



COMPARATIVE REPORT
UPHOLDING RIGHTS!

Early Legal Intervention for
Victims of Trafficking

*The Immigrant Council of Ireland
in partnership with:
Bulgarian Gender Research Foundation
Klaipeda Social and Psychological Services Centre
Legal Services Agency
AIRE Centre
MONIKA Multicultural Women's Association*





Published by: Immigrant Council of Ireland
2 St. Andrew Street
Dublin 2, Ireland
Information Help Line: +353 1 6740200
Admin: +353 1 6740202
Email: admin@immigrantcouncil.ie
Website: www.immigrantcouncil.ie

Funding: Funded as part of the EC ISEC project Upholding Rights! Early Legal Intervention for Victims of Human Trafficking



Co-funded by the Prevention of and Fight against Crime Programme of the European Union

This project has been funded with support from the European Commission. This publication reflects the views only of the author, and the European Commission cannot be held responsible for any use which may be made of the information contained therein.

Written by: Dr Monica O'Connor

Edited by: Nusha Yonkova, Héilean Rosenstock-Armie and Mary Hillery

Printed by: Snap Dame Street

ISBN: 978-0-9570144-7-3

Copyright © 2015, Immigrant Council of Ireland

No part of this book may be reproduced or transmitted in any means, electronic or mechanical, including photocopying, recording, or by any information storage or retrieval systems without permission from publisher except for brief quotations used in critical reviews.

The information in this publication is provided in good faith and every effort is made to ensure that it is accurate and up to date. The Immigrant Council of Ireland (ICI) disclaims any responsibility for errors and omissions in the text. Any person relying upon this publication or using it in connection with any legal matter shall be deemed to have accepted these terms of use and shall not hold the ICI liable for the use or misuse of this publication or any of the information contained therein.

About the Author

Dr. Monica O'Connor

Dr Monica O'Connor is an independent researcher and policy analyst. She is the author and co-author of numerous publications on violence against women including 'Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland' (Kelleher Associates, O'Connor & Pillinger, 2009), which was commissioned by the Immigrant Council of Ireland. She has recently completed doctoral research on prostitution and trafficking for sexual exploitation in Ireland, funded by the Irish Research Council.

About the National Researchers

Ireland

Katie Mannion is a solicitor qualified to practise in Ireland, England and Wales. She trained as a solicitor in a private practice firm specialising in human rights and immigration law. Katie then held legal research and policy positions at Amnesty International Ireland and with a children's rights campaign, Stand Up for Children. Katie graduated from NUI, Galway with a Bachelor of Civil Law and from the University of Essex with a Masters in International Human Rights Law. She also holds a Certificate in Child Law from the Law Society of Ireland and diplomas in Legal French and Legal Irish. Katie works at the Immigrant Council of Ireland as a solicitor.

Lithuania

Dr Dalia Puidokiene has a Masters in social work from Klaipeda University. For her Masters she focused on violence against women, namely domestic violence. She went on to do a PhD where she focused on women involved in prostitution. She co-founded the non-government organisation, Klaipeda Social and Psychological Services Centre in 2003. The organisation offers psychosocial assistance to victims of trafficking, women involved in prostitution and other situations of violence against women.

Ieva Puškoriūtė is a solicitor and has a Masters in Law from Vilnius University specialising in International and European Union Law. Prior to working with Klaipeda Social and Psychological Services centre Ieva volunteered as a lawyer at the NGO Women's Issues Information Centre for two years where she provided legal aid regarding family and labour law for the victims of domestic violence. She also held an internship at the Lithuanian Consulate General in Chicago, USA. She has also participated in a European Human Rights Moot Court Competition.

England

Matthew Moriarty is a practising barrister and has a LLM Masters in Human Rights Law. He joined the AIRE Centre in July 2012. He has recently project managed their invisible migrants project, which aims to encourage EU institutions to focus on issues affecting vulnerable and marginalised EU citizens. He has previously managed the AIRE Centre's Strategic Litigation Project, which included their intervention before the Court of Justice of the European Union in the case of Saint Prix. Matthew has been heavily involved in the Centre's range of work on human trafficking having previously project managed the trafficking and domestic violence project. He regularly represents AIRE Centre clients in appeal hearings and he has worked on third-party interventions and litigation before UK courts, the European Court of Human Rights and the CJEU

Scotland

Kirsty Thomson is a qualified solicitor who has a Scottish law degree and a Masters in International Human Rights Law. She has been the head of the Women and Young Persons' Department of the Legal Services Agency for 8 years. The Department has 5 human rights lawyers who provide a specialist legal service to refugee and migrant women and young people with a specific focus on human trafficking. Kirsty is a member of various advisory, operational and working groups on issues relating to human trafficking. For the last 8 years, she has actively contributed to research, policy and training in these issues at a local, national and European level.

Bulgaria

Genoveva Tisheva is the Managing Director of the Bulgarian Gender Research Foundation (BGRF), as well as head of the Women's Human Rights Training Institute. She is a qualified lawyer specialising in civil law, human rights law and women's rights issues. The national research in Bulgaria was also conducted in consultation with Desislava Kaleova-Nikolova, a qualified lawyer and an advisor to the BGRF with expertise in legal research and analysis.

Finland

Jarna Tanskanen conducted the national research in Finland. She is a final year law student completing her masters at the University of East Finland, majoring in criminal law. She collaborated with MONIKA due to her particular interest in issues pertaining to migration.

Project Partners

The Immigrant Council of Ireland (ICI)

The Immigrant Council of Ireland (ICI) is an organisation where migrant and Irish people work together to provide information, support and legal advice to immigrants and their families. The ICI's Information and Referral Service deals with more than 10,000 enquiries from migrants and Irish people each year. The ICI is a licenced Independent Law Centre, which allows the ICI to provide legal representation to clients as well as doing important legal policy and lobbying work. Cases are taken on when they are of strategic importance and may result in legislative or procedural change, or when the client is particularly vulnerable, for example, a victim of human rights abuses in Ireland such as exploitation as a victim of trafficking. The scope of ICI's work has expanded over the past decade. The organisation's expertise has been sought for a number of different European projects; ground-breaking research in a number of crucial fields has been undertaken and has helped shape public policies and discourse. The ICI is very active in lobbying for legislative and policy reforms and has contributed to some very specific reforms, as well as to attitudinal change and improved understanding of issues facing migrants in Ireland.

The AIRE Centre

The AIRE Centre is a UK based charity whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights. Our work involves providing advice to individuals and legal advisers with regards to EU free movement law and the application of the European Convention of Human Rights. We also provide training to legal advisers and key stakeholders so as to increase awareness of using European Law to assist marginalised individuals. The AIRE Centre has previous experience in working on issues relating to human trafficking. We undertake UK based advocacy and litigation that specifically covers areas of law relating to human trafficking. We are currently managing two projects, in addition to our work on the ELI project, which tackle issues of Human Trafficking. Our project on sexually exploited and trafficked young people, funded by Comic Relief, has focused on providing training for advisors working with young victims. We have also been able to undertake a legal project on trafficking and domestic violence with funding from the Esmée Fairbairn Foundation.

Bulgarian Gender Research Foundation

Bulgarian Gender Research Foundation was founded in 1998. BGRF focuses on on research, awareness raising, education, monitoring and proposing legislation and policy in the field of gender equality and protection of women against violence in all its forms – domestic violence, trafficking in women and sexual harassment at the workplace. The BGRF participated in the elaboration of the Anti-Trafficking law in Bulgaria in 2003-2004 and in the elaboration of the NRM for protection of trafficking victims within the National Commission for Combating Trafficking in Human Beings in the period 2007-2009. The BGRF is a member of the Steering Group with consultative functions to the Commission.

Legal Services Agency (LSA)

Legal Services Agency (LSA) is Scotland's largest law centre tackling the unmet legal needs of those in disadvantage. It does so through the provision of legal advice, representation in courts/tribunals, research, publications, seminars and education. LSA undertakes work in protecting the rights of refugee and migrant women and children, preventing homelessness, defended eviction and mortgage repossession, mental health, dementia and social welfare law. In the area of human trafficking, the LSA has a specific remit to provide an enhanced legal service to victims of human trafficking. In the last year, the Department worked with 78 women and young people who disclosed that they were victims of human trafficking. In terms of policy and research, the Department is part of national and local working groups on this issue working in partnership with key statutory and non-statutory partners. It is a member of the Sub Group on Victim Care and Support which feeds into the Scottish Government Progress Group on Human Trafficking. It is also a member of the Cross Party Group on Human Trafficking in the Scottish Parliament.

Klaipeda Social and Psychological Services Centre, Lithuania

Klaipeda Social and Psychological Services Centre, Lithuania has a vision where women, children, and families are socially and psychologically safe. In order to meet the social security and mental health needs of children, youth, women, and families the centre provides professional staff and volunteers. In addition, the centre raises civil responsibility. The centre works in cooperation with National and international NGO's, along with the Department of Social Support in the Klaipeda Municipality.

MONIKA – Multicultural Women's Association

MONIKA – Multicultural Women's Association, Finland operates as the umbrella organisation for several associations for women of ethnic minorities. Monika supports efforts to enhance cultural tolerance and promote a safe everyday life for everyone. Monika supports the well-being of migrant women in different forms. Monika encourages migrant women to participate actively in social issues and provides services and guidance to victims of domestic violence. Further, Monika actively lobbies decision makers and provides training to social and health professionals. The Association has an expert role in addressing issues around multiculturalism, ethnic relations, empowerment, social integration as well as violence towards migrant women.

Centre for Women War Victims, Croatia (CWWV)

Centre for Women War Victims, Croatia joined the present EC project in late 2014, replacing MONIKA Finland, and has not therefore participated in the national research activities. (CWWV) is a non-governmental, feminist organisation, founded in 1992 with the aim of supporting women in opposing war violence against women. As one of the oldest women's organisations in Croatia, the work focuses on public awareness and promoting women's rights through direct aid to women, sharing knowledge and experience, networking with women's organisations and lobbying to influence state institutions and legislation in favour of women.

Explanatory Note

Devolved powers in the UK and Scotland

The countries which make up the United Kingdom operate on a devolved basis. Devolved powers are statutory powers granted to the Parliaments and Administrations of Northern Ireland, Scotland and Wales. “Reserved powers” are those decisions that remain with the UK Parliament and government at Westminster. Westminster is also responsible for legislation and policy in England on all the matters that have been devolved. In terms of International and European legal standards, it is the UK Parliament which ratifies these on behalf of the UK and thus Scotland is bound by such ratifications. In terms of interventions in the area of human trafficking, immigration is a reserved matter. Consequently, Trafficking in Human Beings and the formal identification of victims of trafficking through the National Referral Mechanism are viewed by the UK government to fall within the area of immigration, and is therefore a reserved matter. Criminal law, victim care, education, health and the safeguarding and protection of children is devolved. In addition, Scotland has its own unique law enforcement, legal and justice system which differs to the rest of the UK. In terms of ELI, victim care and the provision of legal advice is the responsibility of the Scottish Government. Furthermore, there remains a difference in the service provision within Scotland from the rest of the UK.

