



Organization for Security and Co-operation in Europe

Special Representative and Co-ordinator for Combating Trafficking in Human Beings

Foreword

In February 2012, I had the pleasure to pay an official country visit to Ireland, which was the first such visit since the establishment of the Office of the Special Representative in 2003. My visit afforded an important opportunity during the Irish OSCE Chairmanship to engage and discuss human trafficking issues with the Minister for Justice and Equality, Mr. Alan Shatter T.D., and with other senior officials from various state institutions as well as with representatives of international organizations and civil society organizations.

Through this country visit, my Office and I strengthened the existing co-operative dialogue with the Government of Ireland and with the Irish OSCE Chairmanship Taskforce. I appreciated the open, constructive and collaborative approach of the Irish authorities in the course of the visit. I am very pleased to present the results of this co-operation in this report, which is published together with the official response of the Government, received in February 2013.

Progress has already been achieved since my visit. The Government communicated that some of my recommendations such as those related to the prevention of trafficking for labour exploitation, including domestic servitude in diplomatic households, will be addressed in the new National Action Plan to Prevent and Combat Human Trafficking in Ireland which will be published in 2013. Moreover, the Government announced that forced labour will be criminalised.

I would like to acknowledge the strong commitment of the Irish Government with respect to preventing and combating human trafficking which indicates a genuine political engagement at a high political level. I look forward to further co-operation on the occasion of the report's planned follow-up.

A handwritten signature in blue ink, which appears to read 'M. Giammarinaro', is written over a horizontal line.

Maria Grazia Giammarinaro



Organization for Security and Co-operation in Europe

Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Ireland from 30 January to 02 February 2012¹

Introduction

1. The present Report is based on a visit to Ireland by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro (hereinafter referred to as the Special Representative) from 30 January to 02 February 2012.² This was the first visit of the Special Representative to Ireland and as such afforded an important opportunity, during the Irish OSCE Chairmanship, to hold consultations with key stakeholders on Ireland's recent experience in tackling human trafficking and to support ongoing anti-trafficking efforts as the country starts developing its second National Action Plan.³

2. In the course of this visit, the Special Representative engaged in direct consultations with the Minister for Justice, Equality and Defence, Mr. Alan Shatter T.D. and the Head of the OSCE Chairmanship Taskforce, Ambassador Frank Cogan. She held discussions with senior officials from various governmental departments, including the Anti-Human Trafficking Unit (AHTU), An Garda Síochána (Police), the Office of the Director of Public Prosecutions Office, the National Employment Rights Authority (NERA), the Department of Social Protection, the Department of Children and Youth Affairs, the Office of Victims of Crime, the Health Service Executive, the Legal Aid Board, the Irish Naturalisation and Immigration Service (INIS), the Department of Jobs, Enterprise and Innovation, and the Protocol Division of the Department of Foreign Affairs and Trade. She also met with the Head of the Parliamentary Delegation to the OSCE Parliamentary Assembly, Mr. Eoghan Murphy T.D., Ms. Ann Phelan T.D., and Mr. Jim Walsh T.D. She further met the Personal Representative of the OSCE Chairperson-in-Office on Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of Other Religions, Mrs. Justice Catherine McGuinness.

¹ The report was finalized in August 2012.

² During her visit, the SR was accompanied by her adviser, Ms. Georgina Vaz Cabral, and her administrative assistant, Ms. Claire Jessel.

³ The first *National Plan of Action to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* was published by the Minister for Justice and Equality in June 2009: <<http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf>>, accessed 12 March 2012.

3. The SR, who works closely with civil society groups to develop further avenues for dialogue and policy initiatives, also held discussions with the Irish Congress of Trade Unions and the following non-governmental organizations (NGOs): Migrant Rights Centre Ireland (MRCI), Immigrant Council of Ireland (ICI), Barnardos, Ruhama, Children's Rights Alliance, ISPCC and Pavee Point. She further engaged in consultations with academia and independent bodies: Dr. Gillian Wylie and Dr. Eilis Ward, the Irish Human Rights Commission (IHRC) and the Office of the Ombudsman for Children. During her visit, the SR was also invited to visit the Baleskin Reception Centre for asylum seekers, to address the Institute of International and European Affairs⁴ and to meet the Forced Labour Action Group⁵ composed of survivors of human trafficking, especially for the purpose of domestic servitude.

4. The SR wishes to thank the Irish authorities, and in particular the Minister for Justice, Equality and Defence, Mr. Alan Shatter T.D. and the Permanent Mission of Ireland to the OSCE. She also wishes to extend her particular thanks to the OSCE Chairmanship Taskforce and the Anti-Human Trafficking Unit from the Department of Justice and Equality for their assistance in organizing the visit. Moreover, the SR would like to thank all of her interlocutors as well as the people she and representatives of her Office interviewed for the purpose of this visit, and who shared their knowledge and expertise on the situation of human trafficking in Ireland.

5. The aim of the visit was to learn more about Irish recent experience and good practices to respond to the crime of trafficking in human beings, particularly in the area of prevention of sexual and labour exploitation.⁶ Discussions during the visit focused on anti-trafficking policy and action, legislation to combat and prevent human trafficking, and to assist trafficked people as well as the existing challenges.

6. The SR welcomes Ireland's very dynamic anti-trafficking policy. Ireland has developed in a short period of time good practices based on a human rights approach and good governance, in line with OSCE commitments and other international standards. Some aspects of the implementation of existing regulation against trafficking still need to be strengthened to make more efficient use of the legal and institutional framework in place and to achieve better results. In particular, these efforts should aim at increasing the number of victims identified and supported, and the number of cases prosecuted especially in the field of labour exploitation, revising the relationship between anti-trafficking regulation and asylum procedures, and enhancing the protection of children's rights.

⁴ Lecture on "Policy Dilemmas in Preventing Trafficking in Human Beings" delivered at the Institute of International and European Affairs, Dublin, 2 February 2011, available at <<http://www.iiea.com/events/policy-dilemmas-in-preventing-trafficking-in-human-beings-for-labour-exploitation>>, accessed 12 March 2012.

