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**The Irish “State” of protection for child
victims of trafficking in its care:
The human rights paradox of
theory and practice**

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Abstract

Trafficking in children/young persons could be likened to a game of hide and seek, where states, such as Ireland, must seek out victims who are being exploited, coerced and abused. The “game” does not end, however, upon discovery of the victim. Rather, it is required by international law that states correctly identify child victims and afford them special protection. The crime of trafficking is a violation of a child/young person’s human rights, and necessitates a child-centred human rights-based approach in order to ensure his/her well-being in a ‘protective environment’. Co-operation between State and non-State actors is a key element, and political will at all levels of society is required. Reality dictates, however, past tendencies to consider trafficking as an issue of law enforcement or migration. This paper will address the issue of trafficking from a human rights perspective, examining laws, policies and guidelines in place that aim to afford special protection to child victims. The case of Ireland will be analysed, addressing past and present issues and criticisms relating to standards of State care and treatment of separated/unaccompanied child victims. By moving beyond the theoretical surface of trafficking in Ireland, the paper intends to enlighten readers on Irish state practice in the arena of child trafficking.

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“Education is not the filling of a pail, but the lighting of a fire.”

William Butler Yeats

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Acronyms

AHTU – Anti-Human Trafficking Unit

CCA – Child Care Act

CLHT [Act] – Criminal Law (Human Trafficking) Act

CRC – Convention on the Rights of the Child

CTP [Act] – Child Trafficking and Pornography Act

GNIB – Garda National Immigration Bureau

HSE – Health Service Executive

ILO – International Labour Organisation

IOM – International Organisation for Migration

IRP [Bill] – Immigration Residence and Protection Bill

NGO – Non-Governmental Organisation

NRM – National Referral Mechanism

OHCHR – Office of the High Commissioner for Human Rights

OSCE – Organisation for Security and Co-operation in Europe

UNODC – United Nations Office on Drugs and Crime

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Introduction

“I believe the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the most egregious violations of human rights...and is widespread and growing.”

Kofi A. Annan, September 2004.¹

Certainly, trafficking in human beings is not an easy crime to comprehend. What is certain, however, is that human trafficking denies the rights of men, women and children worldwide.² Yet, it was only in the late 1990s that the international community finally began to consider critically the challenges that human trafficking presented.³ There was also the realisation, together with added pressure from Non-Governmental Organisations (NGO) and other International Organisations (IO), that efforts needed to focus more on how to protect and assist victims of trafficking, especially those most vulnerable, such as children. On 15 November 2000, the United Nations adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.⁴ This treaty (commonly referred to as the ‘Trafficking Protocol’) sought to encourage a more human rights approach to human trafficking and was based on a three ‘P’ paradigm of *prevention*, *criminal prosecution* and *victim protection*.⁵ Since then, consensus overall has been that the combat of trafficking in human beings should be multi-disciplinary with co-operation between both state and non-state actors to

¹ Kofi A. Annan, *Forward to the UN Convention against Transnational Organised Crime and the Protocols Thereto*, September 2004, p. iii, available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (consulted on 26 June 2012).

² Europol Public Information, *Trafficking in Human Beings in the European Union*, September 2011, available at <https://www.europol.europa.eu/sites/default/files/publications/trafficking-in-human-beings-in-the-european-union-2011.pdf> (consulted on 17 April 2012).

³ Holmes, 2010, p. 5.

⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 20 November 2000 (hereinafter referred to as the “Trafficking Protocol”).

⁵ U.S. Department of State, *Trafficking in Persons Report 2010*, p. 5, available at <http://www.state.gov/documents/organization/142979.pdf> (consulted on 20 May 2012).

ensure the effective and well-balanced implementation of counter-active measures to trafficking.⁶

However, a review on how states have generally combated trafficking thus far would reveal otherwise; “notions of national security, national sovereignty and border control” have often prevailed over the multi-agency approach and the protection of the rights of persons.⁷ In spite of significant steps that have been taken, past and present research suggests that states have continuously failed to prioritise the human rights of victims of trafficking. What is more, studies reveal a sheer lack of progress in the reduction of human trafficking overall.⁸ Why is it that trafficking-related issues, such as low conviction rates and poor standards of protection, continue to persist and proliferate despite the so-called “best efforts” of the international community? That is to say, many problems remain in spite of the widespread adoption of anti-trafficking treaties and laws. It is not for want of research in the field of trafficking in persons. There is no shortage of reports and studies that focus on the complexities of human trafficking. There is also an abundance of guidelines and training manuals on trafficking that deal with a range of ‘best practice’ measures in terms of prevention, protection and prosecution.⁹ What is certain, however, is the significance of political will. It is a key element towards success or failure of anti-trafficking measures, not only of the leadership but of all sectors of society.¹⁰

Worryingly, recent estimates also reveal that the total number of children being trafficked is extremely high and is on the increase.¹¹ Europe in particular can be considered a prime ‘consumer’ of trafficking in young persons. It is a region of affluence and advantage, with a market of high demand in the exploitation of children.¹² Indeed, almost all Western, Southern and Northern European countries are destinations

⁶ Konrad, 2008, p. 162.

⁷ *Ibid.*

⁸ *Id.*, p. 161.

⁹ A number of these research reports and guideline materials will be examined throughout the paper.

¹⁰ Holmes, 2010, pp. 201-202.

¹¹ Inter-Parliamentary Union (IPU) & UNICEF, *Combating Child Trafficking*, March 2005, p. 13, available at http://www.unicef.org/ceecis/IPU_combattingchildtrafficking_GB.pdf (consulted on 26 May 2012).

¹² UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

for human trafficking, including child trafficking. Consistent flows with the European sub-regions also exist and victims trafficked to these countries are reported to come from all major regions of the world.¹³

Another reason to explain the epidemic proportions of child trafficking is that, without an adequate system of protection, human trafficking, in general, remains a low-risk criminal enterprise with high returns – an enticing and lucrative choice of “career”, therefore, for traffickers already involved in the trading of drugs or arms.¹⁴ The International Labour Organisation (ILO) estimated from its 2008 statistics that annual profits could have generated up to as much as 32 billion USD (equivalent to approximately 24.5 billion Euros) from trafficking in human beings.¹⁵ This paper argues that the failure of states to implement effectively laws and policies for child victims of trafficking not only facilitates the growth of this low-risk, profitable trade but also creates new challenges to deal with such as internal trafficking and the re-trafficking of victims.¹⁶ The Council of Europe (CoE) uses an approach which expands upon the three ‘P’ principle and, more important to the context of this paper’s research, places specific focus on children. In addition to the three aspects of prevention, protection and prosecution, this specific approach offers a further dimension, which is the concept of child *participation*.¹⁷ This child-centred four ‘P’ human rights-based approach ought to be adopted by the international community as a whole when dealing with the trafficking of children. Moreover, it is critical that states understand how best to balance their duties accordingly between the four aspects.

In 2002, the then High Commissioner for Human Rights, Mary Robinson, indicated a “clear need for practical, [human] rights-based policy guidance” in the area

¹³ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, p. 14, available at http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

¹⁴ IPU & UNICEF, *Combating Child Trafficking*, March 2005, p. 7, available at http://www.unicef.org/ceecis/IPU_combattingchildtrafficking_GB.pdf (consulted on 26 May 2012).

¹⁵ International Labour Organisation (ILO), *ILO Action against Trafficking in Human Beings*, 12 February 2008, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf (consulted on 10 April 2012).

¹⁶ These more recent (and therefore less researched) phenomena will be discussed later on in the paper.

¹⁷ Council of Europe (CoE), *Protecting children and promoting their rights*, available at <http://www.coe.int/what-we-do/human-rights/children-rights> (consulted on 28 May 2012).

of human trafficking.¹⁸ States may be reluctant to adhere to such an approach since addressing trafficking from a human rights perspective can create a whole range of issues. For example, more direct focus is put on the obligations of states towards victims of trafficking, as well as their need to recognise the distinct circumstances and rights of victims, like those of children.¹⁹ As stated by the present High Commissioner, Navanethem Pillay; “a human rights-based approach to trafficking requires an acknowledgement that trafficking is, first and foremost, a violation of human rights”.²⁰ Therefore, states have a responsibility to respect and protect the rights of all peoples as well as to afford special protection to those most vulnerable, like trafficked children.

Certainly, when it comes to anti-trafficking laws and policies, the aspect of protection is considered to be the most difficult, and potentially the most costly for states, but it is “the one most needed now”.²¹ Children are particularly vulnerable to traffickers, and their protection and well-being ought to take precedence in the global struggle against trafficking in persons. Undeniably, international law requires states “to ensure the child such protection and care as is necessary for his or her well-being”.²² Such laws are made ineffective, however, unless they are successfully implemented by governments. The fact of the matter is that trafficking in all persons is a vicious circle; a web in which many victims will be caught up unless they are sufficiently protected by states. Governments have been accused of placing too much emphasis on the immigration status of the child as opposed to the best interests of the child; this has certainly been the case in Ireland²³, the country on which this paper will focus. What states need to remember is that victims of child trafficking are victims of serious abuse; they have been exploited and maltreated in a manner that necessitates direct assistance upon such abuse being discovered. Not only this, but the type of treatment afforded to children by state authorities must be specific to their needs. Too often, the variety of

¹⁸ Gallagher, 2010, p. 4.

¹⁹ Holmes, 2010, p. 29.

²⁰ Gallagher, 2010, p. 3.

²¹ Holmes, 2010, p. 196.

²² Convention on the Rights of the Child (CRC), 20 November 1989.

²³ Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

care that child victims of trafficking receive is inadequate and insensitive to the violations that have occurred.²⁴

Therefore, this paper proposes to address three core issues. First, it will look at the various dimensions of trafficking in children/young persons, as well as highlight examples of adequate protection. Second, it will examine the international laws that are most significant when discussing the protection of trafficked children/young persons. Third, in order to obtain more substantive evidence, the paper will explore the situation of trafficked children in Ireland – a country that is known for having violated children’s rights in the past (can the same be said of the present?). In order to avoid confusion or misinterpretation, the first chapter will consist of a general description of some key terms to be used throughout the paper. Chapter two then will centre on the victims of trafficking in children/young persons as well as the importance of their protection to prevent them from being trafficked internally or re-trafficked. Due to the indistinct nature of trafficking, statistics and characteristics of trafficked child victims vary from region to region. Therefore, the paper will focus on the situation of trafficked children in the European region; although, here, trends also differ from country to country. This part will provide a useful framework on how states can adopt a human rights approach to trafficking and, more specifically, a child-centred rights-based approach. The principles and guidelines drafted by the Office of the High Commissioner for Human Rights (OHCHR)²⁵ will be examined alongside guidelines by such organisations like UNICEF.

Chapter three will examine the international and regional, namely the CoE and the European Union (EU), legislation that specifically relates to the protection of trafficked children. With the aid of past research on this particular topic, we will see whether such legislation is sufficient in the protection of child victims of trafficking. The fourth chapter will focus in more detail on the phenomenon of trafficking in Ireland. All legislation linked to the protection of child victims of trafficking will be examined and scrutinised at the domestic level. Using reports and evidence received from both state and non-state actors, research will investigate how the Irish government

²⁴ Dottridge (a), 2006.

²⁵ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, Index: E/2002/68/Add. 1.

has thus far dealt with “rescued” trafficked children in its care. In order to have a clear idea of what constitutes a more human rights, child-centred approach, the OHCHR’s guidelines, as well as other relevant reports, will serve as a comparison. What this paper will determine is whether or not the specific care provided for by Irish authorities is sufficiently adequate. Does legislation at the domestic level provide sufficient protection for trafficked children and young persons and is it in compliance with international human rights law? Finally, this study will establish whether or not Irish policy truly reflects that trafficking in young persons (and persons in general) is, above all, a serious human rights violation. The Irish government commends itself when it declares that “the promotion and protection of human rights is central to Ireland’s domestic and foreign policies”.²⁶ More specifically, the Irish state’s Minister for Children has affirmed that this year will be “an historic one in the improvement of children’s lives and the key services on which they depend”.²⁷ Can the same be said with regard to improving the rights of child victims of trafficking in Ireland?

²⁶ Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Ireland*, HRC Index: A/HRC/WG.6/12/IRL/1, 22 July 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/150/29/PDF/G1115029.pdf?OpenElement> (consulted on 20 May 2012).

²⁷ Fitzgerald, Frances, ‘Opening Statement of Ms. Frances Fitzgerald TD, Minister for Children and Youth Affairs at the Joint Oireachtas Committee on Health and Children’, 16 February 2012, available at <http://www.dcy.gov.ie/viewdoc.asp?Docid=1819&CatID=12&mn=&StartDate=01+January+2012> (consulted on 25 May 2012).

1. How to identify and define:

1.1. Trafficking in children/young persons

With regard to anti-trafficking legislation concerning children/young persons, the term ‘child’ is most often utilised. This may create the misconception that trafficking occurs to children of a certain age, i.e. younger children. On the contrary, and in line with Article 1 of the CRC; “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.²⁸ A ‘child’ or ‘young person’ can be trafficked at any age. Therefore, both these terms will be used interchangeably. Furthermore, when it comes to trafficking, the Trafficking Protocol and the ILO Convention on Child Labour²⁹ do not allow for derogation regarding age.³⁰ Finally, the application of key principles such as the best interests of the child; the right to non-discrimination; the child’s right to participation and the right to privacy, is considered paramount in this paper. A failure by all actors involved to respect these conditions reflects a lack of commitment to combat child trafficking and to protect and assist its victims, in both the short- and long-term.

When it comes to defining trafficking in young persons/children, one must first consider the definitions related to trafficking in human beings in general. In this regard, numerous definitions have been put forward by international bodies and they have been variously interpreted. In the past, uncertainty surrounding the concept of trafficking meant that counteractive measures and provisions were either absent or left undefined, thus, leading to divergences in how to approach such a complex issue and how best to protect the victims of trafficking.³¹ The notable increase in human trafficking in the 1990s forced the international community to take greater strides in their attempts to

²⁸ CRC, 20 November 1989.

²⁹ Save the Children Italy, *AGIRE – Austria, Greece, Italy and Romania: Acting for stronger private-public partnerships in the field of identification and support of child victims and at risk of trafficking in Europe*, August 2010, p. 10, available at http://images.savethechildren.it/f/download/protezione/agire/AG/AGIRE_Training_Manual_EN.pdf (consulted on 15 June 2012).

³⁰ ILO Convention no. 182 on the worst forms of child labour, 17 June 1999.

³¹ Apap and Medved, 2003, p. 11.

combat trafficking. There was also the realisation of the need for a “clearer, broader and commonly accepted definition” of trafficking in human beings.³² In this context, the Trafficking Protocol is hugely significant as it provided the first internationally agreed definition of trafficking in *all* persons.³³

According to the Trafficking Protocol, trafficking in children/young persons is the act of “recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation” regardless of the use of illicit means. The illicit means are defined as the use of threat or force “or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.³⁴ Within this definition, various forms of exploitation are taken into account such as the “exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, the removal of organs”.³⁵ UNICEF, with specific reference to young persons, elaborates on this list when it includes such exploitation as the “use of children associated with armed groups or forces, begging, illegal activities, sport and related activities, illicit adoption, early marriage or any other forms of exploitation”.³⁶ UNICEF also makes note that “the recruitment of children for hazardous work or... theft” can be included under what is mentioned in the Trafficking Protocol as “forced labour or services”.³⁷

1.2. Trafficked children/young persons as victims of abuse

Unless otherwise stated, the usage of the term ‘victim’ in this specific research shall mean any child victim of trafficking believed to be below the age of eighteen years. Trafficking abrogates a child’s right to a healthy childhood and a productive, rewarding

³² *Ibid.*

³³ IPU & UNICEF, *Combating Child Trafficking*, March 2005, p. 11, available at http://www.unicef.org/ceecis/IPU_combattingchildtrafficking_GB.pdf (consulted on 26 May 2012).

³⁴ Trafficking Protocol, 15 November 2000.

³⁵ *Ibid.*

³⁶ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006, p. 9, available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf (consulted on 10 April 2012).

³⁷ Dottridge (a), 2006, pp. 14-15.

and dignified life. Child trafficking victims are subjugated and physically abused by the various perpetrators, including traffickers, employers, pimps, madams and ‘customers’. Victims may be exposed to violence at all stages of the trafficking cycle.³⁸ The CoE’s definition of trafficking expands upon the Trafficking Protocol by defining the term ‘victim’.³⁹ The definition, in its entirety, is regarded as a key factor in the effective implementation of the provisions outlined in the Convention, especially those related to protection.⁴⁰ A Framework Decision of the EU provides an even more detailed definition whereby a victim shall mean any “natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss...”⁴¹ Victims of trafficking are also referred to as “unwilling participants within the terms of the crime in trafficking in persons” and/or those most vulnerable who suffer any number of human rights violations and who, consequently, have the right to protection, assistance and reparation by governments and civil society.⁴²

In the past, child victims of trafficking were seldom recognised as being entitled to special protection measures.⁴³ As shall be discussed further in this paper, children are especially vulnerable because they are often more susceptible to manipulation and deception. The CRC specifically provides that “child victims are entitled to *special protection* measures, both as victims and as children, in accordance with their specific rights and needs” (italics author’s own).⁴⁴ Therefore, the failure of states to provide adequate support and assistance to children cannot be tolerated. IOs and governments have admitted that “they are often unsure what procedures to follow when someone under 18 was believed to have been trafficked”.⁴⁵ In response to this uncertainty, UNICEF developed a set of standards for “good practice in the protection of and

³⁸ IPU & UNICEF, *Combating Child Trafficking*, March 2005, p. 16, available at http://www.unicef.org/ceecis/IPU_combatingchildtrafficking_GB.pdf (consulted on 26 May 2012).

³⁹ Article 3 of the CoE Trafficking Convention defines a victim of trafficking as “any natural person who is subject to trafficking in human beings”.

⁴⁰ Gallagher, 2006, p. 176.

⁴¹ European Union (EU), Council Framework Decision on the standing of victims in criminal proceedings, 15 March 2001.

⁴² IOM, *The IOM Handbook on Direct Assistance for Victims of Trafficking*, 2007, available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf (consulted on 22 May 2012).

⁴³ Dottridge (a), 2006, p. 3.

⁴⁴ *Id.*, p. 12.

⁴⁵ *Id.*, p. 9.

assistance to child victims of trafficking”⁴⁶ and the creation of a “protective environment”.⁴⁷ Moreover, the guidelines highlight child victims as “survivors” in order to emphasise the “resilience of [young] persons who have been exploited or abused”.⁴⁸ Governments and other agencies can too often discredit the abilities and viewpoints of children/young persons in decision-making processes concerning victims of trafficking.

1.3. Trafficked children/young persons as separated or unaccompanied

The human rights system of the UN has acknowledged the particular vulnerability of children who are unaccompanied or who have been separated from their family or guardians for numerous reasons, and who are residing outside their home country. Understandably, they are at a higher risk of exposure to “exploitation and abuse, including through trafficking”.⁴⁹ Their protection by states is paramount as traffickers take advantage of the fact that these children lack any financial, physical or emotional support. In its General Comment No. 6, the Committee on the Rights of the Child informs states of the dangers that unaccompanied or separated children may face at the hands of traffickers. The Committee acknowledges that “there is often a link between trafficking and the situation of separated and unaccompanied children” (para.23).⁵⁰ What is more, an unaccompanied or separated child who has already been a victim of trafficking is likely to be re-trafficked if sufficient protection and assistance is not afforded to him/her. As the Committee has noted itself; “trafficking in children is a threat to the fulfilment of their right to life, survival and development” (para.52).⁵¹ The

⁴⁶ *Id.*, pp. 9-12. *UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006, available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf (consulted on 5 April 2012).

⁴⁷ Gallagher, 2010, p. 34. *The term “protective environment”, used by UNICEF and other organisations, refers to the distinct elements around the child that protect him/her from discrimination, violence, exploitation, abuse and neglect. State authorities and NGOs are considered key actors in the establishment of a protective environment for child victims of trafficking.

⁴⁸ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006, p. 9, available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf (consulted on 5 April 2012).

⁴⁹ Gallagher, 2010, p. 113.

⁵⁰ Committee on the Rights of the Child, *General Comment No. 6 – Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2009, Index: CRC/GC/2005/6.

