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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

1 October 2013

Case Doc. No. 4

Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland
Complaint No 89/2013

**SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 27 September 2013

COLLECTIVE COMPLAINT

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

FEDERATION OF CATHOLIC FAMILY ASSOCIATIONS IN
EUROPE (FAFCE)

V

IRELAND

COMPLAINT NO 89/2013

WRITTEN SUBMISSIONS ON THE MERITS OF THE COMPLAINT

26 SEPTEMBER 2013

Introduction

1. The within complaint (the ‘Complaint’) dated 21 December 2012 and registered on 3 January 2013 as 89/2013 was lodged by the Applicant and alleges that the Respondent has not applied Article 17 of the European Social Charter (Revised) (the ‘Charter’) satisfactorily. In particular, the Applicant requests on foot of its Complaint that the European Committee of Social Rights (the ‘Committee’) should find that the Respondent has failed to protect child victims of human trafficking within its jurisdiction *inter alia* –
 - a. by failing to identify successfully those criminally involved in human trafficking;
 - b. allegedly consequently, by failing to prosecute effectively those who are guilty of such crimes; and
 - c. by failing to identify the child victims of human trafficking.

The Applicant submits that these alleged weaknesses are in breach of Article 17 of the Charter whereby the Respondent has undertaken to take all appropriate and necessary measures to protect young persons against negligence, violence or exploitation.

2. By letter of 16 July 2013, the Executive Secretary of the Committee informed the Agent for the Respondent that in accordance with Article 7(1) of the Additional Protocol to the Charter the Committee had declared the Complaint admissible. The Respondent was invited to make written submissions on the merits of the Complaint and does so herein.
3. The Respondent denies that it is guilty of any breach whatsoever of Article 17 or any other relevant Article of the Charter as alleged or at all. The Respondent requests that the Committee should declare the Complaint

unfounded on the merits and conclude that the Respondent has not failed to ensure the satisfactory application of Article 17 of the Charter.

The Relevant Articles of the Charter

4. The Applicant makes its Complaint by reference to Article 17 of the Charter alone, the relevant portions of which read as follows:

“Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organizations, to take all appropriate and necessary measures designed:

1...

- b. to protect children and young persons against negligence, violence or exploitation;*
- c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support.”*

5. The Respondent submits in the first place that the Complaint has been improperly brought under Article 17 rather than Article 7(10) of the Charter, the latter obliging the contracting parties to ensure special protection against physical and moral dangers to which children and young persons are exposed and thereby governing issues relating to trafficking of children. The purpose of Article 17 is to vindicate children’s rights to social, legal and economic protection. In its own conclusions and caselaw, the Committee has consistently, if implicitly, stressed that Article 17 is concerned with

vindicating the legal status of children and their equal rights *inter se*, as well as establishing the minimum of care and assistance that the State is bound to provide to a child towards whom the State is *in loco parentis* or who is partially or wholly deprived of effective parental support.¹ The phenomenon of child trafficking is outside the ambit of this Article. The Committee has stated clearly that “*trafficking of children and sexual exploitation [are] issues which are dealt with under Article 7§10 of the Revised Charter*” and not Article 17.² Moreover, the Secretariat of the Charter has given indicative information that interprets Article 7(10) of the Charter (and, again, not Article 17) as solely covering the protection of children from sexual exploitation and human trafficking.³ This is even cited by the Applicant in its Complaint at Footnote (7).

6. Within the knowledge of the Respondent, the Committee to date has not entertained any complaint or assessed conformity with the Charter on the subject of child trafficking by reference to Article 17 alone. To do so in determining this Complaint would be a dramatic and unwarrantable enlargement of the jurisprudence in respect of Article 17 – jurisprudence that the Committee has carefully cultivated over many cycles – and would introduce uncertainty as to the true scope of this Article and that of Article 7(10) and the relationship between them.
7. The Respondent requests that the Complaint should be dismissed *in limine* on the ground that the Applicant has proceeded under the wrong Article of the Charter. This was canvassed during the admissibility stage of the Complaint and the Committee in its Decision on Admissibility made a point of reserving judgment on this point until the Decision on the Merits.

¹ Defence for Children International v Belgium, Complaint No 69/2011, Decision on the Merits, 23 October 2012, §§73, 82; Conclusions XIII-2 29-39

² Conclusions 2007 736 (Italy)

³ Children’s Rights under the European Social Charter (Information Document prepared by the Secretariat of the European Social Charter) 6-7

8. In so far as the Committee is unwilling for any reason to dismiss the Complaint on such ground, nonetheless, in the Respondent's submission, the fact that the Applicant has invoked Article 17 to the apparent exclusion of Article 7(10) and without regard to the Committee's existing jurisprudence or guidance from the Secretariat of the Charter – this at once betrays the callow and perfunctory character of the Applicant's Complaint. While the Respondent has no reason to doubt the good intentions of the Applicant, it has grave concerns that the Complaint itself is officious and vexatious; has perhaps been prepared in undue haste; and is too anxious to discern an enormity of problems both with the extent of child trafficking in Ireland and with the adequacy of the State response thereto that is in fact not proven.