⁵ Migrant Rights Centre Ireland has supported the establishment of worker action groups in sectors where there are high levels of exploitation (i.e., domestic work, agriculture). This community work aims at creating opportunities and spaces where migrant workers come together to identify shared issues facing them, build power and take collective action for change. Group members have come together to defend their rights and improve conditions for all workers in these sectors. <<http://www.mrci.ie/Action-&-Campaign-Groups/>>, accessed 23 April 2012.

⁶ The Irish Government led a comprehensive awareness raising campaign on human trafficking. Its central message was 'Don't Close Your Eyes to Human Trafficking', <<http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/index-en>>, accessed 12 March 2012.

7. The SR is very pleased to report that Ireland has established a comprehensive institutional system, building on an effective co-ordination mechanism, as well as on consultation and co-operation with non-governmental organizations, the private sector and international organizations regarding the prevention, protection of victims and the prosecution of trafficking in human beings.⁷ The Irish National Plan of Action 2009-2012 recognizes the need for a co-ordinated approach across Government departments and agencies, while acknowledging the important role of civil society groups and international organizations. To this aim, a solid consultative mechanism was established in 2008 which consists of a Governmental and Non-Governmental Roundtable Forum and five Interdisciplinary Working Groups⁸. The SR particularly commends the Irish model of consultative process with relevant non-governmental stakeholders to implement, monitor and review the National Plan of Action.

8. In 2008, Ireland adopted a Criminal Law on Human Trafficking. Section 2 of the Act criminalizes the trafficking of children while section 4 criminalizes the *trafficking of persons other than children*.⁹ The SR noted the low number of prosecutions under the Criminal Law (Human Trafficking) Act 2008 in relation to the number of investigations initiated. The AHTU Annual Report 2011 indicates that 53 trafficking related investigations were initiated by law enforcement (An Garda Síochána) and only 7 cases were prosecuted under trafficking offences.¹⁰ In addition, the SR noted that the 7 prosecuted cases concern exclusively trafficking for sexual exploitation. In this regard, several stakeholders expressed the view that the autonomous criminalization of forced labour would be useful.¹¹ The SR considers that the offence of *trafficking of persons other than children* fully complies with the UN Trafficking in Persons Protocol¹² and it is broad enough to criminalize all forms of trafficking, including trafficking for the purpose of forced labour. The SR notes however that the introduction of an autonomous offence of forced labour could be an additional tool to tackle the criminal phenomenon of labour exploitation, provided that the benefits and entitlements of victims linked to the indictment and conviction for the trafficking offence are extended to cases of forced labour.

9. Identification of victims of trafficking remains a major challenge in most OSCE participating States as well as in Ireland. The SR appreciated the initiatives of the Anti-Human Trafficking Unit and of An Garda Síochána to increase the number of identified

⁷ See also *Statement of roles and responsibilities for State Organisations, Non-Governmental Organisations and International Organisations in Ireland engaged in cooperation regarding the prevention, protection of victims and prosecution of trafficking in human beings*, <[http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/84e94aaab6162f25802574c600529086/\\$FILE/Statement%20of%20roles%20and%20responsibilities.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/84e94aaab6162f25802574c600529086/$FILE/Statement%20of%20roles%20and%20responsibilities.pdf)>, accessed 12 March 2012.

⁸ The five interdisciplinary working groups focus on: Child Trafficking, Awareness Raising and Training, Labour Exploitation Issues, Sexual Exploitation Issues and National Referral Mechanism.

⁹ Criminal Law (Human Trafficking) Act 2008 enacted on 7 June 2008.

¹⁰ AHTU Department of Justice and Equality, *Annual Report of Trafficking in Human Beings in Ireland for 2011* (2012), pp. 26-28, <<http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/whatisbeingdone-datastrategy-en>>, accessed 4 May 2012.

¹¹ MRCL, *Submission to the Mid Term Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings* (June 2011), p. 10.

¹² UN, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (2000).

victims especially through dedicated trainings for investigators, judges and front-line police.¹³ However, she acknowledges that identification and protection of victims of trafficking especially for labour exploitation needs to be enhanced. To this end the SR encourages the Irish authorities to adopt a more effective and compassionate approach to victim identification and support,¹⁴ and make full use of the existing legislation.¹⁵

10. The Special Representative notes that 60% of alleged victims¹⁶ of human trafficking in 2009, 46% in 2010 and 56.1% in 2011 were asylum seekers.¹⁷ According to Irish law, people who enjoy entitlements offered during the asylum procedure cannot simultaneously benefit from entitlements offered to trafficked persons. This implies that about half of the identified victims of trafficking do not enjoy, for example, the right to work, although this right is granted to everyone who is identified as a trafficking victim. During the discussions, the issue that victims of trafficking in the asylum process are not entitled to receive all benefits and protections foreseen by the system of support for alleged trafficking victims was raised several times, especially by NGOs and experts.¹⁸ The SR recognizes the importance of ensuring international protection for trafficked persons, in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and notices that the asylum procedures and the national referral mechanisms designed for trafficked persons should complement each other with a view to maximizing the protection of the human rights of all trafficked persons. However, in the current situation, a number of presumed trafficked persons most probably do not claim their status of trafficking victims because this would result in the loss of the opportunities and rights they enjoy under the asylum procedures. Therefore the SR encourages the Irish authorities to reconsider the connection between the two systems, also taking into account *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*.¹⁹ The SR also encourages the promotion of further work aimed at ensuring completeness, coherence and effectiveness of the legislative and policy framework, especially concerning

¹³ An Garda Síochána has placed particular importance on ensuring that its members receive training to tackle the phenomenon of human trafficking. About 600 members of An Garda Síochána have received a three-day detailed training course (140 in 2011). In addition, 27% of the front line law enforcement has at least received the basic training on awareness raising to trafficking. A Counter-trafficking course and modules (including a trainer's manual and CD Rom) were developed by the Irish authorities in partnership with the International Organization for Migration, <<http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/9C55BC0802223EA802576100058DF36>>, accessed 23 April 2012.