TABLE OF CONTENTS

Foreword	10
Acronyms	12
Section 1: Introduction	13
1.1 European legal and policy context	13
1.2 International instruments	13
1.3 Upholding Rights! Early Legal Intervention (ELI)	14
Section 2: Methodology	16
2.1 Methodological tools	16
2.2 Interviews with key stakeholders	16
Section 3: International instruments and European directives	17
3.1 Ratification and transposition	17
3.2 International and European monitoring	19
3.2.1 Identification of victims of trafficking	20
3.2.2 Assistance and protection	20
3.2.3 Legal rights	20
3.2.4 The needs of children	21
3.2.5 Prosecution	21
3.2.6 Multi-agency cooperation, training and education	22
3.2.7 Monitoring and evaluation	22
3.2.8 Specific areas highlighted for individual MS	22
3.2.9 Conclusion	23
Section 4: National legislation and identification of VoT	24
4.1 National legislation	24
4.2 National structures and frameworks	24
4.3 The identification of victims of trafficking	25
4.4 Recovery and Reflection periods and Temporary Residence Permits	27
Section 5: Service responses	29
5.1 Definitions and indicators used by agencies	29
5.2 Specialist services	29
5.3 Children	30
5.4 Services providers and legal advice	30
Section 6: Access to legal aid and legal intervention	31
6.1 Access to state legal aid	31
6.2 Legal rights of children	32
6.3 The complexity of trafficking cases and access to specialised legal practitioners	33
6.4 Benefits of early legal intervention for victims of trafficking	34
6.5 Benefits of early legal intervention for the work of organisations	35
6.6 Location and timing of early legal intervention	35

Section 7: Training, inter-agency cooperation and monitoring	36
7.1 Training and inter-agency cooperation	36
7.2 National rapporteurs	36
Section 8: Conclusions and recommendations	37
8.1 Conclusions	37
8.2 Recommendations	38
8.2.1 Identification	38
8.2.2 Early legal intervention	38
8.2.3 Service provision	39
8.2.4 Training and education	39
8.2.5 Interagency work	39
8.2.6 Research	39
Appendix 1:	
Policy Template for ISEC/ELI	41
Appendix 2:	
Draft Interview Schedule	45

IMMIGRANT COUNCIL OF IRELAND

Foreword

Much of the public, media and political debate on the crime of human trafficking focuses on finding the guilty and making them face justice - this is hardly surprising given the extent of this trans-national crime and the ruthlessness shown by those behind it.

However it is important to remember that human trafficking is not a victimless crime, and that our policymakers, our courts and society as a whole must equally focus on the victims.

In a traumatic state they are often left stranded in a foreign country, with a distrust of the police and state agencies and unaware of their internationally recognised rights.

This publication, under the Early Legal Intervention (ELI) project, is an opportunity to correct the policy imbalance to ensure that countries give as much resources to upholding victims' rights as they do in jailing the guilty.

Our comparative study across six countries shows that while there is broad agreement on the benefits of early legal advice and representation being granted to victims there remains numerous gaps in implementation.

This report indicates there are no formal routes, protocols or procedures to ensure early legal intervention is always provided.

Key recommendations arising from this work include the need for standardised criteria across the EU on indicators, grounds and mechanisms for the formal identification of victims.

Together with our partners we are committed to the early legal intervention route as a mechanism for ensuring the non-criminalisation of victims and their compensation for the serious crimes committed against them.

The needs for greater education and training and closer inter-agency cooperation are also addressed. By making public authorities, medical staff and care professionals more aware about the indicators of trafficking and about the importance of early legal intervention, we will be able to reach out to more victims and ensure that they receive adequate and timely legal support.

The report also notes the low level of convictions for human trafficking and recommends further research to establish why this is the case. We believe that by upholding victims' rights we can help increase conviction levels – as it will make victims far more confident in providing testimony and evidence against their abusers.

Many of the recommendations do strike a chord with frontline agencies such as the Immigrant Council of Ireland. International criticism of Ireland's shortfalls in the areas of victim identification and accommodation has come from a range of quarters including the Council of Europe, the OSCE and the annual Trafficking in Persons Report from the US state Department.

Finally, we want to acknowledge the extra-ordinary cooperation between our partners in the ELI project and the financial support of the European Commission in producing what is a substantial body of work.

We believe this publication is an important contribution to a debate which Europe needs to have if it is serious in assisting those most affected by one of the fastest growing crimes of our time.

Denise Charlton

CEO Immigrant Council of Ireland

Nusha Yonkova

Anti-Trafficking Manager Immigrant Council of Ireland

Acronyms

BRGF	Bulgarian Gender Research Foundation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoE	Council of Europe
EC ISEC	European Community, Prevention of and Fight against Crime
EEA	European Economic Area
ELI	Early Legal Intervention
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICI	Immigrant Council of Ireland
ILO	International Labour Organisation
IOM	International Organisation for Migration
KSPSC	Klaipeda Social and Psychological Services Centre
LSA	Legal services Agency
MS	Member State(s)
NGO	Non-Government Organisation
NRM	National Referral Mechanisms
OSCE	Organisation for Security and Cooperation in Europe
R&R	Recovery and Reflection
TIP	Trafficking in Persons
TRP	Temporary Residence Permission
UNODC	United Nations Office on Drugs and Crime
VoT	Victim(s) of Trafficking

Section 1: Introduction

1.1 European legal and policy context

The European Union has increasingly adopted measures which seek to strengthen the protection of victims of trafficking (VoT) and their right to legal intervention and legal representation. Directive 2011/36/EU (replacing Council Framework Decision 2002/629/JHA) is the most recent indication of the commitment of the European Union to addressing human trafficking from a rights based perspective. Article 12(2) requires States to ensure that victims have access without delay to legal counselling and legal representation, including for the purpose of claiming compensation which should be provided free of charge if the victim does not have sufficient financial resources. Member States (MS) shall also ensure that victims receive appropriate protection on the basis of an individual risk assessment, inter alia by having access to witness protection programmes or other similar measures. The Directive supplements a range of European level measures designed to combat trafficking in human beings. Of particular interest to this initiative are Council Decision 2007/125/JHA “Prevention of and Fight against Crime” which in Article 3 (2) (c) and (d) seeks to ‘promote and develop best practices for the protection and support of witnesses and for the protection of crime victims’; EU Directive 2004/81/EC regarding the issuing of residence permits to third-country nationals who are VoT or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; EU Directive 2004/80/EC relating to compensation to crime victims; and EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

1.2 International instruments

EU Directives on the legal rights of victims reinforce a number of provisions within international instruments. Article 6 of the UN Palermo Protocol contains a general commitment to the provision of information to VoT on court proceedings and assistance in enabling their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders. The Council of Europe (CoE) Convention states in Article 12 that State Parties shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. The article is clear that

‘such assistance shall include at least counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand and assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders shall be provided’

It is important to note that assistance to a victim is not to be made conditional on his or her willingness to act as a witness. In relation to compensation and legal redress Article 15 of the CoE Convention states that parties shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand. The right to legal assistance and to free legal aid shall be ensured within internal law including the right of victims to compensation from the perpetrators.

Article 12 of the EU Directive has been welcomed in a joint communique from international human rights bodies, as reflecting Principle 9 of the Office of the High Commissioner on Refugees (OHCHR) Recommended Principles on the critical importance of providing ‘legal and other assistance to trafficked persons for the duration of any criminal, civil or other actions against their exploiters’.¹ They recognise the key role that a VoT can play in the conviction of traffickers but that they also emphasise the special needs, vulnerabilities and risks pertaining to victims’ involvement in criminal cases:

‘free quality legal assistance... as soon as there are reasonable grounds for believing that the person might be a victim of trafficking is in the interest of Member States, as it can help ensure that protection needs are identified early and accurately, and may help secure voluntary participation in criminal investigation and proceedings’.

These international bodies particularly welcome that Article 12 ensures that access to free legal aid and legal assistance is provided without delay and should be provided by qualified lawyers in a language that the victim understands. In transposing the directive they recommend that MS are: encouraged to clarify the legal nature of the counselling provided to victims under this article; that legal counselling and assistance be free of charge as a rule; and that access to free legal aid is not restricted to criminal proceedings but covers all legal proceedings related to the person’s victim status, including criminal, civil or labour procedures for the purpose of compensation, as well as proceedings in relation to immigration status or asylum.

1.3 Upholding Rights! Early Legal Intervention (ELI)

Despite these international instruments and numerous European directives, the EU Strategy towards the Eradication of Trafficking in Human Beings 2012 recognises that there continue to be significant difficulties in relation to the provision of information to VoT regarding their rights in MS. They state that over the past number of years correspondence to the Commission has highlighted a number of problems that VoT are confronted with in relation to:

‘contacting the appropriate authorities or organisations in order to receive clear information on their rights to assistance and health care, their right to a residence permit and their labour rights, their rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation’

Accordingly, Priority A, Action 4(4) states that the Commission is committed to the provision of

‘clear, user-friendly information on the labour, social, victim and migrant rights that victims of trafficking in human beings have under EU law. As a follow-up, the Commission will help Member States provide and disseminate similar information at national level in 2014’.

Within this context the EC ISEC funded Upholding Rights! Early Legal Intervention (ELI) project is timely in seeking to examine whether these theoretical commitments translate into effective, measurable outcomes for VoT. This transnational project aimed to identify and analyse ELI for VoT in five member states namely

¹ Prevent, Combat, Protect Human trafficking: Joint UN Commentary on the EU Directive – A Human Rights-Based Approach (2011) Office of the Human Rights Commissioner of Refugees (OHCHR), United Nations High Commission for Refugees (UNHCR), UNICEF, United Nations Office on Drugs and Crime (UNODC), UN Women and the International Labour Organisation (ILO).

Bulgaria (BG), Finland (FI)², Ireland (IE), Lithuania (LIT) Scotland and the United Kingdom (UK). The project set out to develop models of best practice regarding the provision of ELI which will be transferable across MS. The concept of ELI incorporates the provision of confidential legal counsel and advocacy at first encounter between victims and authorities, risk assessment of immediate protection needs, decision on the best/most appropriate route for protection by the State, ensuring the obtaining of recovery and reflection (R&R) prior to interviews, assessing criminalisation risks e.g. immigration offences, alternative protection routes in case the exploitation is not part of a human trafficking crime, in the full legal term.