⁵¹ *Ibid.*

Committee differentiates between unaccompanied and separated children/young persons as follows:

- *“Unaccompanied children” (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.*⁵²
- *“Separated children” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.*⁵³

Let it be noted that this General Comment applies only to unaccompanied or separated children/young persons who are residing outside of their home country, i.e. those who have crossed transnational borders. This paper would go further and argue that all separated/unaccompanied children, nationals and non-nationals alike, are at higher risks of being trafficked. Nevertheless, as we shall see from the Irish context, it can often be the case that separated/unaccompanied foreign national children will be afforded an inferior level of protection by the state. Risks are particularly great for a child/young person who has already been a victim of trafficking, a factor which resulted in their status of being unaccompanied or separated. The CRC explicitly states that “children who are at risk of being re-trafficked should not be returned to their country of origin unless it is in their best interests and appropriate measures for their protection have been taken” (para.53).⁵⁴ Many of the international conventions and protocols that will be examined have paid little attention to protection standards for separated/unaccompanied young persons, be they victims of trafficking or not, once they are in a destination country.⁵⁵

⁵² Dottridge (b), 2006, p. 20.

⁵³ Committee on the Rights of the Child, *General Comment No. 6 – Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2009, Index: CRC/GC/2005/6.

⁵⁴ CRC, 20 November 1989.

⁵⁵ Reisen and Stefanovic, 2004, p. 21.

2. Trafficking in children/young persons:

The right to protection

2.1. Dynamics of child trafficking

“Every day, children are bought, sold and transported away from their homes”.⁵⁶ While recent research has provided important information on the nature of child trafficking, little is known about its magnitude.⁵⁷ ILO estimates indicate that as many as 1.2 million victims of trafficking are children/young persons⁵⁸ while other anti-trafficking organisations estimate that, among the total victims of trafficking, children count for over 20 per cent.⁵⁹ Nevertheless, it is difficult to verify such figures due to the clandestine nature of the crime of trafficking in persons young *and* old. What is certain, however, is that child trafficking occurs in all regions of the world and is on the increase.⁶⁰ In 2011, the International Organisation for Migration (IOM) reported an increase of 27 per cent in child trafficking cases dealt with by their personnel.⁶¹ While it is true that trafficking in human beings affects a wide range of persons, the particular vulnerability of children in this covert trade is highlighted throughout this research paper. The ILO states that trafficking in young persons “is about taking children out of their protective environment and preying on their vulnerability for the purpose of

⁵⁶ IPU & UNICEF, *Combating Child Trafficking*, March 2005, p. 3, available at http://www.unicef.org/ceecis/IPU_combatingchildtrafficking_GB.pdf (consulted on 26 May 2012).

⁵⁷ UNICEF, *Child protection from violence, exploitation and abuse: Child trafficking*, available at http://www.unicef.org/protection/57929_58005.html (consulted on 29 May 2012).

⁵⁸ ILO, *ILO Action against Trafficking in Human Beings*, 12 February 2008, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf (consulted on 10 April 2012).

⁵⁹ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, available at http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

⁶⁰ UNODC, *Global Report on Trafficking in Persons*, February 2009, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf (consulted on 28 May 2012).

⁶¹ IOM, *Child Trafficking and Labour Trafficking Cases Rising: IOM*, 2012, available at <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnEU/cache/offonce?entryId=31640> (consulted on 31 May 2012).

exploitation”.⁶² International law demands states to recognise the particular vulnerability of children to traffickers and exploiters and highlights their vulnerable position as a direct result of their reliance on others for security and wellbeing.⁶³ This also makes them more susceptible to the likes of coercion and deception; both of which are considered fundamental aspects in the definitions of human trafficking.

While trafficking in young persons has generally been associated with cross-border trafficking, recent research indicates that children are also moved within a country in order to be exploited in some shape or form.⁶⁴ Indeed, many up-to-date studies appear to highlight the fact that child trafficking is becoming more and more complex as time goes on. In this way, the fact that new challenges are emerging alongside other, more traditional, aspects of trafficking makes the fight against it a prime responsibility of states. This also necessitates the establishment of adequate protection for victims of trafficking in young persons. States must not shy away from their duty to protect the wellbeing and development of all children/young persons. Since its adoption in 1989, the CRC has become the treaty most widely ratified by states and specifically mandates State Parties to protect children from trafficking.⁶⁵ Therefore, states are not only obliged to incorporate a system of protection within their laws and policies but they must also implement these measures effectively and hold themselves accountable. In order to combat trafficking in minors effectively, it is essential that governments are aware of the complexities that trafficking presents; “only by understanding the depth, breadth and scope of the problem can we address...how to counter it”.⁶⁶

This particular section will examine the various and more recent dimensions of child trafficking. It must be noted that, as indicated by the array of reports and studies in existence on the victims of trafficking, it is impossible to generalise such a diverse

⁶² ILO, *Trafficking in children*, available at <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm> (consulted on 21 April 2012).

⁶³ Gallagher, 2010, p. 112.

⁶⁴ *Ibid.*

⁶⁵ IPU & UNICEF, *Combating Child Trafficking*, March 2005, p. 26, available at http://www.unicef.org/ceecis/IPU_combatingchildtrafficking_GB.pdf (consulted on 26 May 2012).

⁶⁶ UNODC, *Global Report on Trafficking in Persons*, February 2009, p. 6, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf (consulted on 28 May 2012).

group.⁶⁷ Thus, in order to narrow the research, this section proposes to profile the victims of trafficking in children/young persons with a specific focus on the region of Europe; statistics and other factual data highlighted will be mostly in relation to European states. Nonetheless, although Europe is relatively small in geographic terms, it has become a diverse region with regard to trafficking flows; nationalities of victims; forms of exploitation, etc.⁶⁸ What is more, the section will provide a general backdrop for the situation of child victims in Ireland and offer a more holistic view on the scale of present-day trafficking in young persons. In the coming paragraphs, we will also see the reasons why states absolutely need to provide suitable protective measures for child victims of trafficking.

2.1.1. Moving beyond traditional perceptions:

A modern conceptual framework of trafficking in children/young persons

Despite being a highly complex issue, governments tend to make the mistake of reducing trafficking in persons to a more “simplistic, often one-dimensional” concept.⁶⁹ This narrow perspective does not correspond with the reality. In order to deal effectively with the challenges of trafficking in young persons, and in persons in general, it is essential that governments move beyond the more traditional perceptions of trafficking. Truly, the intricacies of such a process must be thoroughly researched and understood. According to numerous sources, the “simplest” forms of child trafficking have a number of distinct phases which include: *recruitment or movement* → *destination and exploitation* → *withdrawal (by agreement, escape or outside intervention)* → *recovery and possible reintegration*.⁷⁰ During each of these stages a child will most likely be subjected to some form of maltreatment, whether it is physical, emotional or psychological. However, it is at the point of destination where the child is

⁶⁷ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, available at http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

⁶⁸ *Ibid.*

⁶⁹ Cameron & Newman, 2008, p. 13.

⁷⁰ ECPAT & The Body Shop, *supra* note 67; Dottridge (b), 2006, p. 21.

subjected to the most severe forms of abuse and exploitation by the trafficker and other perpetrators. Finally, even though opportunities for intervention present at each phase, it is not usually until the latter part of the process that the victim will be “rescued” from harm.⁷¹

While the above summary provides a more straightforward template of the trafficking process, reality dictates that “trafficking is seldom a simple continuum”.⁷² Testimonies given by trafficked children themselves uncover the sad truth that the same child can enter into and escape from exploitation many times.⁷³ Contrary to what governments or other individuals in society might assume, trafficking in minors is not always a ‘one-time’ occurrence.

The re-trafficking of children has not been as thoroughly researched and it is an issue that deserves fuller attention by states. Nevertheless, there is an accord between international organisations, governments and academics alike that re-trafficking constitutes a serious and significant problem.⁷⁴ To date, however, gaps remain in the research on re-trafficking which would help in determining its “incidence, cause or consequence”.⁷⁵ According to the results of one IOM report, children are among those most vulnerable to being re-trafficked and are often more susceptible to re-trafficking in adult life.⁷⁶ Consequently, the same report lists the lack of inadequate assistance afforded to victims of trafficking as one of the reasons for their being re-trafficked. It also highlights findings that trafficked persons, including children, are more prone to re-trafficking “immediately after having exited a trafficking situation and [are] en route to assistance”.⁷⁷ Therefore, it is safe to say that when a government fails to identify and provide adequate provisions of protection for victims in need of direct assistance, it contributes to their exposure and vulnerability to traffickers. Whether it is intentional or not, states who fail to act appropriately are a passive ‘assistant’ in the cycle of the human trafficking process, including trafficking in children/young persons.

⁷¹ Dottridge (b), 2006, p. 22.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Jobe, 2010, p. 11.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

Another more recent aspect of child trafficking that also needs to be tackled concerns the issue of internal or domestic trafficking. Traditionally, children are trafficked across international borders but it is becoming more common for the trafficking of young persons to be internal.⁷⁸ Even so, knowledge on the issue of domestic trafficking is limited in Europe, particularly in the Western regions and in the EU. The studies that do exist on internal trafficking reveal that, in countries of destination, children may continue to be trafficked within that country in order to avoid detection.⁷⁹ More commonly known is cross-border trafficking, which can be categorised by countries of origin, countries of destination and transit countries (many countries have been classified under two or even all of these categories).⁸⁰ One particular global report has classified Europe to be the destination point for victims from the widest range of origins.⁸¹ Indeed, child trafficking occurs in virtually all countries in Europe and its trafficking flows are diverse. There is no clear-cut distinction between countries of origin, destination or transit in Europe, and in more than half of the countries trafficking routes lead in all directions, into and out of the country.⁸²

While the transnational nature of child trafficking is more widely reported, it has been found that domestic trafficking also occurs on a frequent basis. Indeed, one particular report establishes that this form of trafficking not only occurs in large, transitional countries, in which victims are moved between rich and poor areas, but it also exists in “relatively small and wealthy countries, such as those in Europe”.⁸³ Ireland could easily be, and has been, included in this category. Actually, not only is internal trafficking reported to occur in every second European country but its victims, including children, are also growing in numbers.⁸⁴ According to one related study, the

⁷⁸ IPU & UNICEF, *Combating Child Trafficking*, March 2005, p. 7, available at http://www.unicef.org/ceecis/IPU_combattingchildtrafficking_GB.pdf (consulted on 26 May 2012).

⁷⁹ ECPAT International, *Combating Child Trafficking*, available at http://www.ecpat.net/EI/Programmes_trafficking.asp (consulted on 28 May 2012).

⁸⁰ *Ibid.*

⁸¹ UNODC, *Global Report on Trafficking in Persons*, February 2009, p. 69, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf (consulted on 28 May 2012).

⁸² UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. iv, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

⁸³ UNODC, *supra* note 80, p. 57.

⁸⁴ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, p. 19, available at

victims of domestic trafficking are a diverse group who may be nationals of the country in which they are trafficked; migrants residing in the state, either legally or illegally and/or asylum seekers.⁸⁵ Speculation as to why there has been an apparent rise in those trafficked internally draws attention to the “reduced risks” of domestic as opposed to international trafficking. For example, it is more likely that children who are trafficked internally will not require travel documentation and will speak the language. It is also possible that law enforcement personnel, in focussing more on transnational trafficking, leave undetected the incidents of domestic trafficking.⁸⁶ Despite the reality of this growing phenomenon, the international community has yet to address appropriately the issues surrounding internal trafficking.⁸⁷

The factors that contribute towards children being exposed to trafficking are often the same as those that apply to adults.⁸⁸ However, in this respect, there also exist core differences between the trafficking of minors and the trafficking of adults. Perhaps the most fundamental characteristics of children that make them more vulnerable to trafficking are their greater capacities to believe, to trust, and to forgive. Traffickers take advantage of these characteristics and use them to recruit, to manipulate and, eventually, to exploit the child.⁸⁹ Moreover, there is huge diversity in terms of the causes of trafficking in children/young persons. A particular study by UNICEF divides such causes into distinct categories, labelling them to be one or more of “immediate, underlying, and structural or root causes”; although there may be overlapping of particular causes.⁹⁰ The ‘immediate’ aspect relates to the decisions taken by numerous actors that can lead to a child being trafficked, be it intentional or unintentional. In this way, the child/young person, his/her family members as well as other individuals or groups could play a direct role in the trafficking process. The second element, namely the ‘underlying’ causes, takes into consideration certain conditions that impact upon decisions made by individuals. For example, a low level of education or lack of income

http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

⁸⁵ *Id.*, p. 18.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Dottridge (a), 2006, p. 22.

⁹⁰ Dottridge (b), 2006, p. 22.

could contribute towards a child being trafficked. Finally, the causes that have a ‘structural’ or ‘root’ aspect pertain to a particular socio-economic climate “in which child trafficking and exploitation can flourish”.⁹¹ Poverty, war and natural disasters are all examples of this third type.

Trafficking in young persons and their degree of exploitation may also be influenced by particular aspects like official corruption, gender discrimination, harmful traditional and cultural practices as well as a lack of political will to end such issues.⁹² In general, traffickers target the poor and the vulnerable.⁹³ What is more, they target the unprotected. In this way, more proximate factors such as a nation’s legal and policy regime, its rule of law and the relations between civil society and state authorities also influence a child’s level of exposure to traffickers.⁹⁴ Children can end up as victims of trafficking through direct means, like their sudden abduction by traffickers, or more indirectly, by, for example, being handed over or sold to perpetrators by parents who believe or sincerely hope that it is the best decision for the child’s future.⁹⁵ However, reasons for their being trafficked exist both in countries of origin, where children are recruited, and in destination states where exploitation takes place. In this regard, “causes can be clustered and analysed on both sides of the ‘supply-demand’ continuum”.⁹⁶

The aspects listed above are all factors that contribute to an environment which makes possible the ‘supply’ side of trafficking. It is also important to understand the ‘demand’ dimension of child trafficking if it is to be tackled effectively. While the demand for sexual exploitation and cheap labour plays a large part in the trafficking process, the people who most ‘demand’ trafficked children are those who can potentially profit financially from their use. A combination of “high ‘profiting’ potential”, inadequate migration and protection laws plus low levels of law enforcement

⁹¹ *Ibid.*

⁹² ECPAT & The Body Shop, *Stop Sex Trafficking of Children and Young People: Sex Trafficking of Children in Ireland*, available at http://ecpat.net/EI/Publications/Trafficking/Factsheet_Ireland.pdf (consulted on 23 March 2012).

⁹³ *Ibid.*

⁹⁴ Newman and Cameron, 2008, p. 3.

⁹⁵ Dottridge (b), 2006, p. 23.

⁹⁶ *Id.*, p. 22.

facilitates the ‘demand’ for traffickers to exploit and make money out of children.⁹⁷ Sadly, it has too often been the case that desires for financial gain and profit prevail over ethics and the protection of the rights of the child.⁹⁸ Certainly, in Europe, governments have frequently failed to address the human rights implications for child victims of trafficking. Particularly, in economic climates, such as the one that Europe is currently experiencing, states have a tendency to decrease budget spending for social services, child protection and child care.⁹⁹ Instead, states should focus on strengthening the child protection system since “effective prevention [of trafficking] means ensuring that the forms of protection to which children are entitled on the basis of rights guaranteed by the CRC are available in practice”.¹⁰⁰

All child victims of trafficking are made highly vulnerable to sexual abuse and exploitation because they are removed from familiar support structures, such as their families and communities.¹⁰¹ Governments, state authorities and many others have often associated the trafficking of minors with sexual exploitation in terms of such crimes like prostitution and child pornography. In reality, however, the situation “is much more complex”.¹⁰² While it may be true that child trafficking for sexual purposes has been the most frequently reported form of exploitation, this does not automatically imply that it is the most common. The fact of the matter is that trafficked children may be exploited in a number of ways, through domestic slavery or bonded labour for example.¹⁰³ The general concern has been that trafficking for forced labour too often goes unnoticed and is less reported than trafficking for sexual exploitation.¹⁰⁴ Besides sexual exploitation, children in Europe may also be trafficked and exploited by way of

⁹⁷ Dottridge (b), 2006, p. 23.

⁹⁸ UNODC, *Global Report on Trafficking in Persons*, February 2009, p. 69, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf (consulted on 28 May 2012).

⁹⁹ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, p. 11, available at http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

¹⁰⁰ Dottridge (a), 2006, p. 30.

¹⁰¹ ECPAT International, *Combating Child Trafficking*, available at http://www.ecpat.net/EI/Programmes_trafficking.asp (consulted on 28 May 2012).

¹⁰² UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. iv, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

¹⁰³ *Ibid.*

¹⁰⁴ UNODC, *supra* note 98, p. 51.

forced labour, domestic servitude, begging and petty crime. Marriage, illicit adoption and the sale of babies has also been connected to the trafficking of young persons.¹⁰⁵ More recent studies reveal the changes that are taking place in terms of the “forms and degrees of exploitation”; which in turn creates new difficulties for states, such as the identification of victims.¹⁰⁶ This can be seen with the rising speculation in relation to child trafficking and organ removal. Nevertheless, this newer form of exploitation has not yet been confirmed in the field of child trafficking and needs to be further researched. It also deserves more attention from law enforcement agencies.¹⁰⁷

Ambiguities surrounding exploitation and the role of gender also exist. Past research suggests that girls are generally trafficked for sexual exploitation while boys are exploited in the labour market. Nevertheless, and contrary to popular belief, boys may also be trafficked in order to be exploited sexually. The “widespread social denial” that boys may be subjected to sexual exploitation is indicative of the “limited knowledge, awareness and reports of trafficking in boys for sexual purposes but also the gender biases” in existing frameworks, resulting in a shortage of support services that cater specifically towards boys.¹⁰⁸

Past and present research reveals that, although children can fall victim to trafficking at any age, the form of exploitation to which they are subjected will differ. For example, younger child victims of trafficking are frequently used for “begging, child labour or involvement in criminal activities”, while teenagers mainly aged between 14 and 17 years are often subjected to forms of sexual exploitation.¹⁰⁹ In this regard, the significance of effective and adequate data collection methods must not be overlooked. Europe as a region has been accused of failing to implement a “harmonized and systematic data collection, analysis and dissemination at all levels”.¹¹⁰

¹⁰⁵ Reisen & Stefanovic, 2004, p. 9.

¹⁰⁶ UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. 6, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

¹⁰⁷ *Id.*, p. 12.

¹⁰⁸ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, p. 25, available at http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

¹⁰⁹ *Ibid.*

¹¹⁰ UNICEF Innocenti Research Centre, *supra* note 106, p. iv.

The above paragraphs clearly depict the multi-dimensional nature of trafficking in children/young persons, completely contrary to the one-dimensional views of many governments. Primarily, it is the duty of the state to draft laws and suitable measures which aid in the fight against child trafficking and which provide a sound system of protection for trafficked victims. This said, however, coordination and cooperation are required at all levels of society, starting from the “grass-roots” organisations up to the regional and international bodies. Actions taken solely by the state, while critical, are insufficient if children are to be adequately protected.¹¹¹ Without this multi-agency approach, child trafficking will only continue to proliferate and violate the rights of yet more vulnerable children. The second part of this chapter will highlight the damaging ways in which trafficking affects its victims and the significance of direct assistance in order to cope with the severe violations children have had to suffer through. Examples of adequate and effective systems of protection will also be explored in this section, focussing more specifically on the recommended principles and guidelines of the OHCHR, as well as other child protection guidelines provided by organisations such as UNICEF.

2.2. The significance of special protection

Bearing in mind the specialised care and assistance that trafficked children require, special protection measures must be in place to fulfil these highly specific needs. The provision of such protection accepts the unique circumstances of children who have been trafficked. It also takes into consideration that children will be vulnerable in different ways depending on their age, sex and “the context within which they have been trafficked”.¹¹² Without a doubt, trafficked children will suffer abuse at all stages of the trafficking process. The form and degree of exploitation or abuse will vary depending on each stage. What is more, not all victims of trafficking will undergo the

¹¹¹ Dottridge (b), 2006, p. 30.

¹¹² ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, p. 36, available at http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

same journey. Some children experience deception or violence upon recruitment, while others can be plied with drugs in order to render them powerless. Others choose to go with persuasive and coercive traffickers in the hope for better life opportunities and improved employment prospects but, instead, end up feeling deeply betrayed and worthless. Trafficked children may be moved across borders either legally or illegally, but both situations leave them open to violence and abuse in order to “obey orders”.¹¹³ This can often include sexual violence. Moreover, children may also be endangered upon encountering law enforcement officials or other state authorities trying to stop the traffickers. This could be due to the fact that the children are mistakenly seen as criminals and illegal migrants, or simply because they become trapped in the struggle between traffickers and law enforcement. It is also often the case that children being trafficked will be provided a “new (false) identity” in order to pass into a new country, which in turn contributes to the breakdown of their own personal self.¹¹⁴

During each phase of trafficking, outlined in the previous section, children are subjected to a range of rights violations and endure both physical and psychological damage. The harm inflicted on trafficked children while they are being exploited depends on the form or forms of exploitation to which they have been subjected.¹¹⁵ In most cases, trafficked children are prevented from exercising a wide range of rights such as “the right to preserve his or her identity, the right to education, to healthcare, to rest and leisure as well as the right not to be subjected to torture, or cruel, inhuman or degrading treatment or punishment and not to be deprived of liberty unlawfully or arbitrarily”.¹¹⁶ Victims of child trafficking are controlled and abused physically and/or sexually by any number of perpetrators and varying degrees of violence can occur at all stages of the trafficking cycle.¹¹⁷ Trafficked children will often experience a mixture of feelings including shame, guilt and betrayal as well as suffer from low levels of self-esteem. Not only this, the exploitation of trafficked young persons is likely also to have

¹¹³ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006, p. 17, available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf (consulted on 10 April 2012).