¹⁴ OSCE Ministerial Council, *Declaration on Trafficking in Human Beings* (Porto, 7 December 2002), Section II ; OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Section I.3.

¹⁵ See also D. Coghlan and G. Wylie, "Speaking with a Forked Tongue: Contrary Political Discourses and the Irish State's Construction of Human Trafficking" in C. Van den Anker and I. Van Liempt, *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave MacMillan, 2012), pp. 132-133.

¹⁶ Persons encountered directly by the law enforcement, An Garda Síochána, or referred by other organizations including NGOs.

¹⁷ AHTU Department of Justice and Equality, *Annual Report of Trafficking in Human Beings in Ireland for 2010* (2011), p. 14; AHTU Department of Justice and Equality, *Annual Report of Trafficking in Human Beings in Ireland for 2011* (2012), p. 14.

¹⁸ D. Coghlan and G. Wylie, "Speaking with a Forked Tongue: Contrary Political Discourses and the Irish State's Construction of Human Trafficking" in C. Van den Anker and I. Van Liempt, *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave MacMillan, 2012), p. 135.

¹⁹ See article 11 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

consistency between anti-trafficking legislation and regulations of related policy areas such as labour market, immigration and asylum policy.

11. In Ireland, the provision of accommodation to victims of trafficking is organized by the Refugee and Integration Agency (RIA), while health and counselling services, including for mental and sexual health, are managed by the Health Service Executive (HSE). During the visit to the Baleskin Reception Centre, part of RIA's hostel network where accommodation for asylum seekers is also provided, the SR noted her appreciation of Irish authorities' efforts to provide assistance to identified victims of trafficking. She also positively noted the professionalism and the sensitivity of the Reception Centre's staff. The SR believes, however, that the quality of assistance and support could be further enhanced and individualized to better meet the needs of trafficked persons, also taking into account concerns expressed by NGOs supporting victims.²⁰ The OSCE Action Plan to Combat Trafficking in Human Beings recommends that shelters, run by governmental bodies, NGOs, or other institutions of civil society should meet the needs of trafficked persons and that these shelters should provide safety, while there should also be an opportunity for reflection after the experienced trauma.²¹ This approach is essential to empower trafficked persons and to encourage them to exercise their rights effectively. The SR suggests strengthening the existing co-operation with NGOs to ensure appropriate and safe accommodation and assistance to trafficked persons, taking also into account the need to prevent re-trafficking and further exploitation.²²

12. OSCE participating States have adopted a number of commitments to prevent and combat child trafficking.²³ These commitments strongly acknowledge and address the particular vulnerability of children and their special needs. Therefore, according to the OSCE Action Plan to Combat Trafficking in Human Beings, the special needs of trafficked children and the best interests of the child should be fully taken into account when deciding upon appropriate housing, education and care.²⁴ The SR recognizes the efforts of the Irish authorities to strengthen the child care system over the past few years. She appreciates and welcomes the establishment of a new Department of Children and Youth Affairs.²⁵ The SR encourages the Irish authorities to take further action to ensure the primacy of a child-sensitive and child rights-based approach to all aspects of anti-trafficking policy and measures. Every effort should be made to find a durable and safe solution for every child, taking all

²⁰ See Ruhama submission to the Mid Term Review of the implementation of the National Action to Prevent and Combat Trafficking in Human Beings in Ireland (June 2011); MRCI, *Submission to the Mid Term Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings* (June 2011), pp. 6, 9 (see recommendation no. 4).

²¹ OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Part V, 4.1.

²² OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Section V.4; OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 30 November 2007).

²³ These include OSCE MC Decisions: MC(8).DEC/1, MC.DEC/2/03, MC.DEC/13/04, MC.DEC/13/05, MC.DEC/14/06, MC.DEC/15/06, MC.DEC/8/07, MC.DEC/9/07; MC.DEC/1/11/Corr.1; PC.DEC/557 and PC.DEC/685.

²⁴ OSCE Permanent Council, *Decision No. 557/Rev. 1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005).

²⁵ The Department of Children and Youth Affairs was established on 2 June 2011 following a Government decision to consolidate a range of functions which were previously responsibilities shared by several Ministries; see for more information, <<http://www.dcy.gov.ie/viewdoc.asp?DocID=120>>, accessed 23 April 2012.

relevant factors into consideration. Additionally, individual circumstances must be taken into account in order to act in his or her best interests, in compliance with the spirit and core principles of the United Nations Convention on the Rights of the Child (CRC) and its Optional Protocols.²⁶

13. The SR encourages the Irish authorities to pay particular attention to preventive measures, especially in the field of trafficking for labour exploitation. Research conducted in the OSCE region²⁷ shows that placement or recruitment agencies have been found to play a particularly abusive or fraudulent role in the exploitation of migrant workers. In some sectors of the economy such as domestic work where it is current practice for workers to be recruited and placed via agencies, or the construction sector where workers are paid by labour providers on a sub-contracted basis, migrant workers are often dependent on these labour providers for their wages, their working conditions, and sometimes also their accommodation. Moreover, through a combination of wage deductions, payments in kind and debt manipulation, workers end up in a situation of debt bondage in which they have no other viable option but to submit to their exploiter. The OSCE Ministerial Council Decision No. 8/07 has urged participating States to “*develop programmes to curb the fraudulent recruitment used by some employment agencies that can make persons more vulnerable to being trafficked*”²⁸.