The project recognised that in order to analyse ELI in the six member states it was necessary to gather an overall picture of the response to trafficking and how legal aid and legal intervention functioned within that. Consequently, this comparative research report examines a number of aspects of the legislative and policy frameworks in each country including the ratification and transposition of international instruments and European directives; national legislation and national structures to address trafficking; the identification of VoT and the provision of services; the right to legal aid and legal intervention; training and inter-agency cooperation; monitoring and evaluation. The findings of this report will inform the development of a model of best practice and three pilot projects on ELI.

It is intended that the outcomes of this project will impact on national and EU anti-trafficking responses to enhance the support and protection of victims, including their key role as witnesses and to improve the civil society/state cooperation in upholding the victims' human rights. The project builds on this international consensus that the fight against trafficking must include a rights-based approach to protection of the victims and supports the development of prompt collaboration between the State and civil society in upholding the rights of victims.

² Due to changed circumstances, the Finish project partner MONIKA Multicultural Women's Association had to withdraw from the project at the end of the research phase and was replaced by the Croatian organisation ROSA Centre for Women War Victims with the approval of the European Commission.

Section 2: Methodology

2.1 Methodological tools

The primary methodological tools of the project for producing this report for the ELI project were:

- Policy and legislative template completed and returned by the six original partners
- Consultation day with the six partners of the project
- Interviews with key stakeholders in each country who have a remit in relation to trafficking
- Six national reports

A template was designed focussing on the wider legislative and policy context and legal systems in relation to trafficking and was sent to the six original partners who completed and returned it to the researcher (Appendix 3). A consultation process was then conducted in Dublin firstly, to ensure that the template had fulfilled the purpose of presenting an overall and accurate picture of the response to trafficking across the six countries. Secondly, the consultation aimed to facilitate discussion and build agreement on the gathering of baseline data through interviews with key stakeholders. This ensured clarity and consistency in relation to the data that should be gathered and those who should be interviewed in each country. It was agreed that a broad range of interviewees would be approached in order to reflect the spectrum of agencies and organisations that are involved in the identification, protection, care and support of victims of trafficking and prosecution of offences in each country with a particular focus on ELI. The optimum method was considered to be face-to-face semi-structured interviews but it was accepted that in some cases it would be necessary to conduct the interviews by phone or by e-mail. Based on this consultation, the researcher designed an interview schedule which acted as a guide for the interviewers (Appendix 4).

2.2 Interviews with key stakeholders

Between five and seven interviews were carried with key stakeholders in each country. The baseline data gathered from interviewees, combined with the data gathered for the policy templates was enhanced by current research and formed the basis of a national report from each partner which were sent to the researcher. The researcher also requested that each partner complete the interview schedule to ensure that the work of the partners would be fully captured and included. This data was compiled and a comparative analysis was conducted by the researcher. The findings of this research are presented in the following sections of this report. These findings are not exhaustive and cannot capture the detail and nuances of each individual state response to trafficking. However, they draw together a comprehensive picture in relation to the overall response and in particular to ELI across the six countries.

Section 3: International instruments and European directives

3.1 Ratification and transposition

Ratification of the UN Protocol, the CoE Convention and the relevant articles in CEDAW has been a relatively smooth process in the six countries. In relation to the EU Directives, as Table 1 indicates all six have transposed EU Directive 2011/36/EU and EU Directive 2004/80/EC relating to compensation to crime victims. Although Lithuania is the only country to have transposed EU Directive 2012/29/EU, the other five states are committed to doing so by 2015. However, in relation to EU Directive 2004/81/EC regarding residence permits issued to third-country nationals, it is worth noting that Finland, Ireland the UK (and thus Scotland) have opted out of this Directive, whilst Bulgaria and Lithuania are committed to transposition but are awaiting amendments to existing laws.

Table 1: Ratification and transposition timetable

UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime [The UN Protocol]		
Country	Signed	Ratified
Bulgaria	13.12.2000	05.12.2001
Finland	12.12.2000	07.09.2006
Ireland	13.12.2000	17.06.2010
Lithuania	25.04.2002	25.12.2003
Scotland	12.12.2000	09.02.2006
UK	12.12.2000	09.06.2006

Council of Europe Convention on Action against Trafficking in Human Beings [The Trafficking Convention]		
Country	Signed	Ratified
Bulgaria	22.11.2006	17.04.2007
Finland	29.08.2006	30.05.2012
Ireland	13.04.2007	13.07.2010 ³
Lithuania	12.02.2008	26.06.2012 ⁴
Scotland	23.03.2007	17.12.2008
UK	23.03.2007	17.12.2008

3 Criminal Law (Human Trafficking) (Amendment) Act 2013 and Administrative Immigration Arrangements for the Protection of Victims of Trafficking

4 Article 147 of the Criminal Code of the Republic of Lithuania was amended on 30 June 2012 adding Article 147 (3) which indicates new measures on service provision and criminal penalties

EU Directive 2011/36/EU to combat and prevent human trafficking and protect its victims [The Trafficking Directive]	
Country	Transposed
Bulgaria	Transposed
Finland	Transposed
Ireland	Transposed
Lithuania	Transposed
Scotland	Transposed
UK	Transposed

EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA		
Country	Transposition	Expected date
Bulgaria	Not transposed	
Finland	Not transposed	2015
Ireland	Not transposed	16.11.2015
Lithuania	Transposed	
Scotland	Not transposed	16.11.2015
UK	Not transposed	16.11.2015

EU Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities	
Country	Transposition date
Bulgaria	Not fully transposed ⁵
Finland	31.07.2006
Ireland	Not transposed/Opted out
Lithuania	16.12.2006 ⁶
Scotland	Not transposed/Opted out
UK	Not transposed/Opted out

⁵ Relevant law on asylum and refugees: Prom. SG. 54/31 May 2002, amend. SG. 31/8 Apr 2005, amend. SG. 30/11 Apr 2006, amend. SG. 52/29 Jun 2007.

⁶ Amendments to the law on the Legal Status of Aliens due to this directive, especially regarding the appeals of the decisions concerning the legal status of aliens in Lithuania.

EU Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims	
Country	Transposition
Bulgaria	22.12.2006 EIF:01.2007 ⁷
Finland	01.01.2006
Ireland	01.06.2006 ⁸
Lithuania	01.03.2009 ⁹
Scotland	01.01.2006
UK	01.01.2006

CEDAW		
Country	Signed	Ratified
Bulgaria	17.07.1980	18.02.1982
Finland	17.07.1980	04.09.1986
Ireland		23.12.1985
Lithuania	18.01.1994	08.09.2000
Scotland	22.07.1981	07.04.1986
UK	22.07.1981	07.04.1986

Ratification and transposition of international and European instruments and directives has brought about the introduction of comprehensive legislative and policy frameworks on trafficking in all MS of the European Union, which has resulted in the identification, protection and support of thousands of victims. However, international and European monitoring bodies have continued to identify the gaps in implementation and the need for improved measures which can effectively fulfil MS obligations in relation to VoT.

3.2 International and European monitoring

The most recent reports from key international and European monitoring bodies were considered in relation to reviewing implementation in the six countries namely the most recent reports from the committee for monitoring the Convention to Eliminate All Forms of Discrimination against Women (CEDAW); the Group of Experts on Action against Trafficking in Human Beings (GRETA) responsible for monitoring implementation of the CoE Convention; the Organisation for Security and Cooperation in Europe (OSCE); and the Trafficking in Persons reports (TIP) from the U.S. Department of State. The following are some of the key issues raised in relation to further progress needed in the six countries under review to ensure better outcomes for victims of trafficking and the prevention and prosecution of trafficking.

- ⁷ Crime Victim Assistance and Financial Compensation Act Promulgated in State Gazette, No. 105/22.12.2006
- ⁸ New legislation not considered necessary as “Implemented via the existing national scheme of compensation for personal injuries criminally inflicted. Operated by the Criminal Injuries Compensation Tribunal, CICT”.
- ⁹ New law introduced on Compensation for Damage Caused by Violent Crime

3.2.1 Identification of victims of trafficking

A considerable emphasis is placed by all monitoring bodies on the need to intensify efforts to identify all victims proactively, including victims of labour trafficking and children in prostitution. Review bodies consistently highlight the need for improvement in a number of areas and recommend that MS should:

- Enhance and formalise the role and input of specialised NGOs in identifying potential victims
- Improve National Referral Mechanisms (NRMs) and increase cooperation between law enforcement and NGOs
- Proactively screen for indicators of trafficking in asylum and immigration settings
- Ensure authorities make prompt determinations of potential victims' eligibility for services, irrespective of criminal proceedings
- Guarantee that in practice, identification is dissociated from the suspected victim's cooperation in a criminal investigation

3.2.2 Assistance and protection

It is acknowledged by all the monitoring bodies that the MS have made considerable progress in the delivery of services to and protection of VoT. However, a number of inadequacies are identified and recommendations focus on the need to ensure that all assistance measures provided for in law are guaranteed in practice. States should:

- Provide adequate assistance and protection to all victims, including those who do not cooperate with the police or the authorities
- Ensure that all trafficking victims are offered access to appropriate shelters which recognises the potential risks of mixed shelters and affords sufficient safety and privacy
- Provide sufficient funding for NGOs to ensure the quality of assistance and support services and adopt minimum standards for services
- Facilitate the reintegration of victims into society and avoid re-trafficking by providing them with vocational training and access to the labour market
- Examine the possible vulnerabilities posed by residence permits that are valid only for one employer
- Review the appropriateness of existing voluntary return programmes

3.2.3 Legal rights

The importance of legal advocacy and representation for VoT is recognised in the six states and a number of rights and provisions have been enshrined within national legislation which will be further discussed in this report. Monitoring bodies recommend that MS must:

- Improve the provision of legal advice or assistance to victims on various matters including the NRM, asylum systems, criminal proceedings and compensation
- Ensure that all trafficking victims are, in practice, able to access available legal services and that legal advice and legal aid is provided as soon as there is an indication of trafficking
- Take legislative action to prohibit the prosecution of trafficking victims for acts committed as a direct result of their being trafficked or for immigration-related offences

- Establish a review mechanism to ensure that victims are not punished for their involvement in crimes which they have been compelled to commit as a direct consequence of being trafficked
- Ensure that access to necessary services is available for potential victims who are incarcerated, detained in immigration detention centres, police cells, or prisons and/or charged with immigration violations
- Ensure potential trafficking victims are provided with information about their rights in a language they can understand
- Establish compensation mechanisms for VoT irrespective of their nationality and residence status and provide legal representation regarding the right to compensation