¹¹⁴ *Id.*, p. 18.

¹¹⁵ Dottridge (a), 2006, p. 18.

¹¹⁶ *Id.*, p. 17.

¹¹⁷ IPU & UNICEF, *Combating Child Trafficking*, March 2005, p. 16, available at http://www.unicef.org/ceecis/IPU_combatingchildtrafficking_GB.pdf (consulted on 26 May 2012).

adverse effects on their psychosocial wellbeing in terms of social and educational development. Traffickers and other perpetrators keep their victims cut off from the outside world, thus limiting their capacity to engage in everyday social activities that are typically carried out by “normal” children.¹¹⁸ In terms of physical health, children who have been trafficked and exploited may incur a number of injuries, be more likely to contract diseases, often sexually transmitted, and suffer from malnourishment and/or other illnesses.¹¹⁹

In this way, the deeply significant role that special protection will have on the lives of trafficked children should be appreciated, the provisions of which are two-fold. On the one hand, states must make it their priority to remove child victims from the control of traffickers, their associates and exploiters and, on the other hand, they must also afford these children enough time to “recover and reintegrate into society”.¹²⁰ Experience has taught us that, more often than not, governments will think and act in the short-term. This same attitude may also apply to the type of protective measures that victims of child trafficking receive. Mere retrieval of victims and giving them adequate shelter, although essential, will not suffice. Rather, the failure to consider and offer long-term solutions may prove detrimental to the child’s survival; it is no simple process but it is absolutely essential if the child is to move forward with his/her life or avoid possibilities of being re-trafficked. What is more, the assistance and protection afforded to victims must be provided immediately and in a sensitive manner if it is to have positive, long-lasting effects. It can often be the case that, due to delays in the identification of the victims as well as insufficient planning by those responsible, children will despair and their problems will escalate.¹²¹ This lack of efficiency and professionalism together with the inadequate provision of services will most likely prove more costly and time-consuming in the long-run than if adequate support were provided directly. Therefore, being proactive and investing in direct assistance programmes that avert issues from surfacing in the first place, or from escalating, would

¹¹⁸ *Ibid.*

¹¹⁹ Dottridge (a), 2006, pp. 18-19.

¹²⁰ *Id.*, p. 16.

¹²¹ Richman, 1998, p. 106.

be significantly more beneficial to the child victims as well as to the state in the long-run.¹²²

A human rights approach or, more specific to this paper, a child-centred rights-based approach to protection is of the utmost importance and must be adopted by states. The IOM, considered to be veterans in the field of human trafficking, believes that “the protection and assistance of victims plays a role beyond the merely humanitarian”.¹²³ Rather, the human rights dimension of trafficking in persons, and trafficking in children especially, must be afforded sufficient consideration if the fight against trafficking is to be successful. In other words, it is critical that states and other relevant parties strike a balance between anti-trafficking measures and the protection of human rights since, “protection of victims per se is not the same as protection of a victim’s human rights and human dignity”.¹²⁴ Rather, the concept of protection is multi-dimensional and necessitates a range of responses from states to ensure adequate protection of victims.

One theory regarding child exploitation proposes that children may also experience abuse by the society in which they live, as opposed to the more traditional idea that abuse of the child is caused by a specific person or group of persons.¹²⁵ This leads to the conclusion that, when states fail to adequately protect and assist victims of trafficking, they are complicit in the violations of children’s rights. It follows therefore that there is a necessity of governments to implement a child-centred approach, in line with adequate national and international regimes, and to have effective law enforcement and a high level of awareness within and around society about the dangers of trafficking.¹²⁶ Not only this, the protection of minors who either have been trafficked or are more susceptible to trafficking also requires a strong political will by both state and non-state actors. It is not merely enough to have the necessary laws and policies in place. Rather, their implementation, monitoring and re-enforcement are absolutely crucial. Finally, a child-centred rights-based approach to trafficking in children/young persons is paramount since measures and actions taken will be in the best interests of

¹²² *Id.*, p. 2.

¹²³ Apap & Medved, 2003, p. 8.

¹²⁴ *Ibid; Id.*, p. 87.

¹²⁵ Kay, 2003, p. 24.

¹²⁶ Cameron & Newman, 2008, p. 3.

the child, a fundamental principle of the CRC. The following paragraphs will examine specific guidelines, primarily those of the OHCHR and UNICEF, on how best to protect and assist child victims of trafficking. The most important requirements and standards for good practice that will facilitate a child-centred approach will also be looked at alongside other aspects that states could and should learn from.

2.2.1. Towards a child-centred rights-based approach:

Applying the ‘4P’ principle in the special protection of trafficked minors

Because victims of child trafficking experience a number of “particular physical, psychological and psychosocial” harms and are more vulnerable to being exploited, their treatment ought to be distinct from that of trafficked adults “in terms of laws, policies and programmes”.¹²⁷ The OHCHR’s *Recommended Principles and Guidelines on Human Rights and Human Trafficking* signified progress with regard to the protection of trafficked children, and trafficked persons in general. Indeed, the seventeen Principles and eleven Guidelines contained therein offer to states “a comprehensive road map for integrating human rights in anti-trafficking activities at all levels”.¹²⁸ Within the recommended Principles on protection and assistance, it is specifically stated that the best interests of child victims of trafficking “shall be considered paramount at all times”.¹²⁹ This approach to trafficking explicitly recognises the special position of children and automatically accords them special rights.¹³⁰ Although this document is not legally binding on states, the recommendations outlined in the paper have influenced anti-trafficking measures in a variety of ways. This much can be seen with their integration into various policy papers and interpretive texts affixed to international and regional treaties.¹³¹ The standards it lays out have been cited extensively “by various international human rights bodies and adopted by the

¹²⁷ Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, p. 10, Index: E/2002/68/Add. 1.

¹²⁸ Inter-Agency Coordination Group against Trafficking in Persons, *An analytical review 10 years on from the adoption of the UN Trafficking in Persons Protocol*, October 2010, p. 15, available at http://www.unicef.org/protection/ICAT_Background_Paper.pdf (consulted on 09 June 2012).

¹²⁹ OHCHR, *supra* note 127, p. 2.

¹³⁰ Gallagher, 2010, p. 64.

¹³¹ *Id.*, p. 4.

Special Rapporteur on Trafficking in Persons as a major reference point for the work of that mandate”.¹³² Their use by many NGOs has facilitated specific efforts “to advocate a stronger and more rights-protective response to trafficking”.¹³³

UNICEF’s work is one such example. In 2007, in collaboration with other organisations and institutions, it carried out a thorough study on child trafficking in Europe. In this report, it was concluded that a “child-centred strategy to address child trafficking is long overdue”.¹³⁴ This particular approach gives children’s rights a central role in international, regional and national policies and initiatives. The key objectives are to protect and empower all trafficked children, including those vulnerable to being trafficked, and to prevent the exploitation and abuse of children. The child’s growing capacity to express his/her own opinions must be respected and taken into account; every child has the right to be heard.¹³⁵ The report also outlined a number of challenges faced by European countries including insufficient legal protection for child victims of trafficking; absence of efficient and harmonised data collection procedures; insufficient implementation of anti-trafficking and child protection laws and policies and insufficient coordination and cooperation between the different state and non-state actors. Above all, the study’s findings noted a worrying lack of progress in the areas of protection and the rights of victims of child trafficking. It found that protection measures too often focused on the short-term with little emphasis on the need for more durable solutions. What is more, state authorities were accused of overlooking children’s views when it came to decision-making and procedural planning.¹³⁶ Clearly, there has been and continues to be a need for states to re-evaluate their approaches to child trafficking and align them with guidelines that have already been drafted.

Guideline 8 of the OHCHR document specifically outlines “special measures for the protection and support of child victims of trafficking”.¹³⁷ It should be noted that

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. 1, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

¹³⁵ *Ibid.*

¹³⁶ *Id.*, p. 43.

¹³⁷ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, pp. 13-14, Index: E/2002/68/Add. 1.

these recommendations are to be considered alongside the measures laid out in Guideline 6 entitled ‘Protection and support for trafficked persons’. A core element of the latter Guideline is that suitable protection and support must be offered to all trafficked persons “without discrimination”.¹³⁸ In Guideline 8 then, ten recommendations are put forward concerning the actions that states must take in order to deal appropriately with child victims of trafficking. Above all, definitions of trafficking in young persons in both law and policy must account for the special needs, safeguards and care of trafficked children, as well as provide adequate legal protection. Upon discovery of a supposed victim of trafficking, procedures must be in place for their “rapid identification” and the establishment of “adequate care arrangements that respect the rights and dignity of the trafficked child”.¹³⁹ In cases where the child is unaccompanied or has been separated from relatives or primary caregivers, appropriate action should be taken to facilitate a process of family reunification, but only if such reunification is “deemed to be in their best interest”.¹⁴⁰

It is also important that children who are supposed victims of trafficking are not treated as criminals nor sanctioned “for offences relating to their situation as trafficked persons”.¹⁴¹ Another critical aspect of these Guidelines is that children are afforded “the right to express...views freely in all matters affecting” them. The adoption of “specialised policies and programmes” together with the provision of suitable “physical, psychosocial, legal, educational, housing and health-care assistance” is an essential feature of this list. In addition, measures must be adopted in order to “protect the rights and interests of trafficked children” throughout criminal proceedings of alleged traffickers and during procedures to obtain compensation. Throughout such processes, what must be ensured is the child’s right to privacy and the protection of his/her identity. Finally, persons working with child victims must have “adequate and appropriate training, in particular legal and psychological training”.¹⁴²

¹³⁸ *Id.*, p. 8.

¹³⁹ *Id.*, p. 11.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

Brief yet concise, the Guidelines have played a fundamental role in how states can adopt a more child-friendly approach to trafficking in human beings. UNICEF has added to these measures in its own Guidelines, mentioned earlier, that specifically relate to child victims of trafficking.¹⁴³ Above all, it outlines the principles that must be respected by states throughout the process of caring for and protecting trafficked children. The core principles encompass the rights of the child, as set out in the CRC, which include the best interests of the child; the right to non-discrimination; respect for the views of the child; the right to information; the right to confidentiality; the right to be protected; state authorities' definition of roles and steps; and, finally, coordination and cooperation.¹⁴⁴ Moreover, special protection measures will only be effective in the case of eleven specific criteria outlined by UNICEF's Guidelines. These standards for good practice correspond in many ways to the Principles and Guidelines of the OHCHR, although the measures provided by UNICEF are more elaborate. What is more, they add to such measures for child protection by including distinct aspects like the appointment of a guardian to the trafficked victim.¹⁴⁵ The carrying out of individual case assessments in order to identify a durable solution for each child victim of trafficking together with its effective implementation is another important element.¹⁴⁶ The measures offer a mixture of both short- and long-term solutions and provide core guidance to states in overcoming obstacles faced when adopting a child-centred approach to trafficking.

One such challenge concerns the issue of identification, a process which plays a key role in providing adequate protection to trafficked children. It is often the case that trafficked children are misidentified by authorities, which results in 'next-step decision-making' that is incorrect and inappropriate.¹⁴⁷ By failing to identify child victims correctly, states deny the child's right to and need for special protection measures, and could end up doing more harm than good to the child's well-being.¹⁴⁸ In this way, state

¹⁴³ UNICEF, *Guidelines on the Protection of Child Victims of Trafficking*, September 2006, available at http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf (consulted on 10 April 2012).

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Dottridge (a), 2006, p. 32.

¹⁴⁸ *Id.*, pp. 31-32.

authorities that are responsible for immigration and for controlling border points have a special duty to implement pro-active measures that facilitate rapid and efficient identification. They should cooperate with other statutory agencies and non-state actors, who can also play a role in identifying children who have been exploited and possibly trafficked. For example, drop-in centres run by NGOs provide a contact-point for trafficked children who have used such a facility to voice their fears. Arrangements could thus be made between the centres' staff and police officials about how best to respond to such a situation.¹⁴⁹ Information-sharing between the different actors involved by means of a common database on trafficked children could also prove useful, but it must be highly confidential with monitored and limited access.¹⁵⁰

UNICEF makes note of other particular challenges as well as examples of good practice in the identification process. Firstly, the problems surrounding age determination in the assessment of the child must be addressed. Above all, the “benefit of the doubt” principle must be applied if the exact age of the trafficked victim is deemed unknown.¹⁵¹ In other words, it is considered best practice that law enforcement officials presume a trafficked victim to be a child if the age is not certain. Identification gives rise to numerous state obligations in terms of assistance, support and protection. In this way, mistakenly identifying a child as an adult is in direct violation of his/her human rights, rendering any such rights as “purely theoretical and illusory”.¹⁵² The assessment therefore must be performed by “independent professionals with appropriate expertise” who are familiar with the needs and vulnerabilities of trafficked victims. Factors regarding physical, developmental, psychological and cultural aspects of the child must also be taken into consideration. Finally, the information should be stored on file along with a photo of the child. Past experiences reveal that traffickers often change the name of children and provide them with different identity documentation as they move from place to place.¹⁵³

¹⁴⁹ *Id.*, pp. 43-45.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² Gallagher, 2010, p.162.

¹⁵³ Dottridge (a), 2006, p. 58.

Another critical element is the appointment of a guardian to the trafficked child. Once a child victim of trafficking has been identified, states should immediately assign the child in question with a suitable guardian. This can be done either through a specific guardianship service or, if such an agency does not exist, then by social services or other appropriate institutions. NGOs may even be asked to take a guardianship role if the need should arise.¹⁵⁴ Essentially, the guardian must be independent and always act in the best interests of the child, rather than in the interests of state authorities. What is more, the guardian should be appointed without delay and provide a pillar of support for the child in question until a durable solution has been decided and implemented.¹⁵⁵ Finally, the guardian's role is vital in the effective implementation of special protection measures for child victims for a number of reasons, various of which will be indicated in the coming paragraphs.

As principal advocate for the child, they have the leading responsibility to act in his/her best interests, particularly in any decision-making processes. It is their duty to perform, in cooperation with social services and NGOs, an individual needs assessment for each child victim which will determine the most suitable care and protection provisions.¹⁵⁶ They are also expected to act as a link between the trafficked child and the various agencies with which they will come into contact, making the child aware of any risks attached to the particular options available. Other important duties are to keep the child/young person informed at all times and to accompany and support them during difficult but necessary procedures like criminal proceedings or medical checks.¹⁵⁷ Above all, the appointment of a guardian provides a medium through which the child can express his/her fears or thoughts on what the future might hold. In short, the guardian is a person in whom the child can confide. Being exposed to such a deceitful act like trafficking will severely damage the trust a child has in people and, once trust has been lost, it is hard to restore.¹⁵⁸ Therefore, the guardian is someone who can listen to the child victim's views and work on rebuilding confidence in him/herself.

¹⁵⁴ *Id.*, p. 52.

¹⁵⁵ *Id.*, pp. 51-52.

¹⁵⁶ *Id.*, p. 65.

¹⁵⁷ *Id.*, p. 52.

¹⁵⁸ Kay, 2003, p. 133.

Once a child has been correctly identified it is important to determine the next steps to take that are in the best interests of the child. Will the child benefit from being reunited with their family, or would it be more beneficial for them to remain in state care? “Safe and suitable accommodation”, whether temporary or more long-term, is fundamental to a child’s path to regrowth and recuperation.¹⁵⁹ The development of standards of care by social services, in cooperation with NGOs, should be a top priority for states and “under no circumstances” must a child be kept in any kind of detention facility. A foster family, a transit home or other place of residential care deemed adequate for the child should be arranged by social services. NGOs have also been known to provide accommodation for child victims; shelters run by the IOM in the South-Eastern Europe region are one such example.¹⁶⁰ Whatever the place of suitable residence, it should be adequately regulated, should not be publicly known and access must be restricted and frequently monitored.¹⁶¹

Even though child victims in care are no longer under direct control of traffickers or exploiters, they still require constant protection from potential threats, harassment or intimidation. They are vulnerable to maltreatment by other traffickers and by staff or children in the place of residence, to adverse effects by the media and to stigmatisation by the public.¹⁶² Law enforcement officials and the child’s guardian must also establish whether the child has contact with the trafficker, through a mobile phone for example. Traffickers have been known to make contact with the child victim within the first few days of being taken into care. Instructions are given to the child over the telephone to leave the residence and meet with the trafficker upon their exit. Indeed, a significant proportion of trafficked children across Europe have gone missing from residential centres in this way.¹⁶³ Such circumstances reinforce the necessity for the provision of adequate accommodation that is supervised and secure. Without such protection, the likelihood that the child will remain in the trafficking cycle is increased considerably. Not only that but a failure to provide adequate assistance will reduce a

¹⁵⁹ Dottridge (a), 2006, p. 65.

¹⁶⁰ *Id.*, p. 67.

¹⁶¹ *Id.*, pp. 65-66.

¹⁶² *Id.*, p. 65.

¹⁶³ *Id.*, pp. 67-68.

child victim's chances to recover and eventually re-integrate back into society. The future of a child victim depends on the actions of the state along with support from NGOs and other relevant actors.

Other necessities that make for suitable care include “security, physical and psychological health care, legal assistance, welfare and education”.¹⁶⁴ Finally, foreign-national child victims of trafficking should not be returned to their home country unless it is deemed in their best interests for them to return. It could be that their family was involved in their being trafficked in the first place or that they are more likely to experience victimisation in their country of origin. In this sense, the process of family reunification is significant as factors like the ones referred to above will be investigated and taken into consideration in such procedures like risk assessment.¹⁶⁵ What is more, a government has the duty to ensure that the principle of non-refoulement¹⁶⁶ is respected. During the recovery process, what trafficked children need most in their lives is to feel a sense of security, predictability and control. Actions should be taken to (re)empower victims. Activities should be offered which encourage trafficked victims to express themselves in some way and, with the aid of the guardian, an assessment made to determine whether a child is ready to return to school; in a sense, the relevant parties must instigate and facilitate the process of re-integration into society.¹⁶⁷

Provisions for protection of trafficked children during legal proceedings are also essential since “children who have been trafficked have a right to justice” and to receive some form of compensation.¹⁶⁸ It is important that law enforcement officials allow child victims enough time to recover from the traumas of being trafficked before asking them whether they will press charges and cooperate with the police. A guardian is important in this sense as they can provide a medium between the child and the

¹⁶⁴ *Id.*, p. 70.

¹⁶⁵ *Id.*, p. 78.

¹⁶⁶ The term ‘refoulement’ is defined by UNICEF in its guidelines on child victims of trafficking as “the expulsion or return of a refugee to the frontiers of territories where his or her life or freedom is threatened because of his or her race, religion, nationality, membership of a particular social group or political opinion”. With regard to children, the principle of non-refoulement, as defined in the *1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees*, maintains that “a child who is seeking asylum or who holds refugee status cannot be forced to return to the country of origin or to the frontiers of any country which might in turn force them to return to their country of origin”.

¹⁶⁷ Dottridge (a), 2006, pp. 71-82.

¹⁶⁸ *Id.*, p. 99.

authorities as well as provide advice and keep the child informed. What is more, assistance offered to the child victim should not be made contingent on his/her cooperation with police officers.¹⁶⁹ Children should not feel pressured to cooperate; they have already suffered enough. Should the child agree to take part in the proceedings and be present as a witness, he/she must be made feel comfortable and secure. In practice, subjecting a child to court proceedings can often cause more harm than good.¹⁷⁰ Many victims fear reprisals from traffickers or worry about their family's safety. Therefore, procedures in place must be child-sensitive and their representatives and others with whom they have contact must be well-informed and trained in the area of trafficking and victim support.¹⁷¹ Actions taken must, at all times, be in the best interests of the child, be they in the form of witness protection, recorded testimonies or the provision of an interpreter.¹⁷²

Even though it is not mentioned in the OHCHR Guidelines or those of UNICEF, the provision of aftercare facilities for trafficked young persons who turn 18 whilst in the care of the state is significant. Such a service should be considered an important long-term solution regarding the recovery process of young persons who have been trafficked. It is stated in the former Guidelines, however, that states should adopt specialised “policies and programmes to protect and support” child victims of trafficking; the provision of aftercare could fall under this recommendation. Aftercare provides a range of services to ‘aged out minors’¹⁷³ who must leave childcare services upon turning eighteen. These services should offer young persons with guidance and support during their transition from living in care to adulthood, “with the same opportunities and quality of life as their peers”.¹⁷⁴ Numerous NGOs are keen advocates for such measures since aged out young persons could be faced with new issues, such as those associated with life as an adult asylum seeker, deportation or financing for further

¹⁶⁹ *Ibid.*

¹⁷⁰ *Id.*, p. 100.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ An ‘aged-out’ minor is the term given to young persons who have made the transition from being aged under eighteen years to over eighteen years old.