14. The SR commends the innovative initiative of the National Employment Rights Authority (NERA) on stepping up inspections in private homes, considering that migrant domestic workers are a particularly vulnerable and invisible category of workers.²⁹ Inspection of private homes is an effective instrument to monitor and secure compliance with labour standards, to detect exploitative cases as well as to reach out to vulnerable workers who are isolated. The SR notes that the current regulation on work permits binds migrant workers to their employers including workers employed in diplomatic households. She considers that preventive measures, such as the ability to change employer, would empower domestic workers and provide them with the possibility to escape from dependency on their employer and from exploitation.³⁰

15. In conclusion, the Special Representative acknowledges the important steps taken by the Irish Government to establish an effective mechanism aimed at preventing and combating human trafficking, and protecting its victims, and encourages the Irish authorities to further strengthen their anti-trafficking work and to

²⁶ The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child; see for more information <<http://www.unicef.org/crc/>>, accessed 23 April 2012.

²⁷ See OSCE OSR, *Unprotected Work, Invisible Exploitation: Trafficking for Domestic Servitude*, Occasional Paper Series no. 4 (2011), p. 21; OSCE OSR, *An Agenda for Prevention: Trafficking for Labour Exploitation* (December 2011): a special thematic addendum to the 2011 Annual Report of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

²⁸ OSCE Ministerial Council, *Decision No. 8/07 Combating Trafficking in Human Beings for Labour Exploitation*, MC.DEC/8/07 (Madrid, 30 November 2007), para. 16.

²⁹ ILO, *Towards a fair deal for migrant workers in the global economy, Report VI, 92nd session of the International Labour Conference* (Geneva, June 2004), p. 67.

³⁰ See OSCE OSR, *Unprotected Work, Invisible Exploitation: Trafficking for Domestic Servitude*, Occasional Paper Series no. 4 (2011), pp. 15-16; UN Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian* (focused on manifestations and causes of domestic servitude), Fifteenth session, A/HRC/15/20 (18 June 2010), para. 96, p. 21.

consider some recommendations based on OSCE anti-trafficking commitments, in particular the OSCE Action Plan to Combat Trafficking in Human Beings. The Special Representative is keen to maintain a continuous dialogue and co-operation with the Irish authorities to promote the appropriate follow-up to these recommendations. Her Office stands ready to provide technical assistance where requested by authorities and civil society.

Recommendations

The Irish authorities are encouraged to take into consideration the following recommendations, including for the development of the next National Action Plan:

1. Strengthen the criminal justice response particularly on labour exploitation by:

- Ensuring full and correct implementation of the criminal provisions on trafficking in human beings, also through training and sensitization activities for law enforcement, prosecutors and judges, aimed at raising the quality of the criminal justice response especially in the field of trafficking for labour exploitation;
- Ensuring full implementation of legislation on seizure and confiscation in trafficking cases including through the use of appropriate investigative techniques such as financial investigation, also with a view to ensuring compensation to trafficking victims.

2. Enhance support for and protection to all presumed victims of human trafficking by:

- Reconsidering the connection between the trafficking victim support system and the asylum procedure with a view to improving the protection of presumed trafficked persons who should fully enjoy the opportunities and rights stemming from their being identified as victims of trafficking, without prejudice to their right to seek and enjoy asylum;
- Further developing co-operation with civil society to ensure quality standards for services provided to victims and presumed victims.

3. Take further action to ensure the primacy of a child-sensitive and child rights-based approach to all aspects of anti-trafficking policies and action by:

- Ensuring that the best interests of the child are the primary consideration in all actions concerning every child, including victims or presumed victims of trafficking in human beings;³¹
- Enhancing the skills of social workers in charge of child care through the provision of appropriate and tailored training to meet the specific needs of vulnerable children, especially separated children, asylum seeking children and trafficked children;

³¹ OSCE Alliance against Trafficking in Persons, Joint Statement on Child Protection, Especially among Migrant, Undocumented, Unaccompanied, Separated and Asylum Seeking Children, to enhance Prevention of Child Trafficking (2010).

- Providing child victims of trafficking, when necessary, with a guardian and/or legal representative at all stages of assistance, (re)integration and/or return to ensure protection of their human rights and the child's best interests;³²
- Ratifying the Optional Protocol to the United Nations Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography.³³

4. Strengthen the prevention of trafficking for labour exploitation by:

- Regulating and monitoring the activities of employment agencies in order to prevent abuse and exploitation;³⁴
- Ensuring that no recruitment fees or costs are charged directly or indirectly to workers.³⁵

5. Enhance prevention of trafficking for the purpose of domestic servitude especially in diplomatic households by:

- Considering ways to allow migrant domestic workers to change employer in order to reduce their dependency on the original employer, at least in cases of abuse and exploitation;
- Taking measures to prevent any abuse of diplomatic immunities for the purpose of exploiting domestic workers by putting in place special arrangements to ensure that the diplomatic status of the employer does not hamper access to assistance and support to victims, as well as regulating and monitoring the delivery procedure of visas/residence permits for domestic workers employed by members of the diplomatic corps.

³² OSCE Permanent Council, *Decision No. 685 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance*, para. 6 (7 July 2005).

³³ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography was signed by Ireland on 7 September 2000. See also OSCE Ministerial Council, *Decision n°1 Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings*, para. 2 (28 November 2000).

³⁴ See ILO, *Trafficking for Forced Labour: How to monitor the recruitment of migrant workers*, Training Manual (2006).

³⁵ ILO, *Private Employment Agencies Convention*, C181 (1997).

APPENDIX I

RESPONSE TO THE OSCE REPORT ON HUMAN TRAFFICKING (received 12 February 2013)

Introduction

Ireland is pleased to note that the Special Representative has acknowledged Ireland's dynamic anti-trafficking policy, the development of good practices based on a human rights approach and good governance. It is also welcomed that the Special Representative:

- has complimented Ireland's comprehensive institutional system, co-ordination mechanism, consultation and co-operation with NGOs, the private sector and international organisations,
- commends the innovative initiative of the National Employment Rights Authority (NERA) in stepping up investigations in private homes, and
- has also welcomed the initiatives undertaken in the context of dedicated training for members of An Garda Síochána, prosecutors and the judiciary.