3.2.4 The needs of children

A great deal of emphasis is placed on the special needs of children who have been trafficked and their rights in all the reports. MS are urged to ensure the primacy of a child-sensitive and child rights-based approach to all aspects of anti-trafficking policies and action. In particular they should:

- Ensure that the special needs and circumstances of child victims of trafficking are taken into account during identification and conduct interviews in a child-friendly setting
- Train all professionals working with child victims of trafficking to recognise and respond appropriately to their needs
- Provide 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
- Establish a system of guardianship for all unaccompanied minors and ensure that unaccompanied children are not returned from entry points before being fully assessed by local authority children's services
- Improve assistance to child victims of trafficking, both in terms of secure accommodation and as regards medium and long-term support programmes tailored to the needs of the children

3.2.5 Prosecution

States are urged to enhance their efforts to successfully prosecute and convict trafficking offences. MS should:

- Enhance efforts to investigate, prosecute, and convict trafficking offences, including labour trafficking offenses
- Ensure adequate penalties are in place and that the vast majority of convicted offenders receive custodial sentences
- Ensure that law enforcement priorities to combat organized crime are effectively balanced with a victim-centred response to protect trafficking victims

3.2.6 Multi-agency cooperation, training and education

The monitoring bodies recognise the level of multi-agency cooperation, training and public awareness programmes that some MS have engaged in. They recommend that MS should continue to:

- Establish national trafficking coordinators who can facilitate more effective multi-agency cooperation among different governmental entities
- Deliver on-going training on trafficking for all personnel within health and social services in order to improve identification and treatment of VoT
- Ensure effective training of law enforcement officers, prosecutors, and judges in order to improve detection rates, prosecution and sentencing
- Actively take measures to raise awareness of the issue and discourage demand

3.2.7 Monitoring and evaluation

The role of national monitoring and evaluation is increasingly recognised as critical in order to ensure that the actions by MS, in practice, deliver effective rights and outcomes to VoT. In this regard they should:

- Broaden cooperation with NGOs in implementing and monitoring the NRM for victims of trafficking
- Establish national rapporteurs who can independently monitor progress and assess the human rights impact of anti-trafficking policy and legislation
- Ensure that NGOs are facilitated to provide comprehensive, critical feedback and recommendations
- Develop comprehensive and coherent data collection systems and statistical information

3.2.8 Specific areas highlighted for individual Member States

The general recommendations above reflect common issues highlighted across the six countries, but specific areas of concern were also identified relating to individual states which are worth noting because they raise particular issues which are likely to apply to many other MS.

In the CEDAW reviews and in some TIP reports on Bulgaria, Lithuania and Finland, specific reference is made to the role of the state in relation to addressing sexual exploitation through prostitution. Bulgaria is urged to

‘Pursue a comprehensive approach in addressing the exploitation of prostitution, including by developing strategies to prevent prostitution and implementing programmes to support and provide rehabilitation for women who wish to leave prostitution, and focus on the investigation, prosecution and punishment of those who exploit prostitution’

Regarding Lithuania, the criminalisation of women in prostitution is highlighted and the state is asked to *‘continue the program of prevention, control and reintegration of prostitution and human trafficking victims to the society and the labour market, also including the preventive and educational measures into it cancel the existing fines for women in prostitution’*. The geographic factors which pertain to specific regions is highlighted by CEDAW and TIP in relation to Finland noting prostitution coming from the Baltic countries and Russia and that Finland is both a destination and transit country. Finland is urged to:

Intensify its efforts to increase cooperation between national and international authorities and the authorities of other countries especially of the Russian Federation and the Baltic countries.

In reviewing Ireland TIP, GRETA and the OSCE strongly criticise the Irish government for a policy whereby those people within the asylum process who are suspected VoT are not afforded R&R periods or TRPs. TIP suggests that Ireland needs to:

Consider policy or legal changes to ensure all potential trafficking victims are afforded a reflection period, regardless of immigration status, to recover before making an informed decision about whether to assist law enforcement.

GRETA specifically addresses the fact that the majority of victims of trafficking in Ireland are denied the benefits of a R&R period because they are asylum seekers or EEA nationals which results in the R&R period being rarely applied and urges the Irish authorities to ensure that *'all the measures of protection and assistance envisaged in Article 12 of the Convention during this period'*. The OSCE recommends a review of the current system in relation to the trafficking victim support system and the asylum procedure and insists that all VOT 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'*.

Recommendations to the UK and Scotland from TIP highlight the issues of services to victims prior to engagement with police and allowing access to employment stating that the UK should:

Consider introducing a "pre-reasonable grounds" decision period in which potential victims can access services before having to engage with police and immigration officer....and allow trafficking victims the right to seek employment while cooperating in the prosecution of their traffickers.

The issue of labour exploitation within the domestic and agriculture sectors is raised by the OSCE:

Labour exploitation could be further prevented by enhancing the role of the Gangmasters Licensing Authority and extending its competence to sectors other than agriculture. To prevent domestic servitude, domestic workers should be allowed to change employer, including when they are employed by diplomats.

3.2.9: Conclusion

The role of external monitoring mechanisms is critical in ensuring that MS comply with their obligations under European and international directives. The reports recognise the commitment of states to addressing the issue of trafficking but they also play a vital role in highlighting the continuing failures in relation to implementation. Whilst each MS has a unique legal and policy framework, it is clear from the reporting bodies there are common issues and challenges across all six countries in relation to identification and support for VoT and the prosecution of traffickers. Holding states accountable demands a continued rigorous examination of the practice and the outcomes within each MS to which this project aims to contribute. It is expected that the transposition of the 2011/36/EU will be assessed in the near future, which will result in recommendations and if necessary infringement procedures with regard to MS that have not implemented the European law as intended.

Section 4: National legislation and identification of VoT

4.1 National legislation

Obligations under international instruments and European directives have led to the introduction of dedicated laws on trafficking and/or the amendment of national laws in all MS of the EU. In Bulgaria, Finland, Ireland and Lithuania dedicated legislation has been enacted and laws are currently being drafted in the UK and Scotland. The definition and the forms of trafficking included in the trafficking legislation reflect the UN Palermo protocol and contain severe penalties ranging from two to fifteen years for convicted offenders. Provision is made for imposing heavier sentences which take into account additional elements including the use of severe violence, placing someone at risk of death, the age and mental capacity of a victim, the number of people trafficked and trafficking by a public authority/figure, which for example in Ireland can result in the imposition of a life sentence.

The rights of VoT to receive counselling accommodation and material support are enshrined in legislation in Finland, Bulgaria and Lithuania. The Finnish trafficking legislation, for example, specifically outlines the entitlement of VoT to legal and other advice, crisis support, social and health services, translator services and even specifies that the victim should be given enough money to ensure a reasonable quality of life. On the contrary, in Ireland, even though there is dedicated trafficking legislation, the protection and rights of victims are not included in the law and are therefore dependent on a temporary policy document entitled 'Administrative Immigration Arrangements for Victims of Trafficking'.

In relation to the UK and Scotland various provisions within criminal law have been used to address trafficking but to date no dedicated laws have been enacted. However, The Modern Slavery Bill is currently going through the UK Parliament and a dedicated Human Trafficking Bill is currently under negotiation in Scotland. The details of this Bill are not yet known but the Scottish Government has indicated that it will be a progressive, victim centred Bill which will consolidate and strengthen existing criminal law against human trafficking including aggravating factors; enhance the status of and support for the victims of trafficking; give statutory responsibility to relevant agencies to work with the Scottish Government to develop and implement a Scottish Anti-Trafficking Strategy.

The rights of child victims of trafficking are specifically covered where dedicated trafficking legislation has been enacted and severe penalties are in place for offences relating to child trafficking, including the sexual exploitation of children through prostitution and pornography and forced labour. Besides trafficking legislation, the rights of children are also protected within child protection and child care legislation in all countries.

4.2 National structures and frameworks

National structures have been established in the six countries which are located within central government and have a mandate for the development and implementation of state policy and the coordination of responses to trafficking. Overall responsibility for the areas of prevention, protection and service provision fall within their remit, and they liaise with the key statutory and NGO sectors to ensure a comprehensive

and co-ordinated approach to the identification of VoT and the provision of adequate protection and support. National coordination structures also play a key role in the gathering and dissemination of data. The police forces of all six countries have established dedicated units to investigate and prosecute trafficking offences with an increasing number of police officers developing specialist expertise in the area.

4.3 The identification of victims of trafficking

The increased identification of VoT is a stated priority of the EU which has resulted in national structures and frameworks being established in all MS. The importance of identification is critical for victims in establishing their entitlement to rights, even though some of those rights may be accessible without being formally identified by the state. In theory, international and European legal standards are clear that being afforded the formal status of a VoT should not define whether someone is or is not in fact a VoT, and accordingly eligible for assistance and protection. As LSA in Scotland stress:

Where an individual meets the definition of a victim of human trafficking, they are to be recognised as a victim with all the rights and responsibilities that this entails. This is because such rights do not stem from a formal status conferred on a victim but from the victim's experiences.

But in practice, formal identification does have a significant impact in relation to accessing rights and services and in particular for third country nationals in being granted or refused R&R periods and TRP with all the legal rights accruing from these permits, including welfare support, accommodation, access to education and employment long-term residency rights. As KSPSC states:

Identification of women as VoT is crucial, since practice shows that unless they are identified as a VoT, the woman has no right to legal protection, and this constitutes a violation of human rights.

NGOs, state agencies, police and border authorities all play a critical role in the early recognition of the indicators of trafficking and in the identification of potential and suspected VoT in MS. However, as Table 2 indicates the power or competence to *formally* identify a VoT rests with State authorities in five of the six countries, in particular police, and in cases where there is an immigration issue, border control and immigration authorities. National frameworks for the referral of potential/detected/suspected VoT into state authorities for formal identification, assistance and protection, NRM, have been established in most countries.