¹⁷⁴ Barnardos, *Aftercare for Separated Children*, October 2010, available at <http://www.barnardos.ie/assets/files/Advocacy/Separated%20Children/Barnardos%20Paper%20on%20Aftercare%20for%20Separated%20Children.pdf> (consulted on 25 May 2012).

education.¹⁷⁵ They may even become vulnerable once more to traffickers considering they are no longer supported by integral childcare provisions.¹⁷⁶ The state may officially recognise them as adults but this does not mean that aged out young persons should be suddenly deprived of all state assistance.

Finally, in order to ensure the effective coordination and implementation of such support and protection measures outlined above, the Organisation for Security and Co-operation in Europe (OSCE), in collaboration with the Office for Democratic Institutions and Human Rights, has provided a template for governments on National Referral Mechanisms (NRM).¹⁷⁷ The OSCE describes the NRM as “a cooperative framework” whereby participating States assume their role and responsibility “to protect and promote the human rights of the victims of trafficking in human beings in coordination and strategic partnership with civil society and other actors working in this field”.¹⁷⁸ The OSCE provides specific guidelines for states on how to establish an NRM, which includes carrying out a “comprehensive assessment of the nature and extent of trafficking in the country” as well as an assessment of the relevant laws and protections in place for victims.¹⁷⁹ The creation of a “Roundtable for Combating Trafficking in Human Beings” is also important as it provides a forum where “all major national actors” in the combat of trafficking can meet and discuss issues.¹⁸⁰

Lastly, the OSCE accept that the creation of an NRM is a complex process for states. In order to alleviate such a process, it is possible to develop the NRM in stages rather than all at once. The OSCE highlights five key elements of an NRM, which are as follows: “Identification of presumed trafficked persons; basic principles of co-operation agreements; support and protection services; and repatriation and social inclusion”.¹⁸¹ Before examining more ‘on the ground’ measures in Ireland, which such a mechanism can facilitate, the next chapter will delve into the range of laws within the

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ Organisation for Security and Co-operation in Europe and Office for Democratic Institutions and Human Rights, *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, 2004, available at <http://www.osce.org/node/13967> (consulted on 20 May 2012).

¹⁷⁸ Dottridge (a), 2006, p. 61.

¹⁷⁹ *Id.*, p. 62.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

field of human rights that aid in the protection of trafficked children/young persons, and will consider the following question: “Does the current legislation suffice?”

3. Trafficking in children/young persons: The legal framework

3.1. A general overview of anti-trafficking legislation

“The right to live in dignity, free from fear and want, is still denied to millions of people around the world”.¹⁸² Under international law, states are granted certain rights but they have also specific duties and responsibilities that they are obliged to fulfil. In some instances, like in international human rights law, the law also deals with the relations between states and individuals.¹⁸³ The establishment and development of specific instruments, such as anti-trafficking treaties, provides significant protection for all of those individuals who are vulnerable to traffickers or who have been trafficked. Without such instruments, victims of trafficking are at an even greater risk and are less of a priority to states. To quote Article 28 of the *Universal Declaration of Human Rights*, “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”. One such right put forward by the Declaration is the right to childhood, which deserves “special care and assistance” (Article 25.2).¹⁸⁴

Therefore, the protection of children should be of particular concern to the international community in the combat of trafficking. Although the current legislation regarding the protection of children against trafficking is considered to be comprehensive, this has not always been the case. As already mentioned, it has really only been in the past two decades that the international community has begun to consider seriously and react to the crime of trafficking. Indeed, data collected by various international organisations, institutions and NGOs suggests that the development of most legislative frameworks on trafficking in persons has only occurred

¹⁸² Kofi A. Annan, *Forward to the UN Convention against Transnational Organised Crime and the Protocols Thereto*, September 2004, p. iii, available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (consulted on 26 June 2012).

¹⁸³ Gallagher, 2010, p. 17.

¹⁸⁴ The Universal Declaration of Human Rights, 10 December 1948.

within the last decade.¹⁸⁵ UNODC reports maintain that, before the Trafficking Protocol entered into force in 2003, the majority of countries did not have any sort of human trafficking legislation.¹⁸⁶ With specific regard to child protection, even though the CRC – which upholds that a child’s best interests must prevail above all else – has been signed and ratified by most countries, many states continue to fight child-trafficking with a more traditional approach.¹⁸⁷ That is, state agents place more emphasis on targeting the criminals of trafficking and the factors that harm children rather than looking at trafficking as a violator of children’s rights. What is more, it is still often the case that states primarily will look at trafficking in humans as a crime, and even view victims as “objects of wrongdoing”.¹⁸⁸ Above all else, when a state implements anti-trafficking legislation what is often missing is an “equal emphasis on upholding the rights of the individuals who are trafficked”.¹⁸⁹ Is this the fault of the state in question, or is the current legislation more to blame?

A human rights-based approach or, more specific to this paper, a child-centred rights-based approach must be adopted by states if their obligations under international law, and particularly human rights law, are to be truly respected. The fact of the matter is that, if the various dimensions of child trafficking are to be combated effectively, comprehensive legislation on trafficking will not on its own suffice. Rather, the applicable laws need to be complemented by other measures that place specific focus on those most vulnerable to being trafficked. In this respect, “a well-functioning child protection system” is crucial in that it will have the capacity to provide each child victim with the special care and assistance so badly needed.¹⁹⁰ What is more, this particular approach will ensure the protection of all child victims’ human rights in the broadest sense possible, thus, moving “beyond the criminal aspects of trafficking and

¹⁸⁵ UNODC, *Global Report on Trafficking in Persons*, February 2009, p. 22, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf (consulted on 28 May 2012).

¹⁸⁶ *Ibid.*

¹⁸⁷ Dottridge (a), 2006, pp. 11-12.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. 26, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

the criminal justice system”.¹⁹¹ Finally, if the implementation of laws and policy measures is to be truly effective then it is absolutely essential that states respect a child’s agency. In other words, governments, NGOs and other child-related organisations must recognise a child’s right to voice his/her opinion. Not only this, but children must also be allowed to play an active role in any decision-making process that will impact upon their present or future situation. They must be afforded a certain level of responsibility in their development and daily lives and states must acknowledge their skills and capabilities to make their own decisions.¹⁹² In other words, child victims must learn, or re-learn, how to be independent and protect themselves from traffickers and exploiters. Only then can child victims begin to overcome the extreme abuse and violations they have suffered at the hands of their abusers.

In order to provide a clear and thorough overview of the anti-trafficking laws in place for young persons, all legislative material in this section will be examined at an international and regional level. More specifically, this chapter will consider the legislation that is relevant to Ireland; that is, it will outline the treaties and conventions that Ireland has signed, though not necessarily ratified, on an international and a European basis. Therefore, laws that have been adopted by the CoE and the EU will also be considered. Particular attention will be paid to the protections laid out in the relevant instruments that must be afforded to the child victims of trafficking. In this way, an understanding will be gained of the fixed duties and responsibilities that the Irish government has agreed to undertake in its protection of the rights of the child. Above all else, it should be noted that the laws referred to below should be read from a human rights, child-centred perspective and they should be implemented using the four ‘P’ approach discussed earlier. This approach considers, at all times, the best interests of the trafficked child and promotes the participation of children throughout the process of recovery and re-integration into society. Furthermore, all measures relating to children should be considered at all times in conjunction with, *inter alia*, the best interests of the child, the principle of non-discrimination and the child’s rights to be heard, to privacy and to freedom of expression.

¹⁹¹ *Ibid.*

¹⁹² *Id.*, p. 43.

3.2. International applicable law

The first law dealing specifically with the issue of trafficking was adopted at the beginning of the twentieth century, entitled by its drafters as the *1904 International Agreement for the Suppression of the White Slave Traffic*.¹⁹³ At the time, trafficking was narrowly understood as the “sexual exploitation of women and girls in foreign countries”.¹⁹⁴ This law was subsequently followed by a series of similar treaties, the most of which were combined in 1949 to form a single convention¹⁹⁵ which was to remain the most important international treaty on the subject of trafficking for the next fifty years.¹⁹⁶ It was not until the year 2000 that the crime of trafficking in human beings was seriously addressed once more by the international community.¹⁹⁷ In December of that year, representatives from over eighty countries gathered at Palermo, Italy to sign the *United Nations Convention against Transnational Organised Crime* (UN Convention).¹⁹⁸ It was adopted by General Assembly resolution 25/55 on 20 November 2000 and entered into force on 25 December 2003. It is the main international instrument in the combat of transnational organised crime, including trafficking in human beings.¹⁹⁹ Since its adoption, it has been supplemented by two Additional Protocols, including the Trafficking Protocol. The Trafficking Protocol will be examined in closer detail in the coming paragraphs.

The UN Convention’s adoption and entry into force made evident the political will of the international community to come together to confront such transnational crimes like human trafficking.²⁰⁰ While its measures focus more on the illegal activities of transnational crime in general, it does make reference to the protection of and assistance to victims in so far as it provides criteria for the protection of witnesses

¹⁹³ Gallagher, 2010, p. 19.

¹⁹⁴ *Ibid.*

¹⁹⁵ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949.

¹⁹⁶ Gallagher, 2010, p. 19.

¹⁹⁷ *Ibid.*

¹⁹⁸ United Nations Convention against Transnational Organised Crime, 15 November 2000.

¹⁹⁹ UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, available at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (consulted on 14 June 2012).

²⁰⁰ *Ibid.*

(article 24) and details State Parties' obligations to protect and assist victims (article 25). At times, the language could be described as soft, owing to the fact that it only obligates a State Party to provide, "within its means", protection and assistance to victims (article 25.1). All in all, it focuses much more on legal measures than on protection and care.²⁰¹ Nevertheless, its adoption signalled Member States' acknowledgment of the seriousness of such crimes like trafficking in persons and of the need for international cooperation and coordination.²⁰² The UN Convention was subsequently complemented by two Additional Protocols, more commonly referred to as the "Palermo Protocols". The Protocol most relevant to this paper is the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*²⁰³, often called the Trafficking Protocol. This supplementary Protocol deals specifically with the illicit crime of trafficking in persons. It has had a significant impact on a wide range of trafficking-related laws, policies and other relevant documentation from the domestic to the international level.

The Trafficking Protocol entered into force in 2003 and by 10 October 2009 had 133 State Parties.²⁰⁴ It differs from the UN Convention in its significance in a number of ways. Not only does it provide the first internationally agreed definition of trafficking in persons²⁰⁵ but it is also evidence of international recognition that progress needed to be made with specific regard to victims' rights and protection measures for victims.²⁰⁶ It recognises the multi-dimensional nature of trafficking in humans and pays special attention to children who are vulnerable to trafficking or who have been trafficked. The Preamble affirms that, before the introduction of the Trafficking Protocol, there was no universal instrument that addressed "all aspects of trafficking in persons" so that, inter alia, the most vulnerable, i.e. child victims, were left unprotected. It is currently the single most important and influential international legal instrument on

²⁰¹ Holmes, 2010, p. 196.

²⁰² UNODC, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, available at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (consulted on 14 June 2012).

²⁰³ Trafficking Protocol, 15 November 2000.

²⁰⁴ Gallagher, 2010, p. 19.

²⁰⁵ CoE Convention on Action against Trafficking in Human Beings, 16 May 2005.

²⁰⁶ Konrad, 2008, p. 172.

trafficking²⁰⁷ and provides a significant means to instigate and facilitate international cooperation.²⁰⁸ Although it is not without imperfections, the Trafficking Protocol's definition of trafficking in human beings has been described as a "serviceable framework for countries" to initiate and develop new laws and policies that adequately address the challenges of trafficking in humans.²⁰⁹ In fact, most states, Ireland included, have adopted comprehensive anti-trafficking legislation only since signing and ratifying the Protocol.²¹⁰ In this way, many laws drafted by regional bodies, such as the EU, and nation states are reminiscent of this particular trafficking in persons definition. What is more, State Parties to the Trafficking Protocol automatically make the commitment to criminalise trafficking and to provide adequate protection for all of its victims.²¹¹

While the Trafficking Protocol has been praised for its significant contribution to the reform of many nation states' anti-trafficking laws, it has also received some criticism. It is important to note that the Protocol was drafted with more of an emphasis on law enforcement. While, on the one hand, there was a unanimous agreement that there was a need for provisions concerning victim protection and assistance, on the other hand, the Protocol's particular method of approach did not necessarily specify how to address fully the specific needs of victims or how to obligate governments to deal effectively with these needs.²¹² Therefore, despite its significant and more progressive features, the Trafficking Protocol can actually be accused of having failed to provide sufficient mechanisms which aid in the absolute protection of victims and their rights. In effect, the Protocol might be described as a treaty of contradictions that more alludes to the provision of protective measures for victims as opposed to actually enforcing states to implement them.

The structure of the Protocol is standard in that it starts with the Preamble and is followed by twenty articles, which are divided into four main parts. While it is quite descriptive in its instructions "to protect and assist trafficked victims, with full respect

²⁰⁷ Gallagher, 2010, p. 19.

²⁰⁸ Cameron & Newman, 2008, p. 6.

²⁰⁹ *Ibid.*

²¹⁰ Holmes, 2008, p. 193.

²¹¹ *Ibid.*

²¹² Konrad, 2008, p. 172.

for their human rights”, its use of language in such provisions has been described as “weak and vague”.²¹³ Upon reading specific measures, it becomes clear from particular wordings that the granting of victims’ rights is of a “non-committal and conditional manner”.²¹⁴ The use of such phrases as “in appropriate cases”, “to the extent possible”, “if permissible under domestic law”, “each state party shall consider”, “shall take into account” or “shall endeavour” clearly demonstrate the conditionality of particular rights.²¹⁵ It is interesting to observe that part two, comprised of Articles 6 to 8 – the section dedicated to the ‘Protection of victims of trafficking in persons’ – is abundant with such expressions. Despite its best intentions, the careful reading of such a document exposes its “soft manner”.²¹⁶

Even so, the Protocol does attempt to outline specific measures regarding the protection of victims, including certain aspects like confidentiality during legal proceedings and provisions for the “physical, psychological and social recovery of victims”.²¹⁷ Article 6.4 provides that State Parties must recognise “the special needs of children” in the provision of appropriate services like “housing, education and care”. Possibilities in terms of compensation “for damage suffered” are also mentioned (art.6.6). Articles 7 and 8 provide measures regarding the “status of victims...in receiving States” as well as potential issues surrounding repatriation. In addition, the need to protect victims, “especially women and children”, from being re-victimised is highlighted (art.9).²¹⁸ State Parties are also under obligation in Article 9 to “take or strengthen measures” in order to ease certain conditions of persons most vulnerable to trafficking, “especially women and children”; conditions in this respect include “poverty, underdevelopment and lack of equal opportunity” to name but a few (art.9.4).²¹⁹ Another important aspect concerns the training of “law enforcement, immigration and other relevant officials” which should take into consideration the

²¹³ Dinan, 2008, p. 76.

²¹⁴ Konrad, 2008, p. 173.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ Trafficking Protocol, 15 November 2000.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

“human rights and child- and gender-sensitive issues” (art.10.2).²²⁰ Co-operation with civil society is strongly encouraged, though only “as appropriate” (art.9.3).²²¹ Importantly, the final part of this Protocol highlights the obligation to interpret and apply such measures in the light of the “internationally recognised principles of non-discrimination”.²²²

“International human rights treaties form an important part of the applicable legal framework around trafficking”.²²³ The *Convention on the Rights of the Child* (CRC) is one of the core international human rights treaties and contains substantial and specific references to trafficking and related exploitation. The CRC was adopted on 20 November 1989 and entered into force the following year. It is considered paramount in the protection of young persons, including trafficked victims, as it incorporates the “full range of human rights—civil, cultural, economic, political and social rights”; the first legally binding international instrument to do so.²²⁴ Moreover, the ratification of the CRC by nation states, e.g. Ireland, obliges them to protect and safeguard all children's rights, including those of trafficked children. It also obligates State Parties to “hold themselves accountable for this commitment before the international community”.²²⁵

Article 35 of the Convention explicitly refers to the concept of trafficking in young persons when it states that, in order to prevent the “abduction of, the sale of or traffic in children for any purpose or in any form”, State Parties must take “all appropriate...measures”, be they national, bilateral and/or multilateral in form.²²⁶ Articles 19, 32, 34 and 35 outline the prohibition of all forms of exploitation, making specific reference to economic and sexual exploitation and/or abuse. In particular, State Parties are obliged to recognise a child's rights by protecting them “from performing any work” likely to be detrimental to the child's education and/or health as well as to

²²⁰ *Ibid.*

²²¹ *Ibid.*

²²² *Ibid.*

²²³ UNICEF, *Convention on the Rights of the Child*, available at <http://www.unicef.org/crc/> (consulted on 22 April 2012).

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ CRC, 20 November 1989.

their “physical, mental, spiritual, moral or social development” (art.32.1).²²⁷ While the other Articles do not explicitly refer to trafficking in young persons, they are also relevant in the protections that states are obligated to provide for child trafficked victims.

The CRC affirms that, in the case of a child’s identity being unlawfully deprived of or manipulated in some way, it is the duty of the state to assist and protect that child “with a view to re-establishing speedily his or her identity” (art.8.2).²²⁸ Article 11.1 refers to a State Party’s obligation to combat the “illicit transfer and non-return of children abroad” while articles 12 to 15 incorporate provisions concerning the rights to freedom of expression, freedom of thought and freedom of association. State Parties are also responsible to provide special protection and assistance to any child who is temporarily or permanently deprived of his/her family environment (art.20). Alternative care must be arranged for such children and states must take into account the child’s ethnic, religious, cultural and linguistic background.²²⁹ As previously mentioned, many trafficked children are torn from their home and familiar surroundings, thus requiring measures of special protection. Article 39 obliges State Parties to act appropriately and justly so to facilitate a child’s physical and psychological recovery as well as his/her social reintegration after having been subjected to forms of exploitation, abuse or any other kind of cruel, inhuman or degrading treatment. The CRC also refers to the role of education in developing a child’s “personality, talents and mental and physical abilities to their fullest potential” (art.29.1).²³⁰ In this sense, it recognises the importance of education as a means to aid a child victim’s recovery and reintegration into society.

While the Trafficking Protocol has had the greatest impact on the wording of national laws that make it an offence to traffic children for exploitative purposes, many international organisations also advocate for the adoption and enforcement of the *Optional Protocol to the CRC on the sale of children, child prostitution and child pornography* (CRC Optional Protocol).²³¹ This Protocol specifically addresses the

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ *Ibid.*

²³¹ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, p. 30, available at

different forms of commercial sexual exploitation of children.²³² It has been in force since January 2002 and requires the prohibition of all forms of abuse as well as the criminalising of certain acts and activities, which includes the crime of trafficking in children.²³³ Like the Trafficking Protocol, there are particular measures laid out in the CRC Optional Protocol which obligate State Parties to protect and assist child victims. Indeed, Articles 8, 9 and 10 are descriptive in the obligations they place on states. For example, State Parties must recognise the vulnerability of child victims during criminal proceedings and must adjust procedures in order to meet their special needs (art.8). This includes the provision of appropriate support services together with the protection of identity and respect of privacy. The child victim must be kept informed at all times throughout the legal process and state authorities must listen to and consider the child's own "views, needs and concerns" in relation to proceedings (art.8).²³⁴

However, while these provisions of this nature are discretionary in the Trafficking Protocol, Article 9.3 of the CRC Optional Protocol makes it mandatory for State Parties to "take all feasible measures with the aim of ensuring all appropriate assistance to victims, including their full social reintegration and their full physical and psychological recovery".²³⁵ Furthermore, the latter mentioned Protocol stresses the significant role that international cooperation has not only in child victims' physical and psychological recovery but also in their social reintegration and possible repatriation (art.10).²³⁶ It should also be noted that, unlike the Trafficking Protocol, the enforcement of which is not monitored by any ad hoc body, the implementation of the anti-child trafficking provisions in the CRC Optional Protocol is pursued through reporting mechanisms to the Committee on the Rights of the Child, and through the Human Rights Commission of the UN, and the UN Special Rapporteur on the Sale of Children,

http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, 25 May 2000.