While much has been done in Ireland in a relatively short period of time in the area of preventing and combating human trafficking, Ireland accepts that there will always be more that can be achieved and it wishes to report that the Irish Government continues to be committed to tackling the issue of human trafficking, supporting victims and pursuing traffickers. Ireland welcomes the Report of the Special Representative as an important contribution to supporting the ongoing development of policies and practices to combat this most heinous human rights abuse.

Responses to the specific recommendations of the Special Representative are set out below.

1. Strengthen the criminal justice response particularly on labour exploitation by:

Ensuring full and correct implementation of the criminal provisions on trafficking in human beings, also through training and sensitization activities for law enforcement, prosecutors and judges, aimed at raising the quality of the criminal justice response especially in the field of trafficking for labour exploitation.

The Criminal Law (Human Trafficking) Act, 2008 contains extensive provisions in relation to the trafficking of persons for the purposes of labour exploitation, sexual exploitation and removal of organs and it provides for penalties of up to life imprisonment and/or an unlimited fine for these offences. With specific reference to the Special Representative's recommendation concerning labour exploitation, a '*Report on the Adequacy of the Current Irish Legislation in relation to the Criminalisation of Forced Labour*' was submitted to the Minister for Justice & Equality in late 2012. This Report recommended that for the purposes of clarity, Forced Labour should be defined in legislation. This recommendation has been accepted by both the Minister and the Government and the relevant legislation is currently being drafted; it is anticipated that this legislation will be enacted in early 2013.

In addition to the recommendation on the issue of legislative clarification, the Report has also recommended that a range of non legislative measures be taken to address this issue. These include, inter alia: the consideration of the potential ratification of the ILO Convention No. 189 on Decent Work for Domestic Workers, consideration of reviewing the implementation of the Code of Practice for Protecting Persons Employed in Other People's

Homes, the development of measures to address the particular vulnerabilities attaching to domestic workers in diplomatic households to prevent their exploitation, the enhancement of cooperation between the National Employment Rights Agency and An Garda Síochána in investigations forced labour cases (including the development of a manual using international good practices) and enhanced data collection processes. The Report also recommends that governmental, non-governmental, employer and employees' rights organisations be encouraged to initiate/continue dialogue in relation to their roles and responsibilities in the prevention and recognition of forced labour. These recommendations have been discussed at the relevant Working Group established by the Anti-Human Trafficking Unit of the Department of Justice & Equality, comprising both state and non-governmental groups and will be addressed in the new National Action Plan to Prevent and Combat Human Trafficking in Ireland which will be published in 2013.

Ireland shares the view of the Special Representative that ongoing training of law enforcement personnel is essential to ensure the effective implementation of the legislation. For that reason a comprehensive training programme for members of An Garda Síochána has been in place for the past few years with in excess of 650 members of the Force having completed this training. This training is set to continue into the future. A further 3,500 members of An Garda Síochána have received awareness raising training on the issue of human trafficking. This training is delivered by the International Organisation for Migration and involves both state and non-governmental organisations in the delivery of the training. In addition, a step-by-step guide for officers setting out what to do should they encounter a situation of human trafficking is on an on-line computer portal which is available to all Garda personnel.

As members of the judiciary in Ireland are independent in their functions, subject only to the Constitution and the law, it is not appropriate for the Executive (Government, Civil Service) to advocate training for them on any issue. While respecting that position, a detailed article on human trafficking was published in the Judicial Studies Journal in 2009, a publication directed at members of the Judiciary and a presentation was made to the Circuit Court Judges Annual Conference in July 2010 by a Detective Superintendent from the Human Trafficking Investigation and Co-ordination Unit (HTICU). A further presentation on human trafficking was given to all member of the judiciary by a US Judge with specialist knowledge of human trafficking cases and a senior member of An Garda Síochána in November 2011. These efforts will continue to be pursued.

In the Office of the Director of Public Prosecutions (DPP), particular prosecutors have been nominated to deal with human trafficking cases. They have been issued with guidelines to assist them in examining which factors are to be considered in assessing whether to commence or continue with a prosecution including a consideration as to whether the public interest is served by a prosecution of a victim of human trafficking who has been compelled to commit offences (e.g. immigration or sexual offences) as a result of being trafficked.

Strengthen the criminal justice response particularly on labour exploitation by:

Ensuring full implementation of legislation on seizure and confiscation in trafficking cases including through the use of appropriate investigative techniques such as financial investigation, also with a view to ensuring compensation to trafficking victims.

Current legislative provisions regulating the confiscation of proceeds of crime as set out in the Criminal Justice Act 1994 and the Proceeds of Crime Acts 1996 and 2005 are robust. An Garda Síochána are well equipped to target individuals and criminal groups involved in

criminal activities including the trafficking of human beings through focused operations including financial investigations, money laundering activities, etc. Such operations may be supported by specialist assistance provided by units such as the Criminal Assets Bureau (CAB), the Garda National Immigration Bureau (GNIB) and the Garda Bureau of Fraud Investigation (GBFI).

In relation to compensation, trafficking victims in Ireland may file civil suits against trafficking offenders and can be assisted in this by the Legal Aid Board. Victims may also receive a compensation order in a criminal case under the Criminal Justice Act 1993 on the basis of personal injury or loss resulting from the offence or through applying to the Criminal Injuries Compensation Tribunal which compensates victims of crime for out-of-pocket expenses. Persons who have been trafficked for the purposes of labour exploitation may be able to seek legal redress and compensation through a number of State bodies which deal specifically with work related rights and entitlements. These include the Employment Appeals Tribunal, the Labour Relations Commission, the Labour Court and the Equality Tribunal.

2. Enhance support for and protection to all presumed victims of human trafficking by:

Reconsidering the connection between the trafficking victim support system and the asylum procedure with a view to improving the protection of presumed trafficked persons who should fully enjoy the opportunities and rights stemming from their being identified as victims of trafficking, without prejudice to their right to seek and enjoy asylum;

The Government has created a framework to ensure that any person who is potentially a victim of human trafficking will not be removed from the State. A person who has made a claim for Asylum and who in addition also claims to have been the victim of trafficking receive all the necessary supports and advice but, for immigration related purposes, are treated in the same way as all other asylum seekers.