Table 2: Authorities with the power to identify victims of trafficking and National Referral Mechanisms (NRM)

Country	State Authority with power to identify VoT	NGO Identification	NRM	Formal MOU	Referral Form
Bulgaria	National Anti-Trafficking Commission/Ministry of Interior Structures/Police	No	Yes	Yes	Yes
Finland	National Assistance System/ Police/Border control	No	No ¹⁰	No	No
Ireland	Garda (Police) National Immigration Bureau	No	Yes	No	No
Lithuania	Ministry for the Interior/Police/ NGOs	Yes	Yes	No	No ¹¹
Scotland	UK Human Trafficking Centre/ UK Visas and Immigration	No	Yes	No	Yes
UK	UK Human Trafficking Centre/ UK Visas and Immigration	No	Yes		Yes

In Lithuania, a victim can be identified by NGOs and receive assistance and support *prior* to being referred to or identified by the state authorities. However, in order to have access to adequate legal protection and compensation the status of the VoT has to be established by court proceedings which results in a limited number of positive outcomes, far fewer than the number of persons identified by NGOs. In some countries there are referral forms in place in order for services to make a formal referral to the authorities but there are no formal, written agreements or memoranda of understanding (MOU) except in Bulgaria.

Undoubtedly, the introduction of NRM (or equivalent structures) has resulted in improved coordination and cooperation between the statutory and NGO sectors in the identification of VoT and the referral of an increasing number of detected/suspected VoT to state authorities. However, respondents highlighted major differences between the number of detected/suspected victims by NGOs and other services, the number of people referred to NRM and/or state authorities and the number of VoT who are officially identified by the state. Some respondents expressed concern at the developing practice of not referring some vulnerable and exploited persons into the NRM in the first place, as the service provider is aware that the criteria for VoT identification is unlikely to be met, and there will be a negative decision. Lithuania highlighted the particular needs of women exploited in prostitution who are not being identified as VoT because of the difficulty of proving non-consent especially where the tactics of traffickers do not necessitate direct violence and coercion. Furthermore, a number of respondents raised concerns that once a referral has been made, there is a lack of transparency in relation to positive and negative decisions with very little information being given by the state authorities, on the grounds for refusing identification.

¹⁰ Although there is no structure named as a NRM in Finland, detected/suspected VoT are referred into a National Assistance Programme for identification, assistance and protection by the state, which effectively operates as an NRM.

¹¹ A referral form is being developed

In Finland, victims of similar crimes to human trafficking can be admitted to the national assistance programme system which includes aggravated prostitution, extreme work discrimination, and aggravated arrangement of illegal immigration. The national assistance centre also stated that every time they make a decision to reject an individual, they try to make sure that the person is nevertheless guided to the right services, and that their basic needs are always met. However, it would appear that overall there is scant information on the outcomes for those who are identified as experiencing severe exploitation in MS but who do not fit within the definition of trafficking.

4.4 Recovery and Reflection periods and Temporary Residence Permits

R&R periods are issued to a person who is suspected to be a VoT on application to the relevant authority and TRP are subsequently issued to those VoT who are deemed to require permission to have residency in the State. As Table 3 indicates there are variations in length of time of these periods and permits and the conditions under which they are granted in the six countries:

Table 3: Issuing of permits

Country	R&R period	Flexible/ can be extended	Dependent on cooperation with police	TRP	Renewable	Dependent on cooperation with police
Bulgaria	30 days	Yes	No	30 days	Yes	Yes
Finland	30 days	Yes	No	6 months-1 Year	Yes	Yes
Ireland	60 days	No	No	6 months	Yes	Yes
Lithuania	30 days	Yes	No	6 months	Yes	Yes
Scotland	45 days	Yes	No	366 days	Yes	No
UK	45 days	Yes	No	366 days	Yes	No

As we can see, R&R, and thus rights to VoT specific services, may be granted while considering cooperation with the police and criminal investigations in all states except Ireland where the preclusion of EEA nationals and asylum seekers from the considerations for R&R make the systems extremely restrictive. In Ireland, identification and the issuing of all permits rests solely with the Garda Superintendent in the Garda National Immigration Unit, so cooperation with the police is a pre-requisite for the issuing of any R&R. Secondly, those within the asylum system (as highlighted by GRETA) are not formally identified and therefore not granted R&R periods as they are deemed to have existing permission to remain in the State.

Whilst the Irish State has stated that no potential or suspected VoT will be deported, there are negative consequences for the asylum seeking VoT of not being issued with permits. As GRETA has highlighted, the right to work and education and the right to welfare and accommodation outside the asylum direct provision centre are denied for this group of VoT in contrast to other VoT in the state. On a similar basis of not needing permission to be in the state, EEA citizens and Irish citizens are effectively excluded from the protection of the Administrative Immigration Arrangements which some respondents pointed out acts as a

disincentive to coming forward as a VoT. In the case of EEA nationals, this often results in their choosing to return to their country of origin with no follow up support and nothing known about the possibility of re-trafficking or further exploitation.

In Scotland, on the other hand there is a low burden of proof in relation to the issuing of R&R permits and where there are reasonable grounds, there is very good practice in relation to the promptness of decisions, mostly within 5 days. However, at the next stage, positive decisions based on conclusive grounds are significantly lower than Reasonable Grounds Decisions particularly where the Competent Authority is UK Visas and Immigration. It would appear that the increased difficulty of acquiring formal identification where there are immigration issues is not a practice confined to Scotland, but rather is reflected across all six countries.

The granting of a TRP is dependent on cooperation with the police in most states. However, in the UK and Scotland, although one set of grounds for this type of permit is assisting with police inquiries, there are also two further grounds on which one can be granted a permit, namely where the individual's personal circumstances necessitate a permit such as the need to complete a course of medical treatment or the individual requires to remain in the country in order to pursue compensation. Similarly, in Finland, if a VoT is in a particularly vulnerable position the requirement to co-operate with the police may be waived.

Overall, there is little data available on the reasons for not granting permits and the resulting immediate and long-term outcomes for those who are refused. The lack of transparency in relation to the criteria, the grounds and the decisions to refuse identification and negative decisions in relation to the issuing of permits by the authorities was raised by many respondents. Given the relationship between formal identification and the rights of VoT to assistance and protection, including legal representation, this issue warrants further research.

Section 5: Service responses

5.1 Definitions and indicators used by agencies

The definition of trafficking in the UN Palermo protocol has been adopted by the majority of agencies with responsibility to respond to trafficking. This definition is increasingly being supplemented and combined with and/or replaced by the expanded definition from the Trafficking Directive. The issue of internal trafficking was included in definitions adopted by agencies in all countries. Statutory bodies and NGOs use a number of internationally recognised recommended guidelines and indicators such as the International Labour Organisation (ILO) Delphi set of indicators and the OSCE police guidelines for identification. Country specific ones have also been developed but there was no uniformity across or within individual states on the adoption of an agreed set of indicators that would be followed by both statutory and non-governmental agencies. A number of NGOs emphasised that they do not apply indicators rigidly in a check list but use them more as a guide for assessing the unique situation of each client. Some also stressed the importance of ensuring that all vulnerable clients who present to their service receive support and help, even if the indicators are not sufficient to identify a person as a VoT. Victims of forced labour and women in prostitution do not always fit the definition of a VoT but may be subjected to severe exploitation and abuse.

5.2 Specialist services

The provision of support, counselling, welfare and accommodation is provided by specialist NGOs and state services in each country. Frontline practitioners play a crucial role in ensuring that VoT have access to all the necessary information regarding their rights and the different options and forms of assistance they are entitled to. They carry out risk and safety assessments and provide information regarding the availability of protection and assistance arrangements. Services are also responding to the psychological impacts of trafficking and sexual exploitation and the symptoms and consequences of traumatic experiences. States have provided funding for a range of services including accommodation and access to medical and health care. In Finland, for example, identified VoT can receive assistance from the state national assistance system for VoT coordinated by the Joutseno reception centre. This includes residential arrangements, social and health care services, legal advice and assistance, security arrangements and other support measures required by the victim.

Integrated services for women in prostitution and women who have been trafficked for sexual exploitation are provided by specialist NGOs in Scotland, the UK, Ireland and Lithuania, who have raised the issue of severe levels of abuse and exploitation in the sex trade of destination countries. Victims of forced labour and trafficking for labour exploitation also have dedicated services in some countries that have highlighted the particular sectors into which people are vulnerable to being trafficked, including the domestic, social care and agricultural sectors. Services are not only providing emergency and crisis support, they are also involved in the long term care of VoT helping them to re-integrate into society, reunite with their family in the country of origin, and in some cases to organise a safe return to the home country, if this is desired by the victim. Advocating for welfare and appropriate safe housing was highlighted as a difficulty

by many respondents. Access to education and training and developing entry routes to employment is a core aspect of their work in order for VoT to build sustainable independent lives. NGOs have been an integral part of public awareness campaigns and education programmes for schools to raise awareness and prevent trafficking of young people. They also play a key role in advocating for improved responses and resources by the state and feed into research and review mechanisms.

5.3 Children

The overall responsibility for child VoT falls within the remit of social services and child protection agencies in every country. Social services are involved in the identification of child VoT, safety and risk assessments and provision of accommodation, health care, financial support, education and specialist counselling. The vulnerability and risk in relation to trafficking in the case of unaccompanied minors and children separated from their families was recognised by all states. Child protection agencies carry out risk assessments to screen for indicators of trafficking, seeking to ensure that child VoT are identified at an early stage. The Scottish Guardianship Service for example, works with children and young people who arrive in Scotland unaccompanied and separated from their families and work to improve the separated child's experience and understanding of the immigration and welfare processes and to ensure they receive services appropriate to their needs and entitlements. However, LSA highlight the fact that there can be ambiguity regarding the level and type of support provided to those aged between 16 and 18 due to the definition of a child within Scottish law and practice but recognise that research is currently being undertaken on this issue.

In Ireland, whether or not a child is a victim of trafficking, if they are not accompanied by a parent or previous caregiver, the state has an obligation to provide them with safekeeping and housing and ensure that their basic needs are met. Tusla, the child protection agency provides emergency services, counselling and psychological support services. They highlight the importance of their family reunification stream in relation to protecting victims of trafficking. There was some abuse of this process in the past, which has been greatly reduced after the establishment of DNA testing as part of the family assessment practice, combined with increasing their skill set and quality of assessment

5.4 Services providers and legal advice

Service providers also provide legal advice and information to VoT in relation to a number of areas including how to regularise their presence in the jurisdiction; applications for international protection, welfare and family reunification, the various possible forms of legal redress and compensation and how the civil and criminal justice systems operate. However, as many of the partners have pointed out, access to advice and information on legal rights is not the same as access to professional, legal advice and in particular legal representation. Specialist services and NGOs, indicated that they seek to ensure ELI for their clients and endeavour to refer to legal practitioners with expertise in trafficking as soon as possible. In Ireland for example, Ruhama, refer their clients to the ICI as soon as possible for expert legal advice and representation. Similarly in Scotland, Tara and the Scottish Guardianship Service who respond to child victims indicated that ensuring access to high quality legal advice was a key component of their work. It is worth noting that part of Tara's funding agreement with the Scottish Government is to ensure access to legal advice as soon as possible.