²³⁵ ECPAT & The Body Shop, *Their protection is in our hands: The state of global child trafficking for sexual purposes*, 2009, p. 31, available at

http://www.ecpat.net/EI/Publications/Trafficking/Summary_Global_Child_Trafficking_for_Sexual_Purposes.pdf (consulted on 21 March 2012).

²³⁶ Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, 25 May 2000.

Child Prostitution and Child Pornography.²³⁷ In this particular regard, the added significance of the CRC Optional Protocol is demonstrated in that the aforementioned reporting requirements serve to enhance the implementation of the special protections urgently needed by all child victims of abuse, including victims of trafficking. Unfortunately, for reasons unknown, Ireland has failed to ratify the CRC Optional Protocol since signing up to the treaty in September 2000.

The *ILO Convention no. 182 on the worst forms of child labour* (ILO Convention) was drafted and adopted in 1999 in order to strengthen existing conventions on child labour and to urge the international community to take further action towards the elimination of child labour.²³⁸ Article 3.a of the ILO Convention outlines the worst forms of child labour, which include “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children”.²³⁹ The Convention obliges State Parties to take “all necessary measures to ensure the effective implementation and enforcement of provisions” outlined in the Convention (art.7).²⁴⁰ Such provisions, outlined in the same Article, require states to act directly and appropriately in the removal of child victims from situations of child exploitation. States are also compelled to provide appropriate means for a child’s rehabilitation and to facilitate the process of social reintegration (art.7). Like in the other treaties, cooperation between states is recognised as an essential means “in giving effect to the provisions” outlined in the Convention (art.5).²⁴¹

Finally, even though the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) do not explicitly mention the term trafficking, there are some provisions related to the protection of the child. For example, Article 10.3 of the ICESCR recognises that “special measures of protection and assistance” should be provided to all

²³⁷ *Ibid.*

²³⁸ ILO, *ILO Conventions and Recommendations*, available at <http://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm> (consulted on 22 May 2012).

²³⁹ ILO Convention no. 182 on the worst forms of child labour, 17 June 1999.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

“children and young persons without any discrimination”.²⁴² It also highlights the need for their protection from both economic and social exploitation, stating that any work that is “harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law”.²⁴³ Article 24 of the ICCPR states that, “every child shall have, without any discrimination...the right to such measures and protection as are required by his status as a minor, on the part of his family, society and the State”.²⁴⁴ In this regard, it can be deduced that the protection of trafficked children should be prioritised at all levels of society, from the international to the regional to the domestic level. The next section will look at the quality and scope of child protection at the regional level in Europe.

3.3. Regional applicable law: The Council of Europe and the European Union

The existence of a strong regional framework in both the Council of Europe and the EU complements the international legal standards described in the previous section.²⁴⁵ As will be seen in the coming section, the more recent European laws applicable to human trafficking are detailed and progressive, with some of them expanding upon the Trafficking Protocol in a number of respects. While the Trafficking Protocol focuses primarily on criminal justice aspects of trafficking, the most recent anti-trafficking legislation in Europe is considered to take a more victim-centred approach.²⁴⁶ It will be seen that there are mandatory obligations which require Member States to provide measures of special protection and support for those most vulnerable to trafficking, like children. Since the adoption in 2002 of a CoE Framework Decision on Combating Trafficking in Human Beings (2002 Framework Decision)²⁴⁷, the laws relating to

²⁴² International Covenant on Economic, Social and Cultural Rights, 16 December 1966.

²⁴³ *Ibid.*

²⁴⁴ International Covenant on Civil and Political Rights, 16 December 1966.

²⁴⁵ UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. 19, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

²⁴⁶ Gallagher, 2006, p. 165.

²⁴⁷ Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings, 19 July 2002.

trafficking have developed rapidly. Initiatives have been taken “to promote common action” with particular regard to “definitions, jurisdiction, criminal procedure, assistance to victims and police/judicial cooperation”.²⁴⁸ However, when it came to victims’ rights and protection measures, the 2002 Framework Decision offered very little. It has since been replaced by the *2011 Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims* (2011 Trafficking Directive)²⁴⁹, which is examined below. It will be seen that the 2011 Trafficking Directive is indicative of the commitment European states have made to overcome legal shortcomings in the fight against trafficking in persons.²⁵⁰ In particular, its adoption comes as a response to reports that there is an urgent need for improved protection and assistance to all victims of trafficking, including children.

A study conducted by UNICEF in 2008 determined both positive and negative findings in relation to anti-trafficking initiatives in the European region. On the one hand, it highlighted that governments in Europe had taken numerous “concrete measures”, like the adoption of particular legislation, symptomatic of the growing attention towards the “special situation and vulnerability of children affected by trafficking”.²⁵¹ Yet, on the other hand, the study found deficiencies in the European systems such as the lack of harmonised mechanisms for effective data collection. This is an aspect that should be considered critical by states in order to understand the nature and scale of trafficking.²⁵² The study’s analysis of the flows and patterns of child trafficking in Europe concluded that not only are European countries important places of destination, but they are also countries of origin and transit.²⁵³ Therefore, European nations’ duties are manifold when it comes to combating trafficking in all persons. It is essential that they “identify affected and at-risk populations” while at the same time

²⁴⁸ Gallagher, 2006, pp. 166-167.

²⁴⁹ Directive 2011/36/EU of the European Parliament and the Council on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, 5 April 2011.

²⁵⁰ United Nations High Commissioner for Refugees (UNHCR), *Prevent. Combat. Protect. Human Trafficking: Joint UN Commentary on the EU Directive - A Human Rights-Based Approach*, November 2011, p. 8, available at <http://www.unwomen.org/wp-content/uploads/2011/12/UN-Commentary-EU-Trafficking-Directive-2011.pdf> (consulted on 15 June 2012).

²⁵¹ UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. 1, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

²⁵² *Id.*, p. 8.

²⁵³ *Ibid.*

provide assistance and protection.²⁵⁴ In this respect, the laws drafted by the European region must be multi-dimensional in the [human rights] approach toward trafficking and take into account the specific needs of those most vulnerable, like children. Important factors like this are considered in the examination of the applicable instruments discussed in this section.

Both the European Union and the Council of Europe have taken significant steps towards the combat of trafficking in human beings. While the EU has seen much progress in the past decade with particular regard to preventive measures and victim protection²⁵⁵, significant developments made by the CoE can be traced back to the early 1990s.²⁵⁶ Indeed, the CoE began to work on trafficking at a time when the issue was not considered to be of high priority by national governments and international organisations.²⁵⁷ Evidence of such work can be seen with the CoE's adoption in 1991 of a recommendation that dealt specifically with sexual exploitation and the trafficking of children/young persons.²⁵⁸ Another milestone occurred at the turn of the twenty-first century, which saw the creation of two legal instruments by the Committee of Ministers, the CoE's decision-making body. The first instrument related to trafficking for sexual exploitation while the second outlined measures to protect children against sexual exploitation, including such exploitation through trafficking.²⁵⁹ The core objective was to establish "a comprehensive strategy to deal with trafficking" throughout Europe and beyond.²⁶⁰ Subsequently, a Convention on trafficking was proposed in 2002 which is discussed in the coming paragraphs. The then High Commissioner for Human Rights urged the CoE that this Convention be based on the Trafficking Protocol, thus adopting a more human rights approach to trafficking.²⁶¹

²⁵⁴ *Ibid.*

²⁵⁵ UNHCR, *Prevent. Combat. Protect. Human Trafficking: Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, November 2011, p. 8, available at <http://www.unwomen.org/wp-content/uploads/2011/12/UN-Commentary-EU-Trafficking-Directive-2011.pdf> (consulted on 15 June 2012).

²⁵⁶ Gallagher, 2006, p. 170.

²⁵⁷ *Ibid.*

²⁵⁸ *Ibid.*

²⁵⁹ *Id.*, p. 171.

²⁶⁰ *Ibid.*

²⁶¹ *Id.*, pp. 171-2.

3.3.1. The Council of Europe

The *Council of Europe Convention on Action against Trafficking in Human Beings*²⁶² (CoE Trafficking Convention) opened for signature on 16 May 2005 and entered into force on 1 February 2008. To date, the Convention has 36 ratifications, including ratification by Ireland, and has been signed by 7 countries.²⁶³ It is considered significant in that it was the first regional treaty to have the same standing as other international legal Acts and, unlike legal instruments of the EU, the CoE Trafficking Convention may be signed by any European or non-European state.²⁶⁴ It adheres to a multi-agency approach and seeks to strengthen and expand upon the laws laid down by the Trafficking Protocol and other international legal instruments, particularly with regard to protection.²⁶⁵ What is more, the Convention stresses the importance of the provision of state-assistance to victims of trafficking in persons, children included, and proposes mechanisms to monitor such assistance.²⁶⁶ Indeed, in the explanatory note to the Convention it is affirmed that “the main added value of the present Convention in relation to other international instruments is its human rights perspective and its focus on victim protection”.²⁶⁷ It also exceeds the scope of the Trafficking Protocol when it maintains in its Article 2 that its provisions should be applicable to all forms of human trafficking, at both national and international levels.²⁶⁸ In this way, unlike the Trafficking Protocol, the CoE Trafficking Convention formally recognises the phenomenon of internal trafficking. Finally, it expands upon the Trafficking Protocol’s definition of human trafficking in the sense that it provides a definition for the term ‘victim’, mentioned earlier in the paper.

Chapter III of the CoE Trafficking Convention outlines specific measures for the protection and promotion of the rights of victims together with the respect of gender

²⁶² CoE Convention on Action against Trafficking in Human Beings, 16 May 2005.

²⁶³ CoE, *Action against Trafficking in Human Beings*, available at http://www.coe.int/t/dghl/monitoring/trafficking/Flags-sos_en.asp (consulted on 12 June 2012).

²⁶⁴ Lasocik, 2011, p. 35.

²⁶⁵ CoE Convention on Action against Trafficking in Human Beings, 16 May 2005.

²⁶⁶ Lasocik, 2011, p. 35.

²⁶⁷ CoE, *Explanatory Report on the CoE Convention on Action against Trafficking in Human Beings*, 16 May 2005, p. 33.

²⁶⁸ Lasocik, 2011, pp. 21-2.

equality. Article 10 refers to procedures concerning identification. More specifically, it makes reference to child victims of trafficking, recognising State Parties' obligation to implement the "benefit of the doubt" principle, discussed previously, along with special protection measures "pending verification of his/her age" (para.'s 3, 4).²⁶⁹ Special provisions include immediate representation of the unaccompanied child by a legal guardian, organisation or authority; re-establishment of identity; and family reunification. All procedures carried out by the relevant parties must be in the best interests of the child.²⁷⁰ Article 12 discusses how states shall best assist victims of trafficking and recognises the need to take "due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care" (art.12.7).²⁷¹ Other important requirements include the issuance of a residence permit, when legally necessary, to child victims (art.14.2); also, under no circumstances should a child be returned to his/her state of origin if it is deemed that, following a risk and security assessment, such a return would not be in the best interests of the child (art.16.7).²⁷²

The *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*²⁷³ (CoE SESA Convention) is also significant when it comes to protection of child victims. Certainly, the CoE SESA Convention applies to child victims who have been trafficked for the purposes of sexual exploitation and contains some important measures which deserve to be highlighted. It should be noted, however, that Ireland has not yet ratified this instrument, despite signing it on its adoption date.²⁷⁴ It entered into force on 1 July 2010 and is the first instrument to criminalise the various forms of sexual abuse of children, "including such abuse committed in the home or

²⁶⁹ CoE Convention on Action against Trafficking in Human Beings, 16 May 2005.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007.

²⁷⁴ CoE, *Chart of signatures and ratifications to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CL=ENG> (consulted on 2 June 2012).

family, with the use of force, coercion or threats”.²⁷⁵ The Convention affirms State Parties to encourage child participation, according to his/her evolving capacity, “in the development and the implementation of state policies, programmes” and other efforts in the combat of sexual exploitation of children (Article 9.1).²⁷⁶ This is a noteworthy aspect of the Convention and indicative of the four ‘P’ human rights approach the CoE has committed itself to adopt in the protection of children. The CoE SESA Convention dedicates a section to “protective measures and assistance to victims” (Chapter IV), which includes provisions like telephone or internet helplines (Article 13) and reporting suspicions of sexual abuse or exploitation to services responsible for child protection.²⁷⁷

3.3.2. The European Union

In terms of legislation specific to the EU, the legal aspect of human trafficking in this region is quite recent since the EU only gained competences to legislate in this area with the Treaty of Amsterdam in 1999.²⁷⁸ Until the introduction of this Treaty, there were no specific legislative standards to guide the region in the fight against child trafficking.²⁷⁹ Article 24 of the Fundamental Charter of the EU explicitly recognises the rights of the child as well as accepting that the best interests of the child must be of primary consideration to Member States (article 24.2).²⁸⁰ Nevertheless, the EU has generally combated child trafficking from the perspective of the fight against organised crime.²⁸¹ In past anti-trafficking legislation, a child-centred approach was lacking together with a failure to recognise the specific safeguards that child victims of trafficking needed.²⁸² It should be noted that this past legislation does not fit comfortably with the EU’s

²⁷⁵ CoE, *Summary of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, available at <http://conventions.coe.int/Treaty/EN/Summaries/Html/201.htm> (consulted on 12 June 2012).

²⁷⁶ CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007.

²⁷⁷ *Ibid.*

²⁷⁸ Gallagher, 2006, p. 6.

²⁷⁹ *Ibid.*

²⁸⁰ Charter of Fundamental Rights of the European Union, 30 March 2010.

²⁸¹ Gallagher, 2006, p. 6.

²⁸² *Ibid.*

declarations on children's rights.²⁸³ Nevertheless, as will be seen in the coming paragraphs, steps are being taken in terms of legislative action to tackle the increasing problem of child trafficking in Europe.²⁸⁴ The most recent evidence of commitment is the 2011 Trafficking Directive, which explicitly outlines protection and safety measures for child victims.

As already mentioned, the 2011 Trafficking Directive replaces and expands upon the 2002 Framework Decision. The adoption of the 2011 Trafficking Directive should be viewed as a significant step forward for the European region in both the fight against trafficking and the protection of victims. Until 2011, anti-trafficking laws in the EU consisted of just three main instruments, including the 2002 Framework Decision.²⁸⁵ Although considered progressive at the time of their adoption, these three agreements did not provide for the approach needed to prevent trafficking and protect victims effectively. Rather, their approach lacked appropriate application or enforcement and was indistinct.²⁸⁶ It should be noted that such Framework Decisions can no longer be adopted as, by virtue of the 2009 Treaty of Lisbon, the adoption of any new legislation must be in the form of Directives, like the 2011 Trafficking Directive, or Regulations.²⁸⁷ Certainly, this is encouraging since the 2011 Directive is binding on Member States. In this way, the law requires that the minimum standards set by the Directive must be applied throughout the EU in the prevention and combat of trafficking in human beings as well as in the protection of victims and, in particular, the special protection of child victims.²⁸⁸

In paragraph 7 of its Preamble, the 2011 Trafficking Directive explicitly restates its commitment to combat trafficking in human beings with the use of an “integrated,

²⁸³ Note: Article 24, “The rights of the child”. Charter of Fundamental Rights of the European Union, 30 March 2010.

²⁸⁴ UNICEF Innocenti Research Centre, *Child Trafficking in Europe: A Broad Vision to Put Children First*, March 2008, p. 1, available at http://www.humantrafficking.org/uploads/publications/ct_in_europe_full.pdf (consulted on 1 June 2012).

²⁸⁵ Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings, 15 March 2001; Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking who co-operate with competent authorities, 29 April 2004.

²⁸⁶ ECPAT UK, *Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims*, available at <http://www.ecpat.org.uk/content/directive-201136eu-preventing-and-combating-trafficking-human-beings-and-protecting-its-vict> (consulted on 13 June 2012).

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

holistic, and human rights approach”.²⁸⁹ It also recognises that the increased vulnerability of children puts them at a higher risk of being trafficked than adults (para.8).²⁹⁰ Regarding provisions of special protection and assistance to child victims, its measures are very much the same as those outlined in the CoE Trafficking Convention, discussed above, particularly with regard to decision-making for the determination of age of victims; for unaccompanied young persons who have been trafficked and for the appointment of a legal guardian.²⁹¹ What differentiates the Trafficking Directive from the CoE Trafficking Convention is that it broadens the scope of offences that involve trafficking by including such acts like begging and the exploitation of criminal activities (art.2.3). With regard to the protection and assistance of child victims of trafficking, Articles 13 to 16 outline specific provisions with which Member States must comply. Above all, the best interests of the child “shall be a primary consideration” (art.13.1). Article 14 describes how states should assist and support “with a view to finding a durable solution” while, at the same time, respecting the child’s input and competence during the decision-making process. Here, we see the incorporation of the fourth ‘P’, namely, participation. Special protection measures for child victims involved in a criminal investigation or criminal proceedings are outlined in Article 15, and Article 16 sets out provisions specific to the “assistance, support and protection for unaccompanied child victims of trafficking”.²⁹²

²⁸⁹ Directive 2011/36/EU of the European Parliament and the Council on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, 5 April 2011.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid; Id.*, paras 22-4.

²⁹² *Ibid.*

4. Trafficking in children/young persons: The case of Ireland

4.1. Confronting the phenomenon of child trafficking in Ireland: The particular experiences of child victims in State care

In Ireland, the two main State agencies with responsibility in trafficking-related legislation and policies are the Department of Justice, Equality and Law Reform (Department of Justice) and the Health Service Executive (HSE).²⁹³ With regard to human trafficking, a legal definition complying with international standards was established in 2008²⁹⁴ and it was only classified by Ireland's Central Statistics Office as a separate crime in 2009.²⁹⁵ Subsequently, in 2011, a human trafficking report described Ireland to be a country of destination, source and transit for trafficked women, men and children.²⁹⁶ This recent report is significant considering that earlier versions had stated Ireland to be a "destination and, to a lesser extent, transit country" for trafficking in all persons.²⁹⁷ Although there is evidence that children are trafficked to, from and within Ireland²⁹⁸, thus far there has been limited data collection and research to examine the scope and nature of child trafficking in the Irish context.²⁹⁹ A 2003 IOM report estimated that suspected child victims in Ireland were aged between 3 and 17 years and had been trafficked for a variety of purposes including forced labour, begging, domestic servitude, sexual exploitation and forced marriage.³⁰⁰ It also found that many children were being trafficked from "the former war zones of the Balkans, the coastal

²⁹³ Horgan *et al.*, 2011, p. 209.* The HSE has responsibility for delivering health and personal social services and has prime responsibility in the provision of services to potential victims of child trafficking.

²⁹⁴ The Criminal Law (Human Trafficking) Act, 2008.

²⁹⁵ Rogers, Stephen, 'Group: Not enough done on human trafficking', *Irish Examiner*, 2 November 2009, available at <http://www.irishexaminer.com/ireland/group-not-enough-done-on-human-trafficking-104660.html#ixzz0VobGuqKj> (consulted on 1 May 2012).

²⁹⁶ U.S. Department of State, *Trafficking in Persons Report*, June 2011, p. 198, available at <http://www.state.gov/documents/organization/164454.pdf> (consulted on 29 March 2012).

²⁹⁷ U.S. Department of State, *Trafficking in Persons Report*, June 2010, p. 183, available at <http://www.state.gov/documents/organization/142979.pdf> (consulted on 29 March 2012).

²⁹⁸ Horgan *et al.*, 2011, p. 206.

²⁹⁹ Kanics, 2008, p. 388.

³⁰⁰ Conroy, 2003.

countries of West Africa and Romania”.³⁰¹ Another IOM publication from 2005 highlighted findings that approximately twenty children in Irish state care had been trafficked, the majority of whom were found to be victims of sexual exploitation.³⁰² Media publications have also brought to light various trafficking cases in Ireland involving young persons.³⁰³

In spite of such statistics, a number of NGOs have highlighted the reluctance of Irish state agencies to acknowledge the existence and scale of child trafficking in the country.³⁰⁴ Moreover, there have been consistent inadequacies in the identification of child victims in Ireland and studies have revealed that, even up to 2010, a victim of child trafficking had yet to be identified.³⁰⁵ The Garda National Immigration Bureau (GNIB) of the Garda Síochána and the HSE are the principal actors in the lives of child victims of trafficking.³⁰⁶ In Ireland, a victim of human trafficking, including a child, is considered as a “potential victim”.³⁰⁷ At that time, he/she is entitled to the protections and assistance set out in Irish policy³⁰⁸ and will continue to be treated as a potential victim of trafficking unless evidence should emerge to discredit this “status”.³⁰⁹ It is contended that the Irish government has placed too much focus on immigration rather than child protection in its past responses to child trafficking, whereby “children are viewed as victims of the illegal migration flow” and not as victims of abuse and rights

³⁰¹ *Ibid.*

³⁰² Kanics, 2008, p. 388.

