enabled to assert their own power in a collective manner and to develop actions and campaigns to redress the power imbalances that they have experienced in their lives.

Anti-Slavery and Liberty

Anti-Slavery International and Liberty (The National Council for Civil Liberties) launched a campaign for the criminalisation of forced labour. They pointed out that, despite the introduction of legislation that makes trafficking for forced labour a criminal offence, there is no stand-alone offence for forced labour and servitude. At present, people who find themselves in situations of forced labour that have not been trafficked, or where trafficking is difficult to prove, are not protected. The campaign received huge support which helped exert pressure on the government. Unite, the largest Trade Union in the UK, expressed its full support for the campaign. They pledged to work with Anti-Slavery and Liberty and to use their influence to persuade government to amend the necessary legislation. The Board of the GLA stated that such an offence would be of assistance in its work. It has identified instances of bonded labour in a number of cases but did not have power to prosecute for

forced labour or related offences. The Board at a recent meeting noted that the proposed offences of servitude and forced labour are in the spirit of the GLA's objectives and that adoption of such offences could strengthen its effectiveness to protect workers from exploitation.

In October 2009 the government conceded that existing legislation fails to protect people from modern day slavery and agreed to criminalise forced labour and servitude in the Coroners and Justice Bill. As a result of this successful collaborative campaign, there are now stand-alone offences of forced labour and servitude which include penalties that reflect the severity of this crime and ensure that vulnerable people are protected from this abuse.

MRCI and ICTU (Bridging Visa)

Over a three year period, the Migrant Rights Centre Ireland (MRCI) and the Irish Congress of Trade Unions (ICTU, along with faith groups and immigrant organisations, actively campaigned for the introduction of an ongoing mechanism to allow migrant workers in Ireland who have found themselves undocumented through no fault of their own to regularise their legal status. This was commonly referred to as the 'Bridging Visa'. It responds to migrant workers in Ireland who have found themselves undocumented through exploitation, deception, fraud and abuse of a person's vulnerability. It was implemented by the Irish State as the time-bound *Undocumented Workers Scheme 2009*. Cases are still being considered on a case by case basis. The State is also considering making this an ongoing scheme to continue to respond to those who become undocumented for reasons beyond their control.

This scheme reacts to the fact that many people who are in forced labour situations or haven't been trafficked often have a precarious legal status. Indeed a key factor in the recruitment of a person into exploitative conditions of employment is often their precarious or undocumented legal status. This scheme is clearly a preventative measure.

⁴⁴ As outlined in *Towards Standards for Quality Community Work* An All Ireland Statement of Values, Principles and Work Standards which provides a reference framework for all community work stakeholders to ensure best practice. Community Worker Cooperative, www.cwc.ie

TRADE UNION RESPONSE

SIPTU and MRCI

The Services, Industrial, Professional and Technical Union (SIPTU) and Migrant Rights Centre Ireland (MRCI) have worked collaboratively and successfully over the past number of years. They have now decided to formalise this relationship by signing a Memorandum of Understanding which will focus their work on promoting and defending the rights of agricultural, domestic and restaurant workers. They have both identified that these are sectors where exploitation is rife and instances of forced labour and trafficking have occurred. As part of this process, SIPTU has dedicated an organiser to the Mushroom sector, and MRCI has agreed to support the participation of migrant workers in SIPTU's contract cleaning campaign. MRCI will be undertaking training with activist and key staff on issues affecting migrant workers, including undocumented workers' rights, forced labour and trafficking. Together, SIPTU and MRCI will review and analyse this type of partnership approach in order to identify and document good practice for future work in this area.

Irish Congress of Trade Unions & MRCI: Code of Practice for Domestic Workers

A major achievement to enhance the rights and protection of domestic workers in Ireland was as a result of a collaborative process between ICTU, SIPTU and MRCI's Domestic Workers Action Group (DWAG). This saw the establishment of a Code of Practice for Protecting Persons Employed in Other People's Homes. The Code developed by these parties was negotiated by ICTU in Social Partnership, with the Government and employer bodies and agreed in the National Partnership Agreement on Social and Economic Development - *Towards 2016*. This national code of practice pertaining to Domestic Service conditions was brought into effect in May 2007.

The Code of Practice sets out certain employment rights and protections; it encourages good practice and compliance and helps to increase awareness of current employment legislation. It highlights specific issues, for example, the unacceptability of confiscating a domestic worker's passport,

maximum deductions from salary for accommodation, the prompt reimbursement of out-of-pocket expenses and the free exercise of personal pursuits.