Criticisms of the Quality and Completeness of the Applicant's Evidence

9. The Applicant is guilty of highly selective choice and deployment of evidence herein in a number of ways.
10. First, although the Complaint cites at its Footnote (6) the Respondent's National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009 to 2012 (the 'NAP'),⁴ (**Appendix 1**) there is no reference whatsoever to the subsequent Review of the National Action Plan to Prevent and Combat Trafficking in Human Beings 2009 to 2012 (the '2013 Review', **Appendix 2**),⁵ which was published in 2013 and which sets out in detail the progress that the Respondent made in addressing the issue of human trafficking even in a relatively short period of years. Of the hundred and forty-four actions that were laid down in the NAP, eighty-nine actions had been completed and the remaining fifty-five were well in progress in 2012 –

⁴<http://www.inis.gov.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf>

⁵ [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/\\$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/RADN-95REJP1041313-en/$File/Review%20of%20the%20National%20Action%20Plan%20Final.pdf)

and the majority of these are continuing actions by their nature, such as on-going data collection, provision of supports *et cetera*, and will be carried into the next National Action Plan. A new Action Plan for 2013 and future years is presently in development.

11. The Respondent invites the Committee to consider the entirety of both the NAP and the 2013 Review and to admit the contents of same as evidence of (i) the manifold substantive measures adopted by the Respondent to prevent human trafficking, to protect victims and to prosecute and convict offenders of trafficking; (ii) the unalloyed commitment on the part of servants of the Respondent, up to and including ministerial level, to combat and eliminate and punish human trafficking in Ireland; and (iii) the extensive mechanisms that have been put in place internally for rigorous review and self-scrutiny of the State response to human trafficking. None of this is mentioned in the Complaint.

12. Secondly, which arises largely out of the foregoing, the Complaint makes little or no reference to the fact that the Respondent has established a comprehensive administrative framework to coordinate official efforts to tackle human trafficking. This framework includes specialist structures and training programmes for personnel to complement and also to help effectuate the concrete legislative provisions that criminalize human trafficking in Ireland. As set out in the 2013 Review, the key features of this framework include the following:
 - a. In 2008, an Interdepartmental High-Level Group on Combating Human Trafficking was convened to advise the Minister for Justice and Equality on appropriate and effective responses to the issue of human trafficking in Ireland and to monitor the implementation of these responses. This Group was also assigned responsibility for ensuring the implementation of the National Action Plan above. The

Group is currently co-chaired by the Assistant Secretary from the Crime and Security Directorate of Department of Justice and Equality (a senior member of the management committee of the Department) and the Director General of the Irish Naturalisation and Immigration Service and comprises representatives of State organizations such as An Garda Síochána (the national police force), the Reception and Integration Agency (RIA), the Department of Health, the Health Service Executive (HSE), the Department of Children and Youth Affairs, the Victims of Crime Office and the Child and Family Support Agency. The Group meets at least once or twice a year, but in case of need it can meet more frequently. It is consulted informally on a regular basis.

- b. As outlined in the 2013 Review,⁶ the Anti-Human Trafficking Unit ('AHTU') was established in 2008 and has primary responsibility for coordinating government policy and actions to maximize the effectiveness of national and international efforts. It does so in conjunction with a variety of governmental, non-governmental and international organizations. With regard to suspected and potential victims of trafficking in human beings, the AHTU has primary responsibility for collecting standardized data on such persons from a variety of governmental and non-governmental stakeholders for the purposes of providing an evidence base for policy development. The AHTU provide a secretariat for the Interdepartmental High-Level Group. They also have responsibility for convening, coordinating and chairing meetings of the various working groups described at (d) below, as well as for engaging in general communication with other State service providers, NGOs, international organizations and any other relevant organizations for the purposes of the discharge of their functions.

⁶ *ibid.* 31

- c. Besides the AHTU, three other dedicated State units have been set up to address human trafficking, namely, the Human Trafficking Investigation and Co-ordination Unit ('HTICU') in An Garda Síochána; the Anti-Human Trafficking Team in the Health Services Executive (HSE) and the specialised Human Trafficking legal team in the Legal Aid Board,⁷ all of which liaise closely with one another under the National Referral Mechanism as described below. HTICU has national responsibility for policy development, co-ordination and implementation of policing measures in relation to trafficking in human beings. It manages and co-ordinates all investigations where there is an element of trafficking in human beings. The Unit also plays a central role in the identification of victims of trafficking. The Unit is headed by a Garda not below the rank of Superintendent, who is the Respondent's competent authority as regards the formal identification of victims of trafficking under the Administrative Immigration Arrangements (**Appendix 3**, discussed further at Paragraph (39) of these Observations).⁸ The Anti-Human Trafficking Team in the HSE provides, upon request, care planning and other services for victims of human trafficking who have been notified to them by An Garda Síochána. Care plans cover such areas as general medical and sexual health, mental and psychological health, relationship and family and social and spiritual needs. Where there is a criminal investigation, a member of the Team will accompany a client to interviews with An Garda Síochána so long as there is no objection from the latter.⁹ The

⁷ The Legal Aid Board is the statutory body responsible for the provision of legal aid and advice on matters of civil law to persons unable to fund such services from their own resources. Although it has been in existence since 1979, the Board was put on a statutory footing by virtue of the Civil Legal Aid Act 1995 (No 32 of 1995). The Board provides services to the public from thirty-three full-time law centres located in towns and cities around Ireland.

⁸ *ibid.*

⁹ *ibid.* 39

stated aim of the services provided is to enable the client to gain independence and to enable him or her to make decisions in a safe and supportive environment whilst guiding him or her through all the stages of the recovery process. The Legal Aid Board provides legal services on certain matters to persons notified to them by An Garda Síochána as potential or suspected victims of human trafficking if engaged by the