³⁰³ *Id.*, pp. 388-389.

³⁰⁴ Horgan *et al.*, 2011, p. 211.

³⁰⁵ *Id.*, p. 212.

³⁰⁶ The Garda Síochána is the Irish national police force. The GNIB is a unit within the Garda Síochána that has particular expertise in regard to trafficking in human beings.

³⁰⁷ According to the AHTU’s *Statement of roles and responsibilities for State Organisations, NGOs and IOs in Ireland engaged in cooperation regarding the prevention, protection of victims and prosecution of trafficking in human beings*: “A potential victim of trafficking means a person who has identified himself or herself as a victim of trafficking or in respect of whom there is a view formed by persons such as other State Organisations, NGOs, IOs, etc that indications of trafficking are apparent but for whom reasonable grounds for believing he or she is a victim of trafficking have yet to be determined by the Garda Síochána”

³⁰⁸ AHTU, *Statement of roles and responsibilities for State Organisations, NGOs and IOs in Ireland engaged in cooperation regarding the prevention, protection of victims and prosecution of trafficking in human beings*

³⁰⁹ European Commission, *Together against Trafficking in Human Beings – Ireland*, available at <http://ec.europa.eu/anti-trafficking/showNIPsection.action;jsessionid=Z1tJPIWLTKywTCKWw1bTLcXkVGwGTPJbTL36PjhTnHgZzxWJJMDL!-637572467?country=Ireland> (consulted on 29 June 2012).

violations.³¹⁰ The implementation of this approach meant that child victims of trafficking could not receive the specific support that international law provides for such victims. This much is evident by the types of shelter these children were afforded by the Irish state in the past.³¹¹ Such failures will be discussed in more detail throughout this chapter.

Failing to recognise that child trafficking occurs habitually denies child victims the special protection and assistance that is crucial to their survival. The trafficking of children is not just some ‘passing phase’ that will disappear over time. On the contrary, it is a growing phenomenon and a severe violation of a child’s rights. It is true that the Irish state has already made some progress in the struggle against trafficking in men, women and children. For example, new anti-trafficking legislation and administrative initiatives have been developed over the past few years. In particular, the *Criminal Law (Human Trafficking) Act 2008* (CLHT Act)³¹² came into force on 7 June 2008.³¹³ One significant aspect of this piece of legislation is that it creates separate offences for child trafficking undertaken for purposes like forced labour, sale of organs and sexual exploitation.³¹⁴ This law will be examined further in the subsequent section along with other applicable legislation. In spite of such developments, Ireland has a long way to go in the area of child trafficking, particularly when it comes to protecting trafficked victims. As one report points out, international law requires that “children are to be regarded as especially ‘vulnerable’ in relation to trafficking with consequences for their treatment as victims in criminal proceedings”.³¹⁵ In this way, the Irish state must be held accountable should it fail to fulfil its duties subscribed by the law.

Indeed, Ireland’s track record in the area of children’s rights has not been wholly satisfactory. Amnesty International stated in its 2011 report that “child protection standards [in Ireland] were inadequate in both law and practice”.³¹⁶ This is not the first

³¹⁰ Horgan *et al.*, 2011, p. 213.

³¹¹ *Ibid.*

³¹² Criminal Law (Human Trafficking) Act 2008, 7 May 2008.

³¹³ Kanics, 2008, p. 390.

³¹⁴ *Ibid.*

³¹⁵ Conroy, 2003.

³¹⁶ Amnesty International, *Annual Report 2011: The state of the world’s human rights*, 2011, p. 179, AI Index: POL 10/001/2011, available at

time that the Irish government has been criticised in relation to how it deals with and protects victims of trafficking. Ireland's Special Rapporteur on Child Protection noted in his 2010 report that the Irish government's obligations to implement measures considered critical in the protection of trafficked children remained outstanding.³¹⁷ Such allegations refer to controversies surrounding previous State care that was available to child victims of trafficking. We have already seen that many trafficked children arriving to a country are unaccompanied or have been separated from family and friends. In this respect, it is up to the destination country in which they arrive to provide immediate and appropriate shelter for trafficked victims. Unfortunately, it cannot be said that Ireland has always adhered to this particular responsibility. One particular study conducted by Ireland's Ombudsman for Children's Office (OCO) found that separated children, including those who had been trafficked, were placed by social services mostly in "unregistered hostel accommodation...contrary to legal provisions" outlined in domestic childcare legislation.³¹⁸ What is more, the report uncovered that the care afforded to foreign nationals was inferior to that of Irish children, thus, placing the State in breach of the principle of non-discrimination according to the CRC, discussed previously.³¹⁹

Direct links have been made between deficiencies in suitable care and situations where vulnerable children go missing and are trafficked or re-trafficked for exploitation.³²⁰ In fact, a total of 512 separated children were reported as missing from Irish state care between 2000 and 2010³²¹. 440 of these separated/unaccompanied children are still unaccounted for.³²² It is not known what has happened to the majority of the children. It is possible that they have been unofficially reunited with families or

<http://www.amnesty.org/en/library/asset/POL10/001/2011/en/519da037-1492-4620-9ed5-cac8f1cfd591/pol100012011en.pdf> (consulted on 10 May 2012).

³¹⁷ Shannon, 2010, p. 110.

³¹⁸ Charles, 2009, p. 23.

³¹⁹ *Ibid.*

³²⁰ Children's Rights Alliance, *Briefing Note on Separated Children*, 6 May 2008, pp. 2-3, available at http://www.childrensrights.ie/sites/default/files/information_sheets/files/BriefingNoteSeparatedChildren0508_0.pdf (consulted on 29 May 2012).

³²¹ Horgan *et al.*, 2011, p. 207

³²² Barnardos, *Separated Children*, available at <http://www.barnardos.ie/what-we-do/campaign-and-lobby/separated-children.html> (consulted on 10 May 2012).

that they have been taken by traffickers.³²³ While it is not suggested that all missing children (at one point in State care) end up being trafficked, some children have been subsequently discovered in “involuntary servitude in brothels, restaurants, and in domestic service.”³²⁴ In truth, up until 2010, hundreds of children went missing as a direct result of the insufficient protection and accommodation facilities afforded to them by the State.³²⁵ Fortunately, thanks to pressure from agencies like the OCO and other child-oriented organisations, the Irish state has committed to increase its efforts to improve standards in child protection. Notably, the Government outlined a policy of equal care which promised to make significant changes to the types of accommodation available to foreign national child victims of trafficking.³²⁶ This policy will be discussed further on in this chapter, and progress regarding the changes promised will be investigated by reviewing the current situation of child victims of trafficking. It will determine the progress that the Irish state has made thus far. Can it be deemed satisfactory, and what remains to be done in order to ensure the full protection of trafficked children? First and foremost, however, it is necessary to examine the domestic laws in place that aim to protect child victims of trafficking.

4.2. Domestic legislation on child trafficking

As mentioned above, the Irish state has made some advances in the field of human trafficking. The last four or five years, in particular, has seen an increase in actions taken by Ireland to combat trafficking. This can, in part, be attributed to the establishment of the CLHT Act in 2008³²⁷, which complements existing legislation like the *Child Trafficking and Pornography Act 1998* (CTP Act)³²⁸, to be discussed in the following paragraphs.

³²³ Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

³²⁴ Horgan *et al.*, 2011, p. 207.

³²⁵ Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

³²⁶ ECPAT International & Children’s Rights Alliance Ireland, *Stop Sex Trafficking of Children & Young People: Ireland, Progress Report Card*, 2010, p. 16.

³²⁷ Horgan *et al.*, 2011, p. 209.

³²⁸ Child Trafficking and Pornography Act, 1998.

The CLHT Act is significant in a number of regards. Primarily, its adoption in 2008 finally brought Irish anti-trafficking legislation in line with the international framework of trafficking. For example, it amends the definition of ‘child’ in the 1998 CTP Act by increasing the age from 17 to 18 years like in the CRC and other relevant international legislation.³²⁹ The CLHT Act also prohibits trafficking in adults and young persons and includes such aspects of exploitation like forced labour, sexual abuse and sale of organs.³³⁰ Aside from creating separate offences of trafficking in humans, including children, the CLHT Act also criminalises the sale or “offer for sale or to purchase or offer to purchase any person, adult or child, for any purpose”.³³¹ Another progressive aspect of the CLHT Act is that it acknowledges the fact that trafficking may occur on both a transnational and domestic level.³³² Finally, these offences are all punishable by a maximum sentence of life imprisonment³³³, thus making Ireland the only European state capable of imprisoning a trafficker for life.³³⁴

As previously mentioned, the 2008 CLHT Act complements the *Child Trafficking and Pornography Act 1998* (CTP Act). The CTP Act outlines various offences with specific regard to trafficking in children/young persons for sexual exploitation and the production and dissemination of child pornography.³³⁵ Its core objective was to strengthen legislation related to the protection of children from sexual exploitation “by targeting two manifestations of such exploitation” – namely child trafficking and child pornography.³³⁶ Section 3.1(a) deals specifically with trafficking and punishes “any person who knowingly facilitates entry into, transit through or exit

³²⁹ O’Connell *et al.*, 2008, pp. 8-9.

³³⁰ The Criminal Law (Human Trafficking) Act, 2008.

³³¹ Kanics, 2008, p. 390.

³³² Horgan *et al.*, 2011, p. 205.

³³³ O’Connell *et al.*, 2008, p. 9.

³³⁴ Horgan *et al.*, 2011, p. 210.

³³⁵ Conroy, 2003.

³³⁶ The Child Trafficking and Pornography Bill 1997, *Explanatory Memorandum*, available at https://docs.google.com/viewer?a=v&q=cache:7knzYwS2oCQJ:www.imldb.iom.int/viewDocument.do?id%3D%257BF93BCA0C-CBB4-469D-8E68-8BDA9844F0FA%257D+explanatory+memorandum+for+child+trafficking+and+pornography+bill+1997&hl=en&gl=it&pid=bl&srcid=ADGEESgS7O9jOpzZDG6NtGUx77sxxJpgdWy467SUydoH2sETKSQUn9O3xOFk-78DH5TGVghf_EpFgUJVUvOB08XSvp4sxxHj9fFclytdCDrG5rAr4BI8-ZVV_wTamIA5S6Oxu45-eVaj&sig=AHIEtbSjow77XplAh0A2KZqTulqwpXapQ (consulted on 15 June 2012).

from the State of a child for the purposes of his or her sexual exploitation”.³³⁷ It also prohibits the provision of accommodation for a child for such purposes (section 3.1(b)). A life sentence in prison is the penalty for such crimes.³³⁸ The CTP Act also includes a detailed definition of sexual exploitation in Section 3, including “inducing or coercing the child to participate in any sexual activity which is an offence under any enactment”.³³⁹ It should be noted, however, that the CTP Act does not criminalise trafficking for the purposes of labour exploitation.³⁴⁰

The adoption of these specific laws has brought about numerous developments, like the illegalisation of serious crimes such as child trafficking as well as the punishment of perpetrators. However, it does not contribute to the establishment of a “protective environment” for child victims of trafficking.³⁴¹ Rather, their focus is more centred on criminal matters like prohibition and punishment.³⁴²

The creation of a ‘protective environment’ in which trafficked children can avail of adequate protection and support is critical. It is an issue that deserves to be prioritised by the Irish state. In this respect, it was suggested that such provisions of protection would be provided by the enactment of the *Immigration, Residence and Protection Bill* (IRP Bill). The IRP Bill expressly recognises child trafficking as a form of trafficking “for the purposes of the exploitation of the child”.³⁴³ To date, there have been three versions of this Bill; the most recent of which – the “updated” IRP Bill 2010 – has been criticised by NGOs and other agencies for numerous shortcomings in the text.³⁴⁴ In spite of some improvements to the updated 2010 version, the IRP Bill remains accused of failing to provide sufficient protection for victims of trafficking.³⁴⁵ For instance, it does not specify the types of protection entitled to victims of trafficking

³³⁷ The Child Trafficking and Pornography Act, 1998.

³³⁸ Conroy, 2003.

³³⁹ The Child Trafficking and Pornography Act, 1998.

³⁴⁰ *Ibid.*

³⁴¹ Kanics, 2008, p. 390.

³⁴² Horgan *et al.*, 2011, p.210.

³⁴³ Immigration, Residence and Protection Bill (IRP Bill) 2010.

³⁴⁴ Immigrant Council of Ireland (ICI), *The Immigration, Residence and Protection Bill 2010, a critical overview*, September 2010, p. 1, available at http://www.immigrantcouncil.ie/images/stories/ICI_critical_overview_-_IRP_Bill_2010_final_0910.pdf (consulted on 20 June 2012).

³⁴⁵ Kanics, 2008, p. 390.

such as accommodation, medical care and legal aid.³⁴⁶ What is more, the provisions of the IRP Bill apply solely to non-EU/European Economic Area nationals, thus denying protection rights to many victims who are EEA nationals.³⁴⁷ NGOs have also consistently pointed out the IRP Bill's failure to comply fully with the standards laid out in the CoE Trafficking Convention.³⁴⁸ For instance, it appears that the current Bill runs contrary to Article 14.5 of the Convention by making the granting of a residency permit to victims of trafficking conditional.³⁴⁹

On a positive note, the IRP Bill does provide for certain protective measures that are specific to trafficked children. One such provision concerns the identification of child victims of trafficking. The latest draft of the Bill grants immigration officers, at points of entry to the country, the right to demand verification from adults accompanying children in order to ensure that the person is in fact authorised to take responsibility for the child.³⁵⁰ In cases where the officers do not feel sufficiently satisfied or are suspicious of the situation, the child may be referred to social services, i.e. the HSE.³⁵¹ Another development of the 2010 Bill relates to two new types of residency permits "specifically designed for victims of trafficking who are identified".³⁵² The Recovery and Reflection Permit grants victims a certain amount of time to 'recover', usually a maximum of 60 days.³⁵³ In relation to child victims, regulations may be undertaken by the Minister of Justice, Equality and Defence (hereinafter referred to as the Minister of Justice) to prescribe a "recovery and reflection period exceeding 60 days which shall apply to a foreign national or class of foreign

³⁴⁶ Horgan *et al.*, 2011, p. 211.

³⁴⁷ *Ibid.*

³⁴⁸ ICI, *The Immigration, Residence and Protection Bill 2010, a critical overview*, September 2010, p. 6, available at http://www.immigrantcouncil.ie/images/stories/ICI_critical_overview_-_IRP_Bill_2010_final_0910.pdf (consulted on 20 June 2012).

³⁴⁹ *Ibid.* *Article 14.5 of the CoE Trafficking Convention provides that "each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum".

³⁵⁰ Horgan *et al.*, 2011, p. 210.

³⁵¹ ICI, *supra* note 348.

³⁵² Horgan *et al.*, 2011, p. 210.

³⁵³ According to the IRP Bill 2010; "the recovery and reflection period, with respect to a foreign national, means a period of 60 days during which the foreign national can recover from alleged trafficking and escape the influence of the perpetrators of the alleged trafficking so that he or she can take an informed decision as to whether to assist the Garda Síochána or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking".

national under the age of 18 years” (clause 139.10(a)).³⁵⁴ The second type of permit that the IRP Bill 2010 provides is a Temporary Residence Permit that lasts for a duration of six months but which can be “issued and renewed on certain conditions”.³⁵⁵ Certainly, it is fair to say that these are positive developments, particularly in relation to child victims. Nevertheless, these permits will only be granted on condition that victims agree to co-operate with law enforcement officials during criminal proceedings.³⁵⁶

Yet more criticisms of the IRP Bill 2010 have been made by different NGOs. One criticism relates to the powers granted to the Minister of Justice in decision-making processes. For example, it is the Minister who decides whether there are sufficient grounds to grant a residency permit, not the victim of trafficking or those acting on their behalf.³⁵⁷ Denying victims of trafficking the opportunity to make applications for such permits automatically places them in a position of passivity and dependency³⁵⁸; factors which could prove detrimental to their well-being. What is more, the Minister has the ability to terminate a recovery and reflection period should he/she be “satisfied that the foreign national has renewed contact with the alleged perpetrators of the trafficking [crime]” (clause 139.2(b)(i)). The same applies to the temporary residence permit (clause 139.8). Several NGOs have lamented this conditionality aspect and the fact that victims of trafficking are unable to apply for residency permits solely on humanitarian grounds.³⁵⁹ These rules seem unreasonable as it does not consider a child victim’s vulnerable state and fear of being reprimanded by the traffickers or exploiters. Furthermore, child victims may still be under the influence of their traffickers. In this respect, the Bill fails to acknowledge the coercive aspects of trafficking as well as the influential power traffickers and their associates often have over victims, especially children.

³⁵⁴ The IRP Bill, 2010.

³⁵⁵ Horgan *et al.*, 2011, p. 210.

³⁵⁶ Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

³⁵⁷ ICI, *The Immigration, Residence and Protection Bill 2010, a critical overview*, September 2010, p. 6, available at http://www.immigrantcouncil.ie/images/stories/ICI_critical_overview_-_IRP_Bill_2010_final_0910.pdf (consulted on 21 June 2012).

³⁵⁸ *Ibid.*

³⁵⁹ ECPAT International & Children’s Rights Alliance Ireland, *Stop Sex Trafficking of Children & Young People: Ireland, Progress Report Card*, 2010, p. 16, available at http://www.childrensrights.ie/sites/default/files/submissions_reports/files/IrelandProgressCard062010_0.pdf (consulted on 22 June 2012).

Finally, the IRP Bill is lacking in other areas including family reunification measures, the appointment of a guardian *ad Litem*³⁶⁰, age assessment, aftercare provisions and measures to encourage and facilitate the building of trust in victims. Regarding the process of family reunification, Ireland is the only EU country that has not yet had it enshrined in primary legislation.³⁶¹ In the IRP Bill there is no specific reference made to victims of trafficking in relation to reuniting them with family or guardians, which could be in the best interests of the child. Another important issue concerns the appointment of a guardian. NGOs have recommended the amendment of the IRP Bill to ensure the “prompt appointment of an independent, competent guardian”.³⁶² The benefits of such a guardian for child victims have already been noted; from the identification process to the protection of the child victim during criminal proceedings, to ensuring all decisions are made in the best interests of the child. What is more, one NGO noted that, mention of the best interests of the child, present in Clauses 73(10); 74(8); and 85(9) of the previous draft of the Bill, was *removed* from the 2010 Bill.³⁶³

It is fair to say then that there is much room for improvement regarding the present draft of the IRP Bill, which does not integrate many of the recommendations put forward by NGOs and other organisations like the Irish Refugee Council and the OCO.³⁶⁴ Pending enactment of the Bill, an administrative framework³⁶⁵, which broadly reflects the provisions in the Bill, was introduced on 7 June 2008 to coincide with the commencement of the CLHT Act.³⁶⁶ It provides for “the period of recovery, reflection

³⁶⁰ The role of the guardian *ad Litem* is to be the voice of the child, or to represent their views, feelings and interests in court proceedings. They are independent from all other persons working with the child and from any agencies responsible for the child.

³⁶¹ Tinsley, June, ‘Separated and Trafficked Children’, *ChildLinks*, available at http://www.barnardos.ie/assets/files/publications/free/childlinks_body18.pdf (consulted on 20 June 2012).

³⁶² Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

³⁶³ Irish Refugee Council (IRC), *Comments on the Immigration, Residence and Protection Bill 2010*, October 2010, p. 30, available at http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/IRC_Submissions_on_the_IRP_Bill_2010.pdf (consulted on 25 June 2012).

³⁶⁴ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

³⁶⁵ Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, 7 June 2008, available at [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/a169f75518c30d14802574c60052902f/\\$FILE/Admin%20Arrangements.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/a169f75518c30d14802574c60052902f/$FILE/Admin%20Arrangements.pdf) (consulted on 25 June 2012).