Section 6: Access to legal aid and legal intervention

6.1 Access to state legal aid

Laws have been enacted in each of the six states which make provision for legal aid to be available on a means tested basis for those who cannot afford private legal representation, in specified civil and criminal cases. In relation to trafficking, these provisions have been extended in all countries to include VoT, thus once a person has been detected as a suspected victim in Bulgaria, Lithuania, Scotland and the UK legal aid can be sought, prior to referral into the NRM for formal identification. In Ireland and Finland the only means to be allocated legal aid is, however, after referral into the state authorities, which in practice means cooperation with the police prior to being granted legal aid and legal advice.

The Irish State Legal Aid Board can only accept referrals from the Garda (Police) National Immigration bureau and therefore there is no access to independent state funded legal advice or representation without having had prior contact with the police. The ICI independent law centre provides advice and representation to VoT who have not yet presented to the state authorities or police. In all countries as soon as a R&R period or a TRP has been issued, legal advice and legal representation is provided. However, in Bulgaria, although in theory legal aid is available, access of VoT to a legal representative is difficult because access to legal aid and legal representation is highly limited and in many cases unaffordable.

State legal aid to VoT is limited in all countries to specific areas regarding the different aspects of trafficking cases in relation to participation as a witness in criminal investigation and criminal trials on trafficking; representation in criminal cases where the victim has been charged in relation to immigration violations or criminal offences which occurred as a result of being trafficked; immigration and asylum applications including family reunification and compensation. Table 4 indicates the responses in relation to the right to legal aid:

Table 4: Access to state legal aid

Country	Criminal investigation	Criminal trial	Non-prosecution/immunity	Compensation	Immigration/Asylum	Family reunification
Bulgaria	Yes	Yes	Yes	Yes	Yes	No
Finland	Yes	Yes	Yes	Yes	Yes	No
Ireland	No	No	No	No	Yes/No	No
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes
Scotland	No	No	Yes	Yes	Yes	Yes
UK	No	No	Yes	No	Yes	Yes

It is worth noting that in the UK, Scotland and Ireland there is no provision in general to provide legal aid for advice, assistance or representation to victims in criminal cases as the victim is regarded as a witness for the state and is therefore not entitled to independent legal aid. The Legal Aid Board in Ireland for example can only provide representation in criminal proceedings where the sexual history of the victim has been brought into the hearings by the defence council. Furthermore, the legal advice given to witnesses by state prosecutors has to be limited so as to not risk the appearance of witness coaching or interference. This is regarded as unsatisfactory as participation in criminal cases can be very traumatic and stressful for victims especially for vulnerable witnesses such as the UK partner states:

Although Article 12 notes that such representation only needs to be ‘in accordance with the role of victims in the relevant justice system’, the adversarial nature of criminal trials in the UK make them particularly demanding on witnesses, including victims of trafficking.

Overall, respondents highlighted a gap between the right to legal aid in theory, and the actual reality in terms of availability and the quality of those legal services, which is further expanded upon in Section 6.3. Compensation mechanisms exist in all countries, including procedures to obtain compensation from the perpetrators and state funded compensation schemes. However, respondents believed that in practice this was rarely successful and that compensation was one of the weakest protected rights and often the most inaccessible. Similarly, in theory, witness protection measures could be provided if required, but in practice with so few prosecutions there was little evidence regarding their use in practice. In relation to trafficking for labour exploitation, respondents also highlighted the absence of state legal aid and representation in relation to employment and labour tribunals.

An issue highlighted by Scotland is that legal advice is normally sought as a matter of urgency for non EU nationals, but that there is less urgency with EU nationals as (s)he would not be subject to imminent removal from the UK, and legal advice would be sought only as required. Therefore, the requirement for legal advice tends to be a reaction to a legal process that the victim is involved in, rather than an automatic requirement as a VoT. This reactive provision of ELI is particularly the case in respect of immigration and asylum. There is not, therefore, a practice in Scotland, either informal or formal, of proactively referring a VoT for legal advice simply because he or she may be a VoT and may therefore require advice in order to realise their rights as such a victim. The Scottish Guardianship Service was the exception to this position and is an example of good practice within Scotland.

This issue is not however confined to Scotland but is reflected across the six countries in that there is no formal route, protocol or procedure in place to ensure that access to ELI is provided to all victims, regardless of the legal processes they are involved with. Routes into legal advice and representation may depend on where the individual is within the legal process, the type of exploitation suffered and the support they are accessing.

6.2 Legal rights of children

The majority of respondents believed that legal advice and representation was important for children and social services/child protection agencies were aware of their responsibility to ensure that the rights of children were protected. However, there was no uniformity on the exact form or timing of legal intervention regarding child VoT. In relation to the appointment of legal guardians, the response was mixed with some countries such as Bulgaria and Lithuania stating that a legal guardian is appointed in all cases. In Ireland

the child protection agency, Tusla, stated that they are the legal custodians, as the child is in loco parentis and that it was not therefore necessary for a legal guardian to be appointed.

The UK report highlights the failure to appoint a guardian for trafficked children but that the new legislation child advocates will be appointed on a trial basis. Following a six month review, the Home Secretary has the power to enable the introduction of legal guardians. Special child centred measures have been introduced in most states regarding the protection and interviewing of children including the option of video recorded evidence presented in court. In Bulgaria there are facilities called “blue rooms” in cases of child trafficking which affords judges the option of interrogation in private in the presence of a psychologist.

In all countries child VoT have access to international protections such as refugee and asylum applications and were afforded immunity from prosecution for immigration violations. There were mixed views, however, in relation to immunity from criminal proceedings particularly for minors between the ages of sixteen and eighteen who may have been involved in the growing of cannabis, for example, and were prosecuted prior to being identified as child VoT.

6.3 The complexity of trafficking cases and access to specialised legal practitioners

As indicated above, trafficking cases are complex and extensive. Proceedings relating to immigration and international protection, seeking leave to remain in the country and applications for residency permits can be lengthy, involving numerous statements to the police and the provision of detailed documentary evidence. In relation to the prosecution of trafficking offences, pre-trial investigations and criminal proceedings appear to be extremely difficult. Lawyers need to spend time with witnesses explaining the consequences of an investigation or trial, the length of a trial and witnesses’ duties, and in many cases interpreters are needed and documents must be translated. VoT also have multiple immediate and long term needs and legal advice is also often required in the areas of welfare and housing rights. Furthermore, family reunification is a critical aspect of the long term issues needing expert legal representation for VoT. It is not surprising therefore that the importance of legal advocates who had developed high levels of expertise was recognised in all countries and service providers seek to refer to them where possible.

However, in many cases services were dependent on legal practitioners within the state system or private solicitors who do not have the specialised knowledge or sufficient experience, particularly in rural areas. Furthermore, legal practitioners working within the state legal aid scheme may be limited in relation to the time allocated to a case, which fails to take into account the lengthy proceedings in trafficking cases. In some cases, a VoT may have already been allocated a legal aid solicitor who has no knowledge in relation to trafficking, prior to the specialist service being involved. In particular, within the criminal legal aid system, the right to immunity from crimes committed whilst being trafficked was seriously compromised where the person was not identified as a VoT, resulting in prosecution and in some cases imprisonment. Likewise, failure to recognise the indicators of trafficking has resulted in many VoT remaining unidentified within the asylum process. Research in Scotland for example, has highlighted the lack of knowledge by solicitors regarding human trafficking amongst lawyers outside the asylum/immigration sector.

Given these considerations, the benefit of dedicated, specialised, independent law centres, such as LSA in Scotland and ICI in Ireland, in providing enhanced legal service provision for VoT is obvious. They have developed specialised knowledge and experience and can dedicate the necessary time to complex cases; provide holistic victim care and representation on issues such as housing, health care and welfare;

provide advice to VoT as witnesses in criminal cases; represent victims in employment, labour tribunals and appeals tribunals; pursue compensation claims which lie outside the legal aid schemes; and seek protection of family members through family reunification.

Specialised legal practitioners play a key role in upskilling and liaising with legal practitioners in the state schemes who are representing VoT and provide much needed training on a national basis. Independent law centres are also in a position to challenge the state on issues of human rights infringements, to act as watchdogs in relation to the fulfilment of state obligations under international human rights instruments and ensure that that external review bodies are fully informed of the practice in each state. They also actively campaign and lobby for political change to ensure the rights of VoT are protected.

6.4 Benefits of early legal intervention for victims of trafficking

The vast majority of respondents in all countries agreed that ELI plays a critical role in ensuring that VoT can make informed choices which will ensure they can realise their rights and obtain a better overall outcome. ELI was seen as ensuring victims have the right information at the right time, allowing them to fully participate and realise their rights within a complicated legal framework and make an informed choice at the earliest possible stage. Having access to a specialised lawyer, trained to deliver this information in a manner that a victim understands, ensures that a victim is obtaining consistent information regarding their rights. Specific benefits named included:

- **ACCESS TO RIGHTS:** Victims who receive ELI can benefit from early identification which affords victim-specific protections and access to VoT rights. This can be contrasted with persons who are not advised about the immigration arrangements for VoT at an early stage, and who may spend many years in unsuitable accommodation in the asylum system; who remain as undocumented migrants unable to come forward; and are imprisoned for immigration or other offences. Such people may have no access to relevant protections.
- **AVENUE TO RECOVERY:** Having agency and control over their lives, when this was previously taken away from them, and knowing that they can build a better life is an empowering aspect of legal intervention for VoT. Victims feel safer, better supported and more confident knowing that somebody is looking out for their rights and is representing their case. Building a relationship with the legal practitioner from an early point was considered important as was imparting complex legal information in a clear and accessible manner.
- **NON-PUNISHMENT:** ELI is critical to avoiding criminal punishment of the victim, and legal advocates had experience that building a defence of human trafficking at a later stage, had a much diminished response. Cases were cited where a client was prosecuted for offences linked with being a VoT before legal advice was given on the matter, and extensive inquiries and submissions were required to overturn those offences and have them removed from a client's record.
- **REDUCING THE RISK FOR RE-VICTIMISATION:** ELI is seen as key to preventing re-trafficking of victims. Failure to provide adequate legal advice and recognise the indicators of trafficking can result in deportation which makes a VoT highly vulnerable to further exploitation. Specialised legal intervention at an early stage can therefore play an important role in the prevention of re-trafficking.