An asylum seeker's permission under Section 9(2) of the Refugee Act 1996 expires if their application for a declaration as a refugee is refused. The Irish National Immigration Service (INIS), in partnership with the GNIB, has established a procedure to automatically grant a 6 month temporary residence permission under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking to asylum applicants who are not successful in being declared a refugee and whom the GNIB have identified as a suspected victim of trafficking. In such cases, INIS do not issue a notification under Section 3 of the Immigration Act, 1999 (i.e. of a proposal to deport) as would normally be done when a person's asylum claim is unsuccessful. Suspected victims of trafficking are notified of the refusal of their asylum claim and also notified of their eligibility for temporary residence permission under the Administrative Arrangements.

In common with all persons who are refused a declaration under section 17 of the Refugee Act 1996 (as amended), suspected victims of human trafficking have the alternative option of entering a 'leave to remain' process. This process has two elements - an application for subsidiary protection and a further consideration under section 3 of the Immigration Act 1999, as amended, of any reasons why a person should not be removed from the State. This is separate from the asylum/refugee determination process. The processing of cases at this point is also complex and extremely resource intensive and they are not quick or easy decisions to make. Given the life changing consequences for the persons involved, these are decisions that must be taken with the most scrupulous care and attention.

The Immigration, Residence and Protection Bill, which it is anticipated will be brought before the Oireachtas (Irish Legislature) this year, will provide for the introduction of a single procedure to determine applications for protection and other reasons to remain in the State. It is expected that the single procedure will substantially streamline the existing arrangements when it is enacted.

Enhance support for and protection to all presumed victims of human trafficking by:

Further developing co-operation with civil society to ensure quality standards for services provided to victims and presumed victims.

It is noted that the Special Representative, in her report, is very complimentary of Ireland's level of co-operation and consultation with civil society on human trafficking related issues. It is worth noting that over 70 different Governmental, Non-Governmental and International Organisations are involved with the AHTU in anti-trafficking initiatives. The Department of Justice and Equality provides funding to two NGOs specifically to assist victims of trafficking for the purposes of sexual exploitation and for the purposes of labour exploitation. Under the extensive consultative structures which have been established in Ireland, the adequacy and quality of services provided to victims of trafficking in human beings are monitored and adjustments made, where this is deemed appropriate. The Irish Government will continue to foster links with civil society and build on progress made to date to ensure a comprehensive and co-ordinated response to this issue.

3. Take further action to ensure the primacy of a child-sensitive and child rights-based approach to all aspects of anti-trafficking policies and action by:

Ensuring that the best interests of the child are the primary consideration in all actions concerning every child, including victims or presumed victims of trafficking in human beings

Enhancing the skills of social workers in charge of child care through the provision of appropriate and tailored training to meet the specific needs of vulnerable children, especially separated children, asylum seeking children and trafficked children.

The Health Service Executive (HSE) has responsibility under child care legislation and the Children First Guidelines for the care and protection of all children in the State including any child who is or may be a victim of human trafficking. The welfare of the child is always the paramount consideration and decisions are made having regard to the best interests of the child. Furthermore the views and wishes of the child are incorporated into assessments undertaken and care plans devised.

The *Children First: National Guidance for the Protection and Welfare of Children* and the accompanying *Child Protection and Welfare Practice Handbook* set out clearly how child protection must be placed at the core of any organisation working with children. The documents detail what is to be done to protect children, and the roles and responsibilities of individuals in organisations in that regard.

With significant input from the HSE, the AHTU has recently published a guide entitled 'Services for Victims of Child Trafficking' for persons likely to encounter trafficked children in

their line of work. It sets out the indicators of trafficking; the services available; details on how to report suspicions and the implications of and necessary compliance with *Children First* practices in relation to child victims.

The AHTU recognizes the important role of social workers in the care of children in Ireland. The publication 'Children First: National Guidance for the Protection and Welfare of Children' contains a section on human trafficking setting out the indicators of trafficking and the actions to be taken when there is the suspicion that the child may be a victim of human trafficking.

It is the case in Ireland that all separated children, including those who are identified as victims of human trafficking, are allocated a dedicated social worker by the HSE at the point of referral to/entry into care. The allocated social worker acts in the best interests of the child in terms of their care and development. Social workers in Ireland are recruited by the HSE as qualified and trained childcare professionals and are subject to ongoing training and professional development. Ireland is also exploring the development of human trafficking specific training courses for social workers and has made approaches to a number of third level institutions with a view to incorporating the issue of human trafficking on relevant courses including those related to social science.

Take further action to ensure the primacy of a child-sensitive and child rights-based approach to all aspects of anti-trafficking policies and action by:

Providing child victims of trafficking, when necessary, with a guardian and/or legal representative at all stages of assistance, (re)integration and/or return to ensure protection of their human rights and the child's best interests;

In Ireland, child victims of human trafficking are allocated a dedicated social worker by the HSE. The allocated social worker acts in the best interests of the child in terms of their care and development and, where it is deemed necessary, the social worker will ensure that the child has access to legal assistance and advice in relation to all options available to them. The social worker will also accompany the child to interviews in relation to an asylum claim or with An Garda Síochána in relation to a trafficking investigation. Furthermore, Section 26 of the Child Care Act 1991 provides that the court may appoint a Guardian Ad Litem (GAL) in any court proceedings, where the child might become the subject of a care or supervision order or is being placed in the care of the HSE. The GAL is an independent representative appointed by the court to ensure that the views of the child are heard by the court and to advise the court on the best interests of the child.

Take further action to ensure the primacy of a child-sensitive and child rights-based approach to all aspects of anti-trafficking policies and action by:

Ratifying the Optional Protocol to the United Nations Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography.