UNITE and Kalayaan

Kalayaan, an UK NGO working to provide advice, advocacy and support for migrant domestic workers, and UNITE, the largest trade union in the UK, have successfully collaborated on the supporting the rights of domestic workers. For example, Kalayaan was supported by UNITE in its campaign to prevent the implementation of changes to the domestic worker visas proposed by the UK Government. According to Kalayaan if these were implemented it would have meant the removal of the most basic of rights from migrant domestic workers, facilitated abuse by employers and effectively legalised trafficking to the UK for labour exploitation. It was a successful strategy and the current domestic worker visa was retained. According to Kalayaan, UNITE were, *"very supportive during 2006 and 2008 to get the stay of execution on the domestic worker visa. In the last year or so they have worked very closely with a group of domestic workers to set up a group called justice for domestic workers that meets on a Sunday. They give them a huge amount of support in terms of setting up, like organizing and training. So they do an awful lot."*⁴⁵ Kalayaan believes their successes would not have been achieved without the hard work and commitment of migrant workers themselves and the help of their allies including UNITE. They believe the culture of the UNITE is to view migrant workers simply as workers with rights and stated that Kalayaan's experience with the union has been 'entirely positive'.

Their latest collaboration is a project to provide information to vulnerable domestic workers through other union members. They are developing a small card which will contain basic information on how to access advice and support. This will be distributed by union members in hotels who may come in contact with vulnerable domestic workers.

Conclusions

The Irish and UK governments have worked hard to put in place a framework to fight human trafficking. Both governments claim that they view human trafficking as a human rights issue but the official efforts that have been made so far are simply not enough. Although the measures implemented allow both States to fulfil the minimum requirements under the Palermo Protocol, NGOs and various community groups continue to highlight the gaps in services offered to victims of trafficking and are critical of the lack of protections for victims of forced labour and servitude. It continues to be a challenge to identify trafficked people and, even if they are identified as victims, they are forced to rely on inadequate supports and services which are already under-resourced. Furthermore, NGOs remain wary of referring trafficked people into National Referral Mechanisms because the options available once they come to the attention of the authorities put them on a path towards greater uncertainty and danger rather than safety. However, the legislation and policy initiatives that have been put in place are relatively new. It is possible that they may improve as both States' knowledge of trafficking increases. But NGOs remain sceptical of an approach that places human trafficking within a framework of immigration control and organised crime, and believe that simply tinkering with this system will not be sufficient.

What is increasingly clear is the need for a more integrated and coordinated approach emphasising the need for effective partnerships. Without genuine partnerships it will be impossible to successfully prevent, prosecute and protect people who have experienced forced labour and trafficking. This will require a process of negotiation, and the recognition that NGOs and INGOs have developed a level of expertise and knowledge of the phenomenon of forced labour and trafficking that should inform state agencies in matters of identification and protection. From the interviews undertaken for this report it is clear that trust is an important factor in developing cooperation and partnerships. It can begin from an appreciation of the different understandings and assumptions different groups have about forced labour and trafficking, and building on a common objective to make the problem of

trafficking and forced labour visible and provide adequate protections for those identified.

Finally, it also requires States to respond to this issue not only as part of crime prevention and enforcement but with cross-cutting and complimentary, actions with a focus labour rights and standards, irrespective of legal status. However legislation alone is not enough. There is also a need to address restrictive migration policies which often create the very conditions for forced labour by increasing migrant worker vulnerability to exploitation. The State has a responsibility to provide adequate protection measures for those who experience forced labour in all its forms. Ensuring the enforcement of employment rights and standards is central to eradicating exploitation in all its manifestations, which includes forced labour. Finally, responding to the issue of undocumented workers to reduce vulnerability to forced labour is central in the prevention of forced labour and trafficking.

RECOMMENDATIONS

1. In Ireland, accept the interpretation of the Criminal Law (Human Trafficking) Act 2008 that criminalises forced labour as a standalone offence without the element of trafficking.
2. Develop a cooperative process for the identification of victims of trafficking, with NGOs and appropriate government bodies.
3. Ensure that all NRM “reasonable ground” decisions are made in an expedient and transparent, manner with a right to appeal negative decisions.
4. Ensure that victims of trafficking are exempt from prosecution for immigration violations or other offences that were as a result of their having been trafficked.
5. Strengthen assistance to victims of Human Trafficking by developing appropriate, tiered supports systems, with a particular focus on housing needs and employment supports.
6. Increase the resources committed to the protection of victims as well as the detection and identification of cases. Adequate responses cannot be achieved with limited resources.