6.5 Benefits of Early Legal Intervention for the work of organisations

Agencies recognised that the benefits of ELI are not just for VoT, but also for their own work. Many people expressed the view that a well-informed victim who knows their rights and has access to specialised legal representation, is far more confident in engaging with services. Advocates and practitioners recognise the complexity of navigating the legal system in relation to VoT and consider ELI as hugely beneficial in establishing the legal route for their clients. Specific benefits highlighted included:

- ELI helps organisations to develop appropriate supports and care plans ensuring that all aspects of the needs of clients are met. The rights of the individual and the strategy for their immediate future recovery, is clear for the VoT and the support workers, ensuring a collaborative approach to advocating for their rights.
- ELI avoids delays and speeds up the process in identifying the most appropriate legal routes at an early stage, reducing trauma and uncertainty for the VoT, enabling effective legal representation and resulting in the speedier resolution of cases.
- ELI increases the possibility that VoT will co-operate with police and be more effective witnesses in criminal prosecutions of traffickers, increasing the possibility of successful prosecutions.
- ELI enhances coordination between different agencies is enhanced with ELI as all practitioners are clear about the legal routes open to the VoT and the role each agency should play in ensuring positive outcomes.
- ELI ensures that the rights of the VoT are upheld by the state and all statutory agencies involved which reduces the risks for future claims against the state and/or negative international evaluations.

6.6 Location and timing of early legal intervention

ELI is currently provided in numerous locations including legal offices, shelters, police stations, prisons, immigration offices and accommodation for asylum seekers and refugees. In relation to expanding the locations for ELI, some respondents suggested airports, border/entry points to the country, health institutions, hospitals and community centres as possible points of access. It was suggested that ELI could be provided centres and organisations which respond to the needs of people who may have a high risk of trafficking in some countries, such as Roma, people with mental health difficulties and foster children. Brothel raids were also considered as important in reaching women trafficked for sexual exploitation.

However, many respondents emphasised that for initial contact with vulnerable people in crisis, it is specialist services, in cooperation with the police and the state authorities that are better suited to making that initial contact in order to ensure immediate safety and support. The general view was that legal practitioners should be called as soon as was practicable and that close cooperation between police and specialist services was crucial. This highlights the importance of an integrated, inter-agency approach in which ELI can be most effective.

Section 7: Training, inter-agency cooperation and monitoring

7.1: Training and inter-agency cooperation

International organisations including OSCE, UNODC, the International Organisation for Migration (IOM) and European exchange projects have facilitated the dissemination of knowledge and expertise in relation to many aspects of trafficking including: recognition of indicators of trafficking; identification; recording of information; NRM; support services and increasing access to ‘hard to reach’ victims. Multi-disciplinary and cross sectoral training has facilitated greater understanding and knowledge regarding the critical importance of a co-ordinated approach in ensuring an effective response to the multiple needs of VoT. Inter-agency fora, strategic working groups and networks have been developed in many countries at a local and national level, where agencies collaborate and share information and expertise. Round table discussions and national and international conferences were also mentioned as opportunities to share experience.

Respondents had mixed views, however, on the quality of inter-agency work with ratings from fair to good to very good. There was general recognition that the communication and partnership amongst agencies had improved greatly over the past number of years, with the development of the NRMs and increased referral and cooperation on cases of trafficking between key stakeholders. Respondents highlighted the importance of personal contacts and relationships with individuals, but they also expressed concern that in the absence of memoranda of understanding, formal protocols and policies, good practice was overly dependent on those individual contacts. They stressed the need for a continuous process of development, building on what has already been established and formalising what are, for the most part, informal procedures. Specific recommendations in relation to inter-agency work and training are contained in Section 8.

7.2 National rapporteurs

The importance of independent external review mechanisms is clearly critical in ensuring that theoretical commitments are implemented fully and translate into visible progress and outcomes. This is particularly true in the absence of national independent monitoring mechanisms in five of the six countries. The Ombudsman for Minorities in Finland is an independent and impartial authority responsible for the advancement of the status of ethnic minorities. The Ombudsman is also the rapporteur on human trafficking. In the UK an independent Anti-Slavery Commissioner was recently appointed. He is delegate commissioner until the Modern Slavery Bill achieves royal assent.

Section 8: Conclusions and recommendations

8.1 Conclusions

The enactment of dedicated trafficking legislation and/or amendment of existing laws have resulted in major advances in addressing the trafficking of human beings, within and across the borders of the six countries reviewed in this study. National structures have been established to implement state policy and ensure a comprehensive and co-ordinated approach to the identification of VoT, and the provision of adequate protection and support by both statutory and voluntary agencies. Police forces have established dedicated trafficking units and police officers have developed expertise in the identification and protection of VoT and liaise with the specialised statutory and NGO agencies in the delivery of vital services. Frontline practitioners in the six countries now have considerable experience in carrying out safety and risk assessments, and provide critical information regarding rights and the different forms of protection and assistance to which VoT are entitled. They also respond to the long term needs of their clients, in relation to psychological support, welfare and housing.

Despite such progress, this report highlights some of the critical flaws in fulfilling state obligations which ensure that all those suspected of being trafficked are afforded adequate protection and assistance. The identification process continues to be problematic, with major differences arising between those referred into the NRM and those who ultimately are formally identified by state authorities, and consequently afforded all rights accruing to the status of a VoT. There is a lack of transparency and information in relation to the grounds on which negative decisions are made by states in relation to both identification and the issuing of R&R and temporary and long term residency permits.

In theory, state legal aid is available in all six countries but there are numerous gaps in the implementation of full access to ELI and legal representation for detected and identified VoT. The legal complexity of trafficking cases is highlighted throughout this report and service providers endeavour to ensure that they refer their clients to specialised legal practitioners, at the earliest possible time. However, this report indicates that there are no formal routes, protocols or procedures in place to ensure that access to ELI is always provided and referrals to legal advice and representation may depend on where the individual is within the legal process, the type of exploitation suffered, the location in which they are first detected, and the support they are accessing. There was a very positive response across all countries on the benefits of ELI provided by specialised legal practitioners and in particular independent law centres who can deliver a dedicated, holistic model of care and legal representation.

Finally, whilst there is consistent inter-agency collaboration in all countries there was overall agreement on the need to formalise existing arrangements; enshrine the rights of VoT in legislation; ensure that the responsibilities and roles of all agencies are placed on a statutory basis; and provide sufficient funding for services in order to deliver good quality and accountable assistance and protection programmes to VoT.

8.2 Recommendations

The following recommendations have arisen across the six countries in relation to the improvement of the overall response to VoT and in particular to the provision of ELI.

8.2.1 Identification

- Establish standardised criteria across the EU on indicators, grounds and mechanisms for the formal identification process.
- Ensure that all detected/suspected victims have the right to be formally identified as a VoT with the entailing rights and assistance, which does not discriminate with regard to legal status and nationality, and the right to seek asylum.
- Ensure that all police officers and border guards are fully trained and informed in relation to the identification, referral, and appropriate treatment of victims.
- Increase resources for policing the sex trade to enable early identification of VoT and those experiencing severe exploitation.
- Ensure that grounds for refusal are transparent and communicated to the individual and that appropriate responses are made to vulnerable people who are refused, within the limits of confidentiality.

8.2.2 Early legal intervention

- Establish access to early legal intervention as a right for all detected/suspected and identified VoT, which encompasses comprehensive and freely accessible legal advice and legal representation in every aspect of civil, criminal and administrative law.
- Put robust procedures in place for specialist services need to have robust processes and procedures in place to ensure that a victim is referred for legal intervention at the earliest possible opportunity.
- Ensure all detected but not yet identified VoT are given legal advice, protection and support and that R&R periods are issued prior to engagement with police authorities.
- Make resources available for specialised legal practitioners throughout MS so as to provide expert legal advice at the earliest possible time.
- Pilot the introduction of dedicated, specialised, independent law centres such as LSA in Scotland and ICI in Ireland. Ensure provision of state funding for the centres.
- Establish a network of legal practitioners and law centres across the EU for exchange of information and expertise in the area of ELI for VoT.
- Appoint individual legal guardians to child VoT.
- Ensure special attention is given to protecting children between the ages of 16-18 and monitoring the outcomes of young adults who entered a destination country originally as a child VoT.

8.2.3 Service provision

- Establish minimum standards in relation to the accommodation of VoT ensuring that accommodation is safe and secure and poses no risks to further exploitation, particularly in the case of women who have been trafficked for sexual exploitation. The use of unsuitable direct provision accommodation for asylum seekers should be discontinued.
- Ensure and change to lower case a in adequate funding is provided by the state to support the invaluable work of specialist services, to support their role in multi-agency and national frameworks and their role as advocates for better responses to VoT.
- Provide resources to meet the long term needs of vulnerable VoT including in the areas of health, welfare, training, education, employment and housing.

8.2.4 Training and education

- Integrate training modules on recognising indicators of trafficking for social and health care professionals, medical staff and authorities outside specialist agencies, in order to encourage disclosure and increase identification.
- Improve judicial understanding of trafficking and sensitivity towards adult and child victims of sex trafficking.
- Create opportunities for more in-depth practitioner and multi-disciplinary team training for specialist services including cross-jurisdictional and European training.
- Provide training for front line services on documenting and carrying out qualitative research, which would inform future policy and service provision.
- Increase education and public awareness campaigns to reach potential and current victims and alleviate fears of coming forward to the authorities particularly for migrants who are unfamiliar with the assistance programmes.
- Provide public awareness campaigns to increase public understanding of trafficking and create conditions in which VoT can integrate into communities.

8.2.5 Interagency work

- Ensure that agency responsibilities are clear, roles are formalised and that memoranda of understanding are introduced.
- Pilot the introduction of multi-agency case conferences with the VoT present, where all agencies can commit to fulfilling their role and responsibility to the victim
- Ensure greater coordination of systems, exchange of information and transparency across all agencies.

8.2.6 Research

- Fund longitudinal studies in order to evaluate the long term outcomes for those who have been afforded VoT status and residency in destination countries.
- Conduct in depth analysis on the discrepancy between the number of people detected/suspected as potential VoT, the numbers referred into the NRMs and/or the state authorities and the number of VoT formally identified by the state.

- Carry out research into the outcomes for those who do not fit the state definition of trafficking and/or are refused identification status or permits, but who have experienced severe exploitation, including women who are exploited in prostitution and migrant workers who are being exploited in specific sectors of the economy, including domestic work and agriculture.
- Conduct research into the factors which are prohibiting successful prosecutions of traffickers, considering the relatively small number of convictions of traffickers to date.
- Undertake research on the impact of the timing and quality of legal intervention on the recovery and outcomes for VoT and the impact of ELI on the success or otherwise of prosecutions.