The criminal law elements of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography have largely been implemented by the Child Trafficking and Pornography Act 1998 and the Criminal Law (Human Trafficking) Act 2008.

Legislative proposals to enhance the protection of children against sexual abuse and exploitation, including exploitation through prostitution and child pornography, are at an advanced stage of preparation. These measures will facilitate full compliance with the criminal law provisions of a number of international legal instruments, including outstanding requirements in the Optional Protocol and an EU Directive adopted in December, 2010. It is expected that these legislative proposals will be brought to Government in the coming months. The Optional Protocol will be ratified as soon as practicable after the outstanding legislation has been enacted.

4. Strengthen the prevention of trafficking for labour exploitation by:

Regulating and monitoring the activities of employment agencies in order to prevent abuse and exploitation;

Ensuring that no recruitment fees or costs are charged directly or indirectly to workers.

It should be noted that the Employment Permits Acts of 2003 and 2006 prohibit employment agencies from applying for employment permits. It is an offence in Ireland under Section 23 of the Employment Permits Act 2006 for an employer to deduct from the remuneration of, or seek to recover from, the holder of the employment permit concerned any charge, fee or expense arising out of an application or renewal of an employment permit, recruitment or travel expenses. Where the permit is granted on application from the employee, it is also an offence for the employer to make any deductions from the remuneration of, or seek to recover from, the holder of the permit any charge, fee or expense arising out of the recruitment of the employee or any amount previously paid to the holder in respect of travelling expenses incurred by the holder in connection with taking up the employment in the State.

5. Enhance prevention of trafficking for the purpose of domestic servitude especially in diplomatic households by:

Considering ways to allow migrant domestic workers to change employer in order to reduce their dependency on the original employer, at least in cases of abuse and exploitation;

Taking measures to prevent any abuse of diplomatic immunities for the purpose of exploiting domestic workers by putting in place special arrangements to ensure that the diplomatic status of the employer does not hamper access to assistance and support to victims, as well as regulating and monitoring the delivery procedure of visas/residence permits for domestic workers employed by members of the diplomatic corps.

In Ireland domestic work is no longer considered an eligible category for the granting of employment permits. It should be noted that employment permit holders may move to another employer when 12 months have elapsed.

It is acknowledged that persons working as domestic staff in diplomatic households can be vulnerable to abuse. Therefore in order to ensure that diplomatic privileges and immunities are not abused in relation to these workers the Department of Foreign Affairs and Trade in collaboration with the Department of Jobs, Enterprise and Innovation and the Department of

Justice and Equality are developing additional procedures aimed at strengthening the protections for private domestic workers in diplomatic households. Non-legislative solutions and preventive measures such as a Statement of Intent are being developed to reduce the possibility of abuse and give assistance to abused workers. Procedures for requesting more evidence of an established employer-employee relationship; written terms and conditions of employment agreed by the employer and the worker; and translated information to domestic workers about their rights in the Ireland are included.

Response to other issues raised in the main body of Report

The Special Representative has noted the low number of prosecutions under the Criminal Law (Human Trafficking) Act, 2008 in relation to the number of investigations. There were 4 trafficking convictions in 2011 and there are currently 8 cases before the courts in Ireland. An Garda Síochána is committed to the investigation and prosecution of cases of human trafficking. Given the nature of this crime it can take a significant amount of time to gather the evidence (in some cases this is dependent on co-operation outside the jurisdiction) to enable prosecutions to proceed.

The Special Representative encourages a more effective and compassionate approach to victim identification and support along with the strengthening of existing co-operation with NGOs. Members of An Garda Síochána who interview victims of human trafficking have all received specialist training in building the trust of the victims, giving them time and space to outline their trauma and assisting them in getting all the support they require. An Garda Síochána facilitates the presence of legal representatives, care-workers or support workers from NGOs at such interviews. Specialised staff in the HSE who have responsibility for the development of care plans for victims of human trafficking are trained healthcare professionals who understand and appreciate the need to demonstrate compassion given the trauma victims have endured. In Ireland, there is a robust level of communication between the State and Civil Society organisations. NGOs assist both An Garda Síochána and the HSE in the provision of assistance and support to victims of human trafficking.

APPENDIX II

**AGENDA OF THE OSCE SPECIAL REPRESENTATIVE AND CO-ORDINATOR FOR
COMBATING TRAFFICKING IN HUMAN BEINGS IN IRELAND
30 January – 2 February 2012**