³⁶⁶ European Commission, *Together against Trafficking in Human Beings - Ireland*, available at <http://ec.europa.eu/anti->

and residency in the State pending enactment” of the IRP Bill.³⁶⁷ The Arrangements set out the protections from removal available to suspected victims of human trafficking who have no legal permission to be present in the State. It also outlines specific measures for children regarding long- and short-term residency permits. These particular guidelines will be given legislative effect in the IRP Bill upon its enactment.³⁶⁸

The *Child Care Act 1991* (CCA)³⁶⁹ and the *Refugee Act 1996*³⁷⁰ do not explicitly refer to trafficking in young persons, but they do have significant roles regarding the protection of children. Section 8 (5) (a) of the Refugee Act 1996 (as amended) provides that a child, “under the age of 18 years”, must be immediately referred to social services should he/she appear to an immigration officer or an authorised officer after having “either arrived at the frontiers of the State or...entered the State” and who “is not in the custody of any person”; from thereon in, the provisions of the CCA shall apply “in relation to the child”.³⁷¹ The CCA sets out a list of measures (including for children in care) to which social services must adhere. It outlines regulations regarding support and assistance for children such as the appointment of a guardian *ad Litem* to a child (Section 26), should it be deemed necessary; levels of protection during court proceedings; and services concerning aftercare (Section 45). The CCA also includes a number of “care orders” that can be afforded to the child victim once the health board makes an application to the courts.

[trafficking/showNIPsection.action;jsessionid=tZmTPbGGqSvs4VtCqjvB9mSXP3yJgfM2FPJ0qPVCT7kskrL7FNdt!-637572467?country=Ireland](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/f94a4d79575e5d02802575d800519794/$FILE/Annual%20Report%20of%20Trafficking%20in%20Human%20Beings%20in%20Ireland%20for%202011..pdf) (consulted on 20 June 2012).

³⁶⁷ *Ibid.*

³⁶⁸ AHTU Department of Justice, Equality and Law Reform (Department of Justice), *Annual Report of Trafficking in Human Beings in Ireland for 2011*, 2011, p. 3, available at [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/f94a4d79575e5d02802575d800519794/\\$FILE/Annual%20Report%20of%20Trafficking%20in%20Human%20Beings%20in%20Ireland%20for%202011..pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/f94a4d79575e5d02802575d800519794/$FILE/Annual%20Report%20of%20Trafficking%20in%20Human%20Beings%20in%20Ireland%20for%202011..pdf) (consulted on 6 June 2012).

³⁶⁹ The Child Care Act, 1991.

³⁷⁰ The Refugee Act, 1996.

³⁷¹ *Ibid.*

4.3. Ireland’s policy developments on child trafficking

In terms of policy developments in the field of human trafficking, there have been various Government initiatives carried out in the last couple of years.³⁷² Primarily, the *National Action Plan to Combat and Prevent Trafficking in Human Beings 2009-2012* (National Action Plan) outlines the measures that have been undertaken thus far in Ireland. It was first published in 2009 and includes twenty-five recommendations that are specific to child trafficking.³⁷³ Indeed, such standards aim to take a child-centred approach to trafficking and focus on easing the “vulnerability, identification, protection, recovery and assistance of children, as well as residence and repatriation of child victims of trafficking”.³⁷⁴ In order to bring such a Plan to effect, specific policy schemes include the establishment of the ‘Anti-Human Trafficking Unit’ (AHTU) in the Department of Justice. It was created in February 2008 and leads the co-ordination and implementation of the National Action Plan³⁷⁵ and all national efforts to combat trafficking in human beings.³⁷⁶ The AHTU has also been responsible for the formation of a consultative framework as well as the launching of the ‘BlueBlindfold’ awareness campaign.³⁷⁷ These policy initiatives will be considered and discussed further in the subsequent sections.

4.3.1. The ‘National Action Plan’ and its approach to child trafficking

“The National Action Plan calls for a strengthened partnership approach at national and international level, with more collaborative initiatives focused on child trafficking”.³⁷⁸ As the paper has mentioned already, Ireland adopted the National Action Plan in 2009

³⁷² Horgan *et al.*, 2011, p. 211.

³⁷³ *Ibid.*

³⁷⁴ *Ibid.*

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ Interview with Mick Quinn, Managing Director, and Barra O’ Duill, Research Officer, AHTU, Dublin, 28 April 2012.

³⁷⁸ ECPAT International & Children’s Rights Alliance Ireland, *Stop Sex Trafficking of Children & Young People: Ireland, Progress Report Card*, 2010, p. 10, available at http://www.childrensrights.ie/sites/default/files/submissions_reports/files/IrelandProgressCard062010_0.pdf (consulted on 25 June 2012).

in order to set out the anti-trafficking initiatives assumed by the Irish government. Specific measures targeting child trafficking are included in the Plan, which recognises that children are a particularly vulnerable part of the population and have particular needs.³⁷⁹ Indeed, the Plan explicitly states as one of its fundamental goals the development of a protective environment for young persons.³⁸⁰ Its response to child trafficking and the provision of services to child victims are based on principles which warrant that the “protection of the child/youth will be paramount and services will operate to the highest standards”.³⁸¹ The National Action Plan dedicates one chapter to child trafficking in which it outlines specific objectives that, together with the reduction of a child’s vulnerability and development of a protective environment, include the following:

- to implement specific measures to reduce the vulnerability of children to trafficking and create a protective environment for them;
- to implement special identification procedures;
- to implement special measures to protect the identity of child victims, particularly during court proceedings;
- to implement measures to provide child victims with assistance in their physical, psychological and social recovery;
- to implement measures to ensure enhanced cooperation in the search for missing children; and
- to implement measures to ensure a child victim’s residency permit is issued in accordance with best interests of the child principles and repatriation programme for children, if necessary, have full regard for their best interest.³⁸²

Certainly, the standards to be met by the National Action Plan are comprehensive. It indicates the role each party has to play with regard to child victims and to specific procedures such as identification, provision of “safe and appropriate

³⁷⁹ Horgan *et al.*, 2011, p. 211.

³⁸⁰ *Ibid.*

³⁸¹ Department of Justice, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012*, 2009, p. 165, available at <http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf> (consulted June 27 2012).

³⁸² *Id.*, pp. 165-166.

accommodation” and repatriation.³⁸³ In terms of protection, the particular roles of the HSE, the Garda Síochána and NGOs will be discussed in more detail in the subsequent section. Above all, it notes the responsibilities of the HSE, as the principal caregiver, to whom a child will be referred to upon being identified as a victim of trafficking. This is done through the National Referral Mechanism (NRM), the development of which is considered to be a “major contribution” to the Plan’s victim protection strategy.³⁸⁴ According to the National Action Plan, the NRM adheres to the structure recommended by the OSCE. The NRM is significant as it “formalises relations between the State, law enforcement agencies and NGOs”. In this way, it facilitates effective coordination between State actors and civil society in order to “combat trafficking, assist [in the identification of] victims, ensure the best protection possible and promote the human rights of trafficking victims”.³⁸⁵ The AHTU as well as three consultative mechanisms, including a Working Group (WG) on Child Trafficking, have been developed to coordinate and progress the implementation of the National Action Plan. Such developments will now be discussed in more detail in the following section.

4.3.2. The ‘Anti-Human Trafficking Unit’ and its various counterparts

NGOs have been particularly praiseworthy of the AHTU.³⁸⁶ Its core function is to facilitate a “co-ordinated, comprehensive and holistic” State response to trafficking in persons.³⁸⁷ In other words, the AHTU is in charge of ensuring the effective implementation of the National Action Plan.³⁸⁸ Its role is significant in that it is the national point of reference for State authorities like social services and law enforcement as well as for NGOs and other IOs working within the field of trafficking. The AHTU

³⁸³ *Id.*, pp. 165-188.

³⁸⁴ *Id.*, p. 115.

³⁸⁵ *Ibid.*

³⁸⁶ Horgan et al., 2011, p. 211.

³⁸⁷ BlueBlindfold, *Administrative Arrangements*, available at <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/whatisbeingdone-administativearrangements-en> (consulted on 1 June 2012).

³⁸⁸ ECPAT International & Children’s Rights Alliance Ireland, *Stop Sex Trafficking of Children & Young People: Ireland, Progress Report Card*, 2010, p. 10, available at http://www.childrensrights.ie/sites/default/files/submissions_reports/files/IrelandProgressCard062010_0.pdf (consulted on 25 June 2012).

has been responsible for the setting up of a consultative framework and the creation of various forums. Here, key players can work together in the combat of trafficking and protection of victims by discussing numerous issues as well as sharing different ideas and opinions.³⁸⁹ In this regard, key elements of the AHTU's strategy have been the development of "Non-Governmental and Governmental Roundtable Forums and Interdisciplinary" WGs including a Child Trafficking WG.³⁹⁰ The AHTU is also significant in that it collects human trafficking-related data on particular topics, like profiles of victims and conviction rates. This aspect is important since, at the time of the AHTU's establishment, there was no real recording system in existence.³⁹¹ Data is collected from a variety of NGOs and the Garda Síochána and then compared, thus, attempting to offer an overall balanced view on the situation of trafficking in Ireland.³⁹²

In spite of the release of trafficking reports, given the young age of the AHTU, Irish statistics on trafficking in persons remains limited. It is only as time progresses that more accurate trends will be able to be noted and identified. Another reason for the incomplete data provided by the AHTU could be due to the fact that data provided by social services (who deal primarily with children) has not yet been integrated into trafficking reports.³⁹³ In the near future, the AHTU also plans to begin collecting data on the services available to victims of trafficking, looking at the specific services provided and in what ways they need to be rectified or improved.³⁹⁴ Thus far, the AHTU has released three annual reports "examining the nature and extent of trafficking in human beings in Ireland"³⁹⁵, from 2009 to 2011. Such reports are crucial if trafficking is to be understood and combated effectively by the Government. They

³⁸⁹ Interview with Mick Quinn, Managing Director, and Barra O' Duill, Research Officer, Anti-Human Trafficking Unit (AHTU), Dublin, 28 April 2012.

³⁹⁰ Horgan *et al.*, 2011, p. 211.

³⁹¹ Interview with Mick Quinn, Managing Director, and Barra O' Duill, Research Officer, AHTU, Dublin, 28 April 2012.

³⁹² *Ibid.*

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

³⁹⁵ AHTU Department of Justice, *Annual Report of Trafficking in Human Beings in Ireland for 2010*, 2010, p. 2, available at <http://www.inis.gov.ie/en/JELR/AHTU%202010%20Annual%20Report.pdf/Files/AHTU%202010%20Annual%20Report.pdf> (consulted on 6 June 2012).

adopt a multi-agency approach to data collection that is closely modelled on pilot data collection systems developed at a European level.³⁹⁶

All three reports have been divided into four main sections, which include an overview of persons reported to the Garda Síochána, an overview of persons encountered by or referred to NGOs, Ireland's criminal justice response to human trafficking and the methodology. The data provided by both the NGOs and the police are also divided into subsections of the total number of reported or referred victims, gender, age, region of origin and immigration status. What is encouraging is that each report is more comprehensive and includes additional information to latter reports. For example, unlike the 2009 report, both the 2010 and 2011 reports contain an overview of prosecutions and both define the term 'minor' (referred to as child/young person in this paper). Victim profiles are disaggregated between labour and sexual exploitation in the two latter reports. Moreover, in the 2011 report, cases included victims who had been subjected to both sexual and labour exploitation. Nevertheless, when these reports are considered with specific reference to child/young persons, the information remains quite restricted. Even in the latest report, only the number of trafficking cases involving children, together with the different types of exploitation, is given. In all reports, gender is not differentiated between in the case of children/young persons.

Just as there was no real means for data collection before the ATHU, there was also no central forum where the different parties could meet and discuss specific topics or each other's work. What is more, there was no co-ordination of the distinct roles of each party involved in the field of trafficking.³⁹⁷ As has been mentioned, the AHTU was responsible for the drafting of a consultative framework within which there are three principal layers. The High Level Group (HLG) comes first and consists of a range of senior officials, including from relevant Government departments, the Garda Síochána and the HSE.³⁹⁸ The HLG makes recommendations to the Minister of Justice on the most appropriate and effective responses to trafficking in human beings.³⁹⁹

³⁹⁶ *Ibid.*

³⁹⁷ Interview with Mick Quinn, Managing Director, and Barra O' Duill, Research Officer, AHTU, Dublin, 28 April 2012.

³⁹⁸ *Ibid.*

³⁹⁹ ECPAT International & Children's Rights Alliance Ireland, *Stop Sex Trafficking of Children & Young People: Ireland, Progress Report Card*, 2010, p. 10, available at

Second, there is a Roundtable Forum composed of HLG representatives and chief executive or senior officers of various NGOs and IOs, such as IOM and UNHCR.⁴⁰⁰ They “consider the views of stakeholders in relation to combating trafficking; receive updates from WGs; and make recommendations” to the HLG.⁴⁰¹ The WGs make up the final layer of this framework and involve more “on the ground” discussions, centring on the particular area of the Group.⁴⁰² Currently, there are five different WGs, including one on Child Trafficking.⁴⁰³ The WG on Child Trafficking has become central to fostering a co-ordinated response to child trafficking and to promoting and developing a protective environment for all children who have been trafficked.⁴⁰⁴ Aptly put by one research officer of the AHTU: in the absence of such a WG, each party exists in its own individual bubble, thus, unaware of the work of other divisions.⁴⁰⁵

Lastly, the AHTU established, and presently leads, the BlueBlindfold campaign, the objective of which is “to raise public awareness of human trafficking in Ireland”.⁴⁰⁶ The campaign is part of a larger project known as the “European G6 Human Trafficking Initiative”⁴⁰⁷ which is an “unofficial group made up of the six EU member states with the largest populations”.⁴⁰⁸ The initiative primarily involves intelligence gathering, awareness raising, law enforcement activity and victim protection.⁴⁰⁹ With specific regard to the Irish context, a BlueBlindfold-related website⁴¹⁰ has been set up and

http://www.childrensrights.ie/sites/default/files/submissions_reports/files/IrelandProgressCard062010_0.pdf (consulted on 15 June 2012).

⁴⁰⁰ Interview with Mick Quinn, Managing Director, and Barra O’ Duill, Research Officer, AHTU, Dublin, 28 April 2012.

⁴⁰¹ ECPAT International & Children’s Rights Alliance Ireland, *Stop Sex Trafficking of Children & Young People: Ireland, Progress Report Card*, 2010, p. 10, available at http://www.childrensrights.ie/sites/default/files/submissions_reports/files/IrelandProgressCard062010_0.pdf (consulted on 15 June 2012).

⁴⁰² Interview with Mick Quinn, Managing Director, and Barra O’ Duill, Research Officer, AHTU, Dublin, 28 April 2012.

⁴⁰³ *Ibid.*

⁴⁰⁴ Horgan *et al.*, 2011, p. 211.

⁴⁰⁵ Interview with Mick Quinn, Managing Director, and Barra O’ Duill, Research Officer, AHTU, Dublin, 28 April 2012.

⁴⁰⁶ Horgan *et al.*, 2011, p. 211.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ Citizens Information, *Anti human trafficking initiative*, available at http://www.citizensinformation.ie/en/justice/crime_and_crime_prevention/anti_human_trafficking_initiative.html (consulted on 13 June 2012).

⁴⁰⁹ *Ibid.*

⁴¹⁰ BlueBlindfold.gov.ie, 2008, available at <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/index-en> (consulted on 22 June 2012).

includes a number of aspects like an emergency email or telephone number to call should someone suspect a person to be a victim of trafficking. In line with the National Action Plan, a manual outlining measures on how best to support and protect victims of trafficking, including child victims, is also available on the website.⁴¹¹

All in all, the AHTU has done significant work in the field of human trafficking. Without such a unit, NGOs would find it difficult to carry out their own work. For them, the AHTU provides structure.⁴¹² The three-tiered structure discussed earlier is currently operational and has proven useful for sharing ideas and opinions. However, work must be on-going in order to sustain and improve upon its effectiveness, as well as to ensure that the inputs at the WG level are indeed impacting on the HLG and at Ministerial level.⁴¹³ It is at this level that opinion truly counts and where the most influence on anti-trafficking measures is to be made.

4.4. Special protection and assistance: Child victims of trafficking in Irish State care

The Irish government has asserted its recognition of the particular vulnerability of trafficked children and the fact that their protection needs are considerably different from those of adults.⁴¹⁴ In its National Action Plan on human trafficking, the government has pledged that provision of services to ensure the protection of trafficked children “will be paramount and services will operate to the highest standards”.⁴¹⁵ A

⁴¹¹ Department of Justice, *A Guide to Procedures for Victims of Human Trafficking in Ireland*, available at [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/84e94aab6162f25802574c600529086/\\$FILE/Guide%20to%20Procedures%20for%20Victims%20of%20Trafficking.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/da0ca5e97401855180257355006068dd/84e94aab6162f25802574c600529086/$FILE/Guide%20to%20Procedures%20for%20Victims%20of%20Trafficking.pdf) (consulted on 17 June 2012).

⁴¹² Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

⁴¹³ ECPAT International & Children’s Rights Alliance Ireland, *Stop Sex Trafficking of Children & Young People: Ireland, Progress Report Card*, 2010, p. 10, available at http://www.childrensrights.ie/sites/default/files/submissions_reports/files/IrelandProgressCard062010_0.pdf (18 June 2012).

⁴¹⁴ Department of Justice, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012*, 2009, p. 165, available at <http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf> (consulted on 25 June 2012).

⁴¹⁵ *Ibid.*

report commissioned by the Minister for Children and Youth Affairs noted the trafficking of children into Ireland for purposes of labour and/or sexual exploitation as “an area of growing concern”.⁴¹⁶ The report highlights the “especially vulnerable” position of such children, trafficked to and “frequently hidden within communities” by traffickers or exploiters.⁴¹⁷ In spite of such commitments and acknowledgement of child trafficking, the Special Rapporteur for Child Protection continues to criticise the Irish government’s level of special protection afforded to victims.⁴¹⁸ The latest report affirmed that “rhetoric can only go so far”.⁴¹⁹ The signature and ratification of the CRC obliges the Irish state to provide special care and protection to child victims of trafficking. Ireland has been classified as a destination, transit and country of origin meaning that both Irish-born and foreign national children are trafficked into, within and out of the country. It is likely that trafficked children will have different experiences and be subjected to different forms of exploitation or abuse. In this respect, a diverse range of special protection measures must be in place to provide each child victim with adequate support that is specific to their needs.

In Ireland, child victims of trafficking may be foreign nationals or Irish-born. This paper has already emphasised the particular vulnerability of separated or unaccompanied children in care since they are residing outside of their own country.⁴²⁰ It can often be the case that separated/unaccompanied children arriving in Ireland have been trafficked to the country for purposes of labour or sexual exploitation, or even both. Many will have been subjected to various forms of physical and/or sexual violence.⁴²¹ As these children are generally without their family and loved ones, they lack the “traditional support systems of parents” and are therefore more susceptible to

⁴¹⁶ Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, 2011, p. 59, available at http://www.dcy.gov.ie/documents/child_welfare_protection/ChildrenFirst.pdf (consulted on 29 June 2012).

⁴¹⁷ *Ibid.*

⁴¹⁸ Shannon, 2010.

⁴¹⁹ *Id.*, pp. 110-112.

⁴²⁰ It should be noted that identified child victims of trafficking are provided care by the separated children’s unit in the HSE. Thus, when this paper details the experiences of separated or unaccompanied children in care, not necessarily all of them have been victims of trafficking. However, due to their situation, they are more susceptible to being trafficked while previous child victims of trafficking could be re-trafficked.

⁴²¹ Arnold, 2011, p. 8.

being trafficked, manipulated and exploited.⁴²² Without doubt, appropriate protection and assistance should be considered one of the main priorities of the State in order to help these children to overcome their trauma and to assist them in the recovery process. What is more, the principle of non-discrimination should be applied at all times. Thus, theoretically speaking, it is the duty of the Irish state to afford equal care to both foreign nationals and Irish-born children in its care. In practice, however, we have seen that this has not always been the case. This specific section will investigate the types of provisions Ireland claims to afford to child victims of trafficking, looking at both past and present circumstances and areas of particular concern.

4.4.1. Past and present State-provided care for child victims of trafficking: The theory versus the reality

When it comes to child protection standards in Ireland, the Irish state has come under considerable criticism. Cases of widespread child abuse, discrimination of foreign national children and inadequate State-provided childcare are among the most controversial. Indeed, an independent report released as recently as June 2012 on child deaths in State care revealed that “ultimately and tragically the efforts to protect these children failed”.⁴²³ Regrettably, it is not the first time that the Irish government and the HSE have come under criticism for the level of care provided to children. The last decade has seen approximately 6,000 unaccompanied children seeking refuge in Ireland; of them, over 500 have been reported as missing.⁴²⁴ The links between inadequate accommodation and cases of children going missing have already been mentioned. It is unacceptable that a certain proportion of these children ended up being trafficked, or even re-trafficked. It is only in the last couple of years that the Irish government has finally begun to make considerable efforts, together with NGOs, to

⁴²² IRC, *Separated Children given a voice in new report on protection by the Irish Refugee Council*, available at <http://www.irishrefugeecouncil.ie/news/separated-children-given-a-voice-in-new-report-on-protection-by-the-irish-refugee-council/307> (consulted on 12 June 2012).