APPENDIX 1: POLICY TEMPLATE FOR ISEC/ELI

Country:

1. International law compliance

UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime [The UN Protocol]		
Signed	Ratified	
Council of Europe Convention on Action against Trafficking in Human Beings [The Trafficking Convention]		
Signed	Ratified	
EU Directive 2011/36/EU to combat and prevent human trafficking and protect its victims [The Trafficking Directive]		
Signed	Ratified	
EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA		
Signed	Ratified	
EU Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities		
Transposed		
EU Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims		
Transposed		
Convention to Eliminate All Forms of Discrimination against Women (CEDAW)		
Signed	Ratified	Aceded

2. International Monitoring CEDAW

Relevant recommendations to your country under Article No 6
Trafficking in Persons reports (TIP) ‘Tier’ the country is in, if it has been up/down graded recently and relevant recommendations to your country in the 2013 report
Group of Experts on Action against Trafficking in Human Beings (GRETA) Have you been evaluated? If so, relevant recommendations to your country in the evaluation
The Organisation for Security and Cooperation in Europe (OSCE) Have you been evaluated? If so, relevant recommendations to your country in the evaluation

3. National Legislation on Human Trafficking

--

4. National Legislation regulating provision of legal aid and other relevant law/policy.

--

5. Protection and assistance to victims of trafficking

Legislation/policy providing for assistance to VoT

Recovery and Reflection Periods (R&R)	Temporary Residence Permits (TRP)
Duration of the R&R	Duration of the TR permit
Is the R&R renewable?	Is the TRP renewable?
Is the R&R of flexible length?	Is the TRP dependant on cooperation with the police?
Authorities authorised to identify VOT:	
Can NGOs identify VoT or have any input in the process? Please explain.	
Is there a memorandum of understanding or written agreement between the players in the identification process?	
Is there a referral protocol (form) agreed between players in the identification process?	

6. LEGAL ADVICE AND REPRESENTATION for victims of trafficking

During R&R permit (Yes or No): Legal Advice Legal representation	During Temporary Residence Permit Legal representation regarding: <ul style="list-style-type: none"> - criminal investigation - criminal trial - non-prosecution - compensation - immigration/asylum related - family reunification with children
---	---

In your opinion, has Art 12 of the EU Directive 2011/36/EU been transposed in your State correctly/fully?
How does a VOT contact providers of legal counselling or legal representation?
Is legal advice available free of charge?
Is legal representation available free of charge? If so, by whom?
<p>Is information on accessing legal advice provided at:</p> <p>Brothel raids Hospitals Asylum centres Other locations (Please give details) If yes to any of the above, how is this information provided?</p>
Do NGOs and /or legal representatives attend brothel raids with members of the police force to be available to provide advice if necessary?
Can you point to any measures which have led to early access to legal advice and/or representation?
Is legal advice provided prior to contact with police forces?
Is legal advice provided prior to cooperation with police forces?
Is free legal representation available for accessing compensation?
Is there a process for advising women who are considering applying for asylum of the legal provisions relating to VOTs?

7. What is presently facilitating / obstructing the ELI in your country?

--

8. Are there any provisions for legal aid in place for people who are not formally recognised as VOT (vulnerable migrant women in prostitution for example) as their experience does not amount to HT (the legal definition)?

9. Any useful information that you'd like to share?

APPENDIX 2: DRAFT INTERVIEW SCHEDULE

Name and title of interviewer.....

Name of interviewee.....

Job title of interviewee.....

Organisation/agency of interviewee.....

Please provide a brief description of the main role and purpose of the organisation/agency

1. DEFINITIONS AND ROLES IN RELATION TO TRAFFICKING IN HUMAN BEINGS

1.1 *What definition of Trafficking of Human Beings (THB) do you/does your organisation/ agency use?*

- Palermo Protocol/CoE Convention
- EU Directive
- No definition used

1.2 *Does this definition include internal trafficking?*

- Yes
- No

1.3 *Does this definition have a basis in national legislation?*

- Yes
- No

If yes, please describe and cite relevant legislation in the box below.

1.4 *Do you have guidelines/indicators that practitioners are required to follow?*

- Yes
- No

If yes, please could you attach a copy of these guidelines/indicators.

1.5 Does your organisation/agency have a formal remit to respond to THB? (entrusted by the State to a statutory agency/NGO, or adopted by an NGO)

- Yes
- No

1.6 If yes, please could you indicate below in which area you have a formal (or agreed) remit (tick as many boxes as appropriate).

- Trafficking for sexual exploitation
- Trafficking for labour Exploitation
- Child victims of trafficking
- Trafficking for the exploitation of criminal activities

1.7 Please indicate what formal remit your organisation/agency holds.

- Identification of VOT
- Power to refer to State subsidised services
- Provision of emergency services (e.g. health, housing, support)
- Provision of legal services
- Other (please specify).....

Please could you briefly describe your formal remit in the areas you indicated above.

1.8 How do you define the primary role of your organisation/agency in relation to VOT?

1.9 Does this role have a legal/statutory basis?

- Yes
- No

1.10 Please could you provide data on the numbers of VOT your agency responded to in 2013 (broken down by type of trafficking; gender; nationality; age; country of origin etc.).

- Data attached
- Yes
- No

1.11 What do you think are the main strengths of your organisation/agency's response?

1.13 What are the main barriers/gaps in the response you provide?

2. EARLY LEGAL INTERVENTION

2.1 Does your organisation/agency have responsibility for the provision of any of the following legal services?

a) Legal advice only

- Yes
- No

b) Legal representation

- Yes
- No

c) Power to authorise State funded legal aid (advice or representation)

- Yes
- No

(If no, please go directly to Question 2.4)

2.2 At what point does the VOT have access to a legal representative? Give examples if appropriate

2.3 In the case of child victims, is a legal guardian/representative appointed in all cases.

- Yes
- In some cases
- No

If no, please explain why this does not occur.

2.4 In the case of child victims, at what point does the appointed legal guardian seek legal advice for the child?

2.5 If your agency does not provide legal advice/representation, please could you describe at what point, and for what purposes, a legal representative is called/engaged?

2.6 Which legal agency/representatives do you contact?

2.7 Are they specialists in trafficking?

- Yes
- No

2.8 Who or what organisation/agency is responsible for referring VOTs for legal advice and/or representation?

2.9 Please give details about the different elements of legal advice that VOT have access to.¹² (please tick yes or no under each heading and provide a brief description)

a) Safety and risk assessment

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

b) Information regarding availability of protection and assistance arrangements to VOT

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

¹² Drawn from Article 15 of the CoE convention and 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

c) Requirements for legalising their presence in the Party's territory

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

d) Information regarding the various possible forms of legal redress

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

e) Information on how the criminal-law system operates (including the consequences of an investigation or trial, the length of a trial, witnesses' duties)

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

f) The possibilities of obtaining compensation from persons found guilty of offences or from other persons or entities, and the chances of a judgment being properly enforced

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

g) Information and counselling which enables victims to evaluate their situation and make an informed choice from the various possibilities open to them

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

h) Witness protection, anonymity and safety measures in criminal proceedings

- Yes
- No

If yes, please describe and specify if there are differences between adults and children.

2.10 Do VOT have access to legal representation in any of the following areas? (tick yes or no under each area below)

a) VOT protection and residency rights

- Yes
- No

b) Immunity from immigration violations

- Yes
- No

c) Immunity from criminal proceedings

- Yes
- No

d) International protections such as refugee and asylum applications

- Yes
- No

e) Compensation claims

- Yes
- No

f) Access to Welfare supports

- Yes
- No

g) Access to Housing

- Yes
- No

h) Access to Health care

- Yes
- No

i) Other (please specify).....

2.11 *Is there a coordinated approach to the provision of legal services?*

- Yes
- Sometimes
- No

Please explain further.

2.12 *Is legal advice provided free of charge?*

- Yes
- Sometimes
- No

2.13 *Are legal services always available in the language that a person understands?*

- Yes
- Sometimes
- No

2.14 *Can you identify the main locations where early legal intervention is provided.*

2.15 *Can you identify other locations where early legal intervention could be provided (e.g. hospital, brothel raids, asylum centres)*

2.16 *What do you think is the main benefit of early legal intervention for VOT?*

2.17 *What do you think is the benefit of early legal intervention for your work?*

3. INTER-AGENCY COOPERATION

3.1 Are VOT referred to you from other agencies?

- Yes
- No

If yes, please could you list the agencies that refer VOT to you.

3.2 Do you refer VOT to other services/agencies?

- Yes
- No

If yes, please could you list the agencies that you refer VOT to.

3.3 Do any of the service providers listed below have a specialised response to VOT? (tick all that apply)

- Police
- Designated NGO
- Other NGO
- Social services
- Child protection
- Emergency shelter/refuge
- Direct housing provision for asylum seekers
- Housing
- Health care
- Psychological services/counselling
- Other (please specify)

3.4 Is there a formal referral mechanism/protocol between the different agencies?

- Yes
- No

If yes, please could you briefly describe this.

3.5 How would you rate the cooperation between agencies?

- Very good
- Good
- Fair
- Poor

3.6 How would you rate the communication between agencies?

- Very good
- Good
- Fair
- Poor

3.7 What improvements would you like to see in inter-agency cooperation?

4. TRAINING

4.1 Have you or your staff received training in responding to THB?

- Yes
- No

4.2 Please briefly describe the type and level of training received.

4.3 Do you consider that the training was sufficient to enable you to respond appropriately to THB?

- Yes
- Somewhat
- No

4.4 What additional training do you think would be helpful for staff in your agency/organisation?

4.5 Do you think inter-agency training would be helpful?

- Yes
- Maybe
- No

5. RESPONSES AND OUTCOMES

5.1 How would you rate the current immediate response to VOT?

- Very good
- Good
- Fair
- Poor

5.2 How would you rate the current long-term outcomes for VOT?

- Very good
- Good
- Fair
- Poor

5.3 Have outcomes for VOT been documented in evaluation reports?

- Yes
- No

If yes, could you summarise the main outcomes that have been documented (and also provide copies of any evaluation reports that have been published).

5.4 What specific measures/actions do you think could be introduced to improve responses to and outcomes for VOT?

6. COUNTRY SPECIFIC AREA TO HIGHLIGHT PARTICULAR ISSUES

Please highlight one country specific issue or target group that is of current concern in relation early legal intervention.





Immigrant Council of Ireland

Published by:

Immigrant Council of Ireland
2 St. Andrew Street
Dublin 2, Ireland
Information Help Line: +353 1 6740200
Admin: +353 1 6740202
Email: admin@immigrantcouncil.ie

Website: www.immigrantcouncil.ie

www.earlylegalintervention.eu