APPENDIX 1

Organisations Interviewed

Anti-Slavery International is the world's oldest international human rights organisation and the only charity in the United Kingdom to work exclusively against slavery. They work at local, national and international levels to eliminate all forms of slavery around the world

Anti Human Trafficking Unit (Ireland) is exclusively dedicated to co-ordinating and facilitating the implementation of the national strategy to address human trafficking in Ireland. The Unit is working to ensure the State's response to human trafficking is coordinated, comprehensive and holistic.

Gang Masters Licensing Authority (GLA) (UK) regulates those, in the UK, who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. Their mission is to safeguard the welfare and interests of workers whilst ensuring Labour Providers operate within the law.

Human Trafficking Investigation and Co-ordination Unit (HTICU) Garda National Immigration Bureau (GNIB) (Ireland) has responsibility for overseeing all investigations involving human trafficking in Ireland providing advice, guidance and operational support for investigations. Their role also involves keeping statistics and monitoring trends in human trafficking in Ireland. This is under the auspices of the GNIB which has overall responsibility for immigration control in Ireland.

International Trade Union Confederation, aims to better the conditions of work and life of working women and men and their families, and to strive for human rights, social justice, gender equality, peace, freedom and democracy.

Irish Refugee Council (Ireland) is an independent non-governmental organisation advocating on behalf of asylum seekers and refugees since 1992. They support asylum seekers and refugees at a policy level to make sure that their voices are heard on issues of concern to them and to the Irish public.

Kalayaan (UK) is a registered charity established to provide advice, advocacy and support services in the UK for migrant domestic workers. It is the only organisation in the UK providing support services to migrant domestic workers.

Metropolitan Police London (Human Trafficking Team) was set up in 2007 to respond to reports of trafficking of people. The team is part of Operation MAXIM which is a Metropolitan Police Service partnership with the UK Border Agency (UKBA) and the Crown Prosecution Service (CPS) targeting organised immigration crime across London.

Migrant Helpline (UK) is a charity providing advice and support for asylum seekers and refugees entering and living in the UK. They are involved with facilitating the integration of asylum seekers and refugees into the community and promoting awareness of asylum issues

Migrant Rights Centre Ireland (MRCI) working to promote justice, empowerment and equality for migrant workers and their families. MRCI is seeking to contribute to the creation of an intercultural society and in particular towards creating the conditions for inclusion of those migrant workers and their families who are at risk of poverty, social exclusion and discrimination

Serious Organised Crime Agency (UK) is an Executive Non-Departmental Public Body sponsored by, but operationally independent from, the Home Office. SOCA is an intelligence-led agency with law enforcement powers and harm reduction responsibilities. It tackles serious organised crime. This

includes Class A drugs, people smuggling and human trafficking, major gun crime, fraud, computer crime and money laundering.

The Services, Industrial, Professional and Technical Union (SIPTU) (Ireland) represents over 200,000 Irish workers from virtually every category of employment across almost every sector of the Irish economy. SIPTU provides the expertise, experience and back-up services necessary to assist workers in their dealings with employers, government and industrial relations institutions.

University of the West of England, Bristol (Human Rights Unit) provides a forum for research activity which covers a broad spectrum of human rights, including the protection of refugees, asylum seekers and migrants' rights. They are collaborating with a number of organisations with the aim of developing a coalition based approach to combating human trafficking including NGOs, Bristol City Council (BCC) and the Bristol Legacy Commission.

Trafficking Awareness Raising Alliance , (TARA), Scotland was established in 2005. It is the only non law enforcement agency focusing specifically on victims of trafficking, which provides services to female adult victims who have been trafficked into sexual exploitation. It liaises with the police, housing departments, health professionals, agencies which work with women in the sex trade and other relevant non-governmental organisations (NGOs).

United Kingdom Human Trafficking Centre [UKHTC] is a multi-agency centre that provides a central point for the development of expertise and cooperation in relation to the trafficking of human beings [THB], working together with other stakeholders from the governmental, non-governmental and inter governmental sectors in the UK and abroad.

Round Table Discussion was held in Northern Ireland

Belfast GEMS helps people living in the South Belfast area, particularly those people on longer-term unemployment, lone parents, people with disabilities, early school leavers, minority ethnic groups and returners to the labour market. It provides tailored assistance to help unemployed people find and hold on to a job.

Institute for Conflict Research is an independent research organisation, which specialises in working on issues related to conflict, human rights, social transformation and social justice. At present they are conducting research into trafficking for forced labour.

Law Centre of Northern Ireland (NI) is a not for profit agency working to advance social welfare rights in Northern Ireland. It promotes social justice through legal advice, representation, policy, training and publications

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