⁴²³ O'Brien, Carl & Taylor, Charlie, 'Report into child deaths in State care a 'litany of shame'', *Irish Times*, 20 June 2012, available at <http://www.irishtimes.com/newspaper/breaking/2012/0620/breaking4.html> (consulted on 4 July 2012).

⁴²⁴ IRC, *supra* note 422.

develop specific protection standards for all children in care, including trafficked children.⁴²⁵ This much can be seen with the HSE Equity of Care Plan, a government-backed policy to improve State-provided accommodation for foreign national children.⁴²⁶

The HSE Equity Care Plan, drafted in 2009, was the Government's response to consistent pressure and lobbying from NGOs and other organisations about the treatment of separated children in care.⁴²⁷ Prior to the Plan, accommodation afforded to separated foreign national children was not only inappropriate and unsafe but it also made children yet more vulnerable to traffickers. One NGO described the situation as "frankly shocking".⁴²⁸ Up until 2010, children could be placed in privately-run hostels which were often unsupervised. This is an aspect traffickers took advantage of, using the poor protection services of the Irish state as an "easy route" to traffic their victims.⁴²⁹ In other words, an unaccompanied child whom had been identified and provided shelter to by the HSE could well go missing a few days later. Investigations and reports looking into the whereabouts of these missing children prove that some were picked up by traffickers in order to be exploited in some shape or form.⁴³⁰

The discovery of such happenings was symptomatic of discriminatory treatment by State actors towards foreign national children placed in such accommodation. Indeed, the level of care provided to them has been described as "significantly and markedly inferior".⁴³¹ The Equity Care Plan came into effect at the beginning of 2010 and its chief aim was "to bring the service provided to [foreign national] separated children in line with that which is provided for the indigenous Irish".⁴³² All such hostels have since been closed and the numbers of children in care going missing have been significantly decreased from the unacceptable high of 60/70 per month.⁴³³ While it is fair to say that significant improvements have been made in this problem area,

⁴²⁵ Interview with Itayi Viriri, Separated Children's Officer, Barnardos Ireland, Dublin, 26 April 2012.

⁴²⁶ *Ibid.*

⁴²⁷ Arnold, 2011, p. 24.

⁴²⁸ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

⁴²⁹ Arnold, 2011, p. 37.

⁴³⁰ Horgan *et al.*, 2011, pp. 206-207.

⁴³¹ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

⁴³² *Ibid.*

⁴³³ Interview with Itayi Viriri, Separated Children's Officer, Barnardos Ireland, Dublin, 26 April 2012.

concerns continue to be raised by NGOs.⁴³⁴ The role of a guardian, the competencies of the Garda Síochána in dealing with child victims and the lack of aftercare services for aged-out minors are issues which will be discussed further in the coming paragraphs.

Primarily, it is vital that a potential child victim be correctly identified to ensure that he/she receive the specific support and protection required for his/her well-being.⁴³⁵ In a report of the UN Special Rapporteur on trafficking in persons, especially women and children, Ireland stated its policy of “best practice” concerning the identification of child victims of trafficking.⁴³⁶ The Government made note that, once a child victim of trafficking has been identified by police authorities, he/she will be immediately referred to social services.⁴³⁷ While this policy is supported by the Special Rapporteur, it is important to remember that the identification and referral stage is only the beginning of a long process of protection and assistance measures that must be afforded to the child victim. Under the CCA, the HSE assumes primary responsibility for the child or children in question and has the duty to coordinate the services necessary to protect and assist the victims adequately.⁴³⁸ The HSE echoes Section 24 of the CCA by affirming its regard to the welfare of the child as “first and paramount” in every aspect of its service provision.⁴³⁹ According to the HSE, the child’s well-being, “regardless of nationality”, is central to its work concerning the care of vulnerable children.⁴⁴⁰

The National Action Plan, discussed earlier, sets out a range of statutory measures that the HSE must provide, under the CCA, to “any unaccompanied child who is identified as a suspected victim of trafficking”.⁴⁴¹ Moreover, it provides that minors identified as suspected child victims of trafficking will be immediately referred to the

⁴³⁴ *Ibid.*

⁴³⁵ Department of Justice, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012*, 2009, p. 170, available at <http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf> (30 June 2012).

⁴³⁶ UN General Assembly, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, 12 August 2009, p. 18, UN Index: A/64/290.

⁴³⁷ *Ibid.*

⁴³⁸ Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, 2011, p. 56, available at http://www.dcy.gov.ie/documents/child_welfare_protection/ChildrenFirst.pdf (consulted on 30 June 2012).

⁴³⁹ Arnold, 2011, p. 21.

⁴⁴⁰ *Ibid.*

⁴⁴¹ Department of Justice, *supra* note 435, p. 178.

HSE social work team for separated children.⁴⁴² According to the Plan, most of the services that child victims require are already available within this unit “and can be adapted or expanded” as is necessary.⁴⁴³ Such provisions include “initial counselling and debriefing, a multidisciplinary assessment of need and a Care Plan”.⁴⁴⁴ Each child must be assigned a social worker who “assumes the role of legal guardian at the operational level” and who is responsible for implementing the specific care plan outlined.⁴⁴⁵ In this way, it is necessary that social workers take decisions “on behalf of the child”.⁴⁴⁶ For example, not only do they decide on the particular care required by the child victim but the carrying out of medical and psychiatric evaluations, assessments and treatments is left at their discretion.⁴⁴⁷ The National Action Plan also makes note that the HSE will place potential child victims of trafficking with foster families in order to reduce their susceptibility to being exploited and re-trafficked.⁴⁴⁸

It has already been noted that the Garda Síochána and the HSE have statutory responsibility for child victims of trafficking. It is explicitly stated in the National Action Plan that, should a separated/unaccompanied child be discovered by immigration police or any authorised officer, and is identified as a potential child victim of trafficking, it is their duty to refer the child immediately to the HSE.⁴⁴⁹ The Plan also affirms that there is “a high level of co-operation on the ground between the HSE and the GNIB in relation to children arriving into the State”.⁴⁵⁰ In cases where it is unsure that the potential victim is under 18 years or not, then “it may be necessary to carry out an age assessment”.⁴⁵¹ Authorised officers of the immigration police together with the

⁴⁴² Joyce and Quinn, 2009, p. 45.

⁴⁴³ Department of Justice, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012*, 2009, available at <http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf> (30 June 2012).

⁴⁴⁴ *Ibid.*

⁴⁴⁵ Arnold, 2011, p. 20.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

⁴⁴⁸ Joyce and Quinn, 2009, p. 45.

⁴⁴⁹ Department of Justice, *supra* note 443, p. 170.

⁴⁵⁰ *Id.*, p. 172.

⁴⁵¹ *Id.*, p. 178.

HSE carry out such assessments “having regard to the Separated Children in Europe Programme Statement of Good Practice, 2004”.⁴⁵²

On principle, the HSE affirms that “the privacy of every child will be observed and protected”.⁴⁵³ Disclosure of a child’s details, “except in exceptional circumstances”, goes against its strict policies on data protection. “Exceptional circumstances” include the tracing of family members and other measures to secure the well-being and protection of the child.⁴⁵⁴ Yet, Ireland is not fully compliant in terms of providing, in statute, family reunification procedures, in spite of recommendations put forward by the UN Committee on the Rights of the Child in its 2006 report.⁴⁵⁵ A lack of coherent procedures could prove problematic when it comes to the possible repatriation of a child victim. The National Action Plan stipulates that a child should only be repatriated if it is in his/her best interests. Otherwise, the repatriation should not proceed and the child should be allowed remain in the care of the State.⁴⁵⁶ Therefore, State authorities require clear measures on investigating the possibility of safe return of a child to his/her family. A failure to do so could result in the child being returned to family or relatives who were complicit in his/her being trafficked in the first place, or could lead to stigmatisation of the child in home environment.

4.4.2. Current causes for concern for child victims of trafficking: The core deficiencies in Irish state care

There is no doubt that Government initiatives like the National Action Plan and the HSE Equity of Care Plan have brought considerable progress in the protection and support services afforded to child victims of trafficking. Certainly, the provisions outlined and the standards that must be met are comprehensive and aspire towards a human rights-based child-centred approach. Nonetheless, NGOs and other relevant

⁴⁵² *Ibid.*

⁴⁵³ *Ibid.*

⁴⁵⁴ *Ibid.*

⁴⁵⁵ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

⁴⁵⁶ Department of Justice, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009 – 2012*, 2009, pp. 185-187, available at <http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf> (30 June 2012).

actors continue to point out issues that subsist in the field of child trafficking in Ireland. In spite of the positive developments that the Equity of Care Plan has brought about, new problems are arising which need to be addressed, such as issues linked to a child/young person's dispersal, for example.⁴⁵⁷ Rather than being placed in residences or hostels, which were originally in Dublin, child victims may now be allocated a foster family in different parts of the country.⁴⁵⁸ There are substantial doubts whether local HSE units in other regions of Ireland possess the expertise that the Dublin HSE team has been able to develop over the years due to the high concentration of separated children, including trafficked victims, within its care.⁴⁵⁹

Deficiencies in identification procedures, which in turn increase a child's risk of being trafficked, have already been mentioned. Concerns have also been raised by social workers regarding the capacities of the Garda Síochána during investigations, thus, linking current practice with low conviction rates.⁴⁶⁰ Reasons included "a perceived lack of Gardaí [police officer] experience in managing child trafficking cases, male Gardaí interviewing female teenagers and lack of trust".⁴⁶¹ On top of this, the six month recovery and reflection period has been criticised by experts who deal directly with trafficked children.⁴⁶² In their opinion, the time allocated is too short a period for young persons to get the support necessary to truly develop and progress. Allowing child victims to remain longer could facilitate and benefit investigations by having more time to build up the trust of victims.⁴⁶³ What is more, the gain in trust of child victims could finally help free those still under the influence of traffickers. State authorities need to remember the vulnerability of these children and their susceptibility to the likes of coercion and deception, especially those who are separated/unaccompanied.

In this respect, the role of a guardian is crucial to the child's security and well-being throughout his/her time in care. Common practice in Ireland is the appointment of a statutory social worker to the child victim of trafficking. Ireland currently has no

⁴⁵⁷ Arnold, 2011, p. 25.

⁴⁵⁸ *Id.*, p. 24.

⁴⁵⁹ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

⁴⁶⁰ Horgan *et al.*, 2011, p. 212.

⁴⁶¹ *Ibid.*

⁴⁶² *Ibid.*

⁴⁶³ *Ibid.*

system in place to appoint independent guardians to children. Section 26 of the CCA 1991 makes provisions for a guardian *ad Litem*, mentioned earlier, under certain circumstances but this is not common practice.⁴⁶⁴ It is State authorities who have total care of the child; taking into consideration all aspects of their recovery and development as well as making sure that their welfare is the top priority.⁴⁶⁵ Certain NGOs, like the Irish Refugee Council and Barnardos, have questioned whether the HSE has a conflict of interest in taking on such a role⁴⁶⁶ together with conflicting priorities.⁴⁶⁷ One NGO advocate has stated that “having a[n independent] guardian would make life a lot easier for everyone concerned”.⁴⁶⁸ Moreover, such a guardian would be independent of the State and would be solely there for the child, taking his/her best interests into account.⁴⁶⁹ Others have expressed the view that social workers “are not as available as a parent would be”⁴⁷⁰ and that the appointment of a guardian would allow social workers more time “to focus on the child’s care and accommodation”.⁴⁷¹ Despite continuous lobbying and submissions made by NGOs to the Irish government for such a key service, it is not an issue currently prioritised by the State.⁴⁷²

Another recommendation that has been put forward by NGOs is that concerning the provision of aftercare facilities for separated children in care who turn 18.⁴⁷³ Currently, there is no statutory entitlement to specific aftercare for “aged-out minors”, and many complaints have been made to the Ombudsman for Children’s Office in relation to this deficiency.⁴⁷⁴ It is an issue that directly affects trafficked children in the sense that, if the child victim has not had his/her status determined by the time they turn 18, they automatically become an adult asylum seeker and are treated as such.⁴⁷⁵ This means their subsequent transferral from the care of the HSE to the Reception and

⁴⁶⁴ Joyce and Quinn, 2009, p. 46.

⁴⁶⁵ Arnold, 2011, p. 20.

⁴⁶⁶ Joyce and Quinn, 2009, p. 47.

⁴⁶⁷ Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

⁴⁶⁸ *Ibid.*

⁴⁶⁹ *Ibid.*

⁴⁷⁰ Arnold, 2011, p. 28.

⁴⁷¹ *Ibid.*

⁴⁷² Interview with Itayi Viriri, Separated Children’s Officer, Barnardos Ireland, Dublin, 26 April 2012.

⁴⁷³ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

⁴⁷⁴ *Ibid.*

⁴⁷⁵ *Ibid.*

Integration Agency (RIA) and their dispersal into the direct provision system.⁴⁷⁶ Under the guidance of RIA, aged-out minors will generally be placed in adult asylum-seeker accommodation, which often involves having to move to another part of the country.⁴⁷⁷ Such an upheaval can negatively affect an aged-out minor's ability to continue with education and places them in a "relative legal limbo".⁴⁷⁸ Doubts have also been raised about whether a direct provision centre, catering for adult asylum seekers, is an appropriate environment for someone still so young.⁴⁷⁹ Particularly in relation to trafficked children, one must question whether such centres have the support and assistance that these young persons will continue to require in spite of their "adult" status. Dispersal can also culminate in the separation of siblings, where the older, recently turned 18, young person must leave the younger. This aspect further adds to the trauma of victims and complaints have also been made in this regard.⁴⁸⁰ Other complaints received by the OCO, many from children/young persons themselves, included deficiencies in care planning processes of the HSE, not being fully informed about certain situations and not having an opportunity to express their views in an appropriate manner.⁴⁸¹

The child protection-related issues discussed above, such as guardianship, family reunification and provisions for aftercare, are not recent. Rather, NGOs and other organisations have, for several years, urged that the Irish government place them high up on their agenda. In spite of the States acknowledgement, particularly in the National Action Plan, of the vulnerability of child victims of trafficking and committing to the improvement of special standards of care, many shortcomings remain. While initiatives like the HSE Equity Care Plan have brought about some developments in State-provided care to victims, new problems are emerging which the Government also needs to address. If Ireland is truly serious about adopting a child-centred human rights-based approach, then it should simply be a case of "practice what you preach".

⁴⁷⁶ Arnold, 2011, pp. 30-31.

⁴⁷⁷ *Ibid.*

⁴⁷⁸ *Ibid.*

⁴⁷⁹ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

⁴⁸⁰ *Ibid.*

⁴⁸¹ *Ibid.*

Conclusion

Conducting research in the field of child trafficking leaves one with many perplexities and doubts, and it is just one conglomerate of the human trafficking process overall. It is clear that efforts have been made to combat such a crime, most notably in the last decade or so. The drafting and enactment of key anti-trafficking legislation is a sure sign of the recognition that trafficking in persons is a serious issue that must be tackled. Significant treaties like the Trafficking Protocol and the CoE Conventions⁴⁸², although not perfect, have encouraged and assisted states in the development of anti-trafficking laws at the national level. Ireland provides a good example of this considering that it has amended and established national legislation in recent years, such as the enactment of the CLHT Act in 2008, to be on a par with international standards. Indeed, Ireland has made considerable efforts towards the combat of human trafficking in law and policy. Initiatives like the AHTU should be commended due to its contribution to a well-functioning multi-agency approach between key actors like the HSE, the Garda Síochána, NGOs and other IOs.

Indeed, the successful and effective combat of human trafficking requires full co-operation and communication between both state and non-state actors, and there must be a balance between law enforcement measures and victim protection. It demands political will from all parties involved at all levels of society, from the grassroots foundations to the international leaders. What is most critical, however, is that states, including Ireland, adopt a child-centred rights-based approach to child trafficking in order to ensure that its victims receive special protection and assistance that is in “the best interests of the child”.⁴⁸³ The application and implementation of the four ‘P’ principle, discussed earlier, should be prioritised by states. Particularly, the fourth aspect of this approach – the *participation* of children – should not be undermined by governments and state authorities. It has been expressed that Irish public bodies do not always appreciate a child’s capacity to reason and that they can

⁴⁸² CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007; CoE Convention on Action against Trafficking in Human Beings, 16 May 2005.

⁴⁸³ CRC, 20 November 1989.

have a “slightly jaundiced view” when it comes to engaging directly with and seeking out the opinions of children/young persons.⁴⁸⁴

The response to child trafficking in terms of special protection has, particularly in Europe, been heightened due to political pressure put on states by international organisations like UNICEF and ECPAT International. In a similar sense, national NGOs and other actors have put pressure on the Irish government by submitting recommendations concerning child victim protection and anti-trafficking measures on a regular basis.⁴⁸⁵ Furthermore, as Party to the EU and CoE’s “regional and sub-regional normative framework” to combat trafficking⁴⁸⁶, Ireland should respect the commitments it has *chosen* to undertake by signing and ratifying trafficking-specific laws like the CoE Trafficking Convention. Moreover, it is the Irish State’s duty to implement such laws alongside other treaties concerning the special protection of child victims of trafficking. The ‘window-dressing’ tactic applied by some states and institutions cannot be tolerated. Rather, the responsibilities and obligations outlined in the relevant laws must be mirrored by substantive measures ‘on the ground’. In this regard, and in specific relation to child protection measures, there remain significant gaps on which the Irish government must be confronted and held accountable. Certainly, it is recommended that Ireland follow up on its signature of the CRC Optional Protocol and the CoE SESA Convention by ratifying them both.

While Ireland has received some positive feedback concerning its follow-up and implementation of numerous concluding observations, it has been criticised for failing to fully address “some of the concerns expressed and recommendations made” by the Committee on the Rights of the Child.⁴⁸⁷ Most notably, the Irish government was lamented for shortcomings related to “the status of the child as a rights-holder and the adoption of a child rights-based approach in policies and practices”.⁴⁸⁸ It was also noted the high number of complaints received by the Ombudsman for Children in relation to a

⁴⁸⁴ Interview with Manu de Barra, Policy and Human Rights Officer, OCO, Dublin, 25 April 2012.

⁴⁸⁵ *Ibid.*

⁴⁸⁶ *Ibid.*

⁴⁸⁷ UN Committee on the Rights of the Child, *Concluding Observations: Ireland*, CRC/C/IRL/CO/2, 29 September 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/74/PDF/G0645074.pdf?OpenElement> (consulted on 27 June 2012).

⁴⁸⁸ *Ibid.*

“lack of respect for the views of the child”.⁴⁸⁹ Other concerns addressed by the Committee included insufficient provisions for guardian *ad Litem* and for family reunification procedures; aftercare facilities for ‘aged out minors’ leaving care centres and the level of special protection afforded to separated or unaccompanied children/young persons. The Committee also highlighted specific issues concerning the sale and traffic of children, most notably the lack of data on the situations of child victims of trafficking.⁴⁹⁰

It is discouraging to see that, six years on, the Irish government continues to disregard a significant number of the Committee’s suggestions and recommendations. The issues listed above are concerns which are continuously reiterated by NGOs and other agencies and which directly impact upon child victims of trafficking. If the Irish government is to comply fully with international standards in terms of special protection measures for child victims, then now is the time for change. The fact of the matter is that trafficking-related conviction rates in Ireland are extremely low, a factor that has been pointed out by numerous bodies.⁴⁹¹ It is vital that the Government consider some potential causes for the low levels of conviction. This paper would argue that such low levels could be directly linked with the standards of protection Ireland thus far affords victims of trafficking. Previously discussed, the latest draft of the IRP Bill, not yet in the statute book, fails to provide an adequate level of protection for both adult and child victims, including during criminal proceedings. Victims should be made feel secure and child victims must be encouraged to participate in the decision-making process as well as had their views listened to by adequately trained law enforcement officers and care staff. In this regard, provisions for the appointment of an independent guardian to child victims, or at least a guardian *ad Litem*, must be prioritised by the present Government.

To sum up, there are both negative and positive aspects regarding anti-trafficking law and policy in Ireland. The recommendations and submissions, concerning the protection of trafficked children/young persons, need to be addressed by

⁴⁸⁹ *Ibid.*

⁴⁹⁰ *Ibid.*

⁴⁹¹ Interview with Mick Quinn, Managing Director, and Barra O’ Duill, Research Officer, AHTU, Dublin, 28 April 2012.

the Government. Regarding such issues, it has procrastinated long enough. The rights of *all* children deserve to be valued and protected. In this respect, there are no exceptions.

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