Monday 30 January - Day 1

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|--------------------------------------|---|--|--------------------------------------|---------------------|--|-------------------------|-------------------------------------|-------------------|------------------|------------------|---------------|------------------|-----------------------------------|-------------------|--------------|------------------|
| 10:00-10:15 | Welcome by Mr. Frank Cogan, Head of OSCE Chairmanship Taskforce | | | | | | | | | | | | | | | |
| 10:30-11:30 | Meeting with Department of Justice and Equality - Anti Human Trafficking Unit
<u>Attendees:</u>
Ms. Marion Walsh, Executive Director, AHTU
Mr. Mick Quinn, AP, AHTU
Ms. Gerardine Coyle, AP, AHTU | | | | | | | | | | | | | | | |
| 11:45-13:00 | Meeting with Officials from An Gardaí Síochána (Police), the Office of the Director of Public Prosecutions & the National Employment Rights Authority
<u>Attendees:</u>
Detective Superintendent Noel Clarke, Human Trafficking Investigation & Co-ordination Unit
Mr. Peter McCormick, Office of the Director for Public Prosecutions
Mr. John Kelly, National Employment Rights Authority | | | | | | | | | | | | | | | |
| 14:00-16:00 | Roundtable Meeting with NGOs
<u>Attendees:</u>
<table border="0"> <tr> <td>Migrant Rights Centre Ireland</td> <td>Ms. Grainne O'Toole</td> </tr> <tr> <td></td> <td>Mr. Pablo Rojas Coppari</td> </tr> <tr> <td>Immigrant Council of Ireland</td> <td>Ms. Nusha Yonkova</td> </tr> <tr> <td>Barnardos</td> <td>Mr. Itayi Viriri</td> </tr> <tr> <td>Ruhama</td> <td>Ms. Sarah Benson</td> </tr> <tr> <td>Children's Rights Alliance</td> <td>Ms. Emma McKinley</td> </tr> <tr> <td>ISPCC</td> <td>Ms. Lisa Collins</td> </tr> </table> | | Migrant Rights Centre Ireland | Ms. Grainne O'Toole | | Mr. Pablo Rojas Coppari | Immigrant Council of Ireland | Ms. Nusha Yonkova | Barnardos | Mr. Itayi Viriri | Ruhama | Ms. Sarah Benson | Children's Rights Alliance | Ms. Emma McKinley | ISPCC | Ms. Lisa Collins |
| Migrant Rights Centre Ireland | Ms. Grainne O'Toole | | | | | | | | | | | | | | | |
| | Mr. Pablo Rojas Coppari | | | | | | | | | | | | | | | |
| Immigrant Council of Ireland | Ms. Nusha Yonkova | | | | | | | | | | | | | | | |
| Barnardos | Mr. Itayi Viriri | | | | | | | | | | | | | | | |
| Ruhama | Ms. Sarah Benson | | | | | | | | | | | | | | | |
| Children's Rights Alliance | Ms. Emma McKinley | | | | | | | | | | | | | | | |
| ISPCC | Ms. Lisa Collins | | | | | | | | | | | | | | | |
| 16:30-17:00 | Courtesy Call on the Minister for Justice & Equality, Mr. Alan Shatter T.D. | | | | | | | | | | | | | | | |
| 19:30 | Dinner hosted by Mr. Frank Cogan, Head of OSCE Chairmanship Taskforce, Department of Foreign Affairs and Trade with Mr. Jonathan Conlan, Deputy Director, and Ms. Marion Walsh, AHTU | | | | | | | | | | | | | | | |

Tuesday 31 January- Day 2

- 10:00- 12:30** **Visit to Reception Centre at Baleskin, St. Margaret's, North County Dublin.**
Attendees:
Reception and Integration Agency Mr. Ultan Ryan & Mr. Noel Dowling
Health Service Executive Ms. Mary Kenny
Baleskin management Mr. Brian Byrne & Ms. Linda McDonnell
Anti Human Trafficking Unit Mr. Mick Quinn & Ms. Helena Stapleton
- 14:00- 16:00** **Meeting on Protection of Rights**
Attendees:
Legal Aid Board Ms. Claire Kelly & Ms. Grainne Brophy
Health Service Executive Ms. Mary Kenny
Office of Victims of Crime Mr. Greg Heylin
Department of Social Protection Mr. Frank Kelly
Department of Children & Youth Affairs Ms. Michele Clarke
- 16:00- 16:45** **Meeting with Irish Congress of Trade Unions**
Attendees:
Ms. Esther Quinn, Irish Congress of Trade Unions
Mr. Michael Halpenny, Irish Congress of Trade Unions
- 17:00 - 18:00** **Meeting with the Irish Naturalisation and Immigration Service (INIS), and officials from Department of Justice and Equality & Department of Jobs, Enterprise & Innovation**
Attendees:
Mr. William O'Dwyer, INIS Immigration-General
Mr. Kevin O'Sullivan, Head of Immigration Policy, INIS
Mr. Noel Dowling, Principal Officer, Reception and Integration Agency
Ms. Mary Killeen, Department of Jobs, Enterprise & Innovation

Wednesday 1 February- Day 3

- 09:30-10:30** **Meeting with the Irish Human Rights Commission (IHRC)**
Attendees:
Dr. Maurice Manning, President
Ms. Kirsten Roberts, Director, Research and Policy
Mr. Des Hogan

12:00 - 13:00	Meeting with Academics <u>Attendees:</u> Ms. Gillian Wylie, Irish School of Ecumenics, Trinity College Dublin Ms. Eilis Ward, NUIG
14:00- 15:00	Meeting with International Bodies <u>Attendees:</u> UNHCR Ms Sophie Magennis UNICEF Ms Nikita White IOM Ms Siobhan O’Hegarty
15:30- 16:30	Meeting with Office of the Ombudsman for Children <u>Attendees:</u> Ms. Emily Logan, Ombudsman for Children Mr. Mánuis De Barra, Policy and Human Rights Officer, OCO
17:00-18:00	Meeting with Pavee Point <u>Attendees:</u> Ms. Anastasia Crickley, Chairperson Ms. Ronnie Fay, Co-Director, Pavee Point Mr. Martin Collins, Co-Director Pavee Point Ms. Siobhan Curran, Roma Programme Co-ordinator Ms. Monica Makulova, Roma Development worker
18:00- 19:00	Debrief with AHTU

Thursday 2 February

09:00- 10:00	Meeting with representatives of the Irish delegation to the OSCE Parliamentary Assembly <u>Attendees:</u> Mr. Eoghan Murphy, T.D., Head of the Irish delegation Ms. Ann Phelan, T.D., Member of the Irish delegation Mr. Jim Walsh, T.D, Member of the Irish delegation
10:30-11:15	Meeting with Mrs. Justice Catherine McGuinness
11.15- 11:45	Meeting with An Garda Siochana <u>Attendees:</u> Inspector Patrick McMenamin, DMR South Central Detective Superintendent Noel Clarke Detective Inspector Paul Molloy, Human Trafficking Investigation & Co-ordination Unit Ms. Marion Walsh, AHTU Ms. Sinead Leyden, AHTU

13:00- 14:00

Address to Institute of International and European Affairs

14:15-15:00

Meeting with Protocol Division of the Department of Foreign Affairs & Trade

Attendees:

Ms. Orla O'Hanrahan, Incoming Chief of Protocol

Ms. Marion O'Donnell, Protocol Division, DFAT

Ms. Marion Walsh, Anti Human Trafficking Unit, Department of Justice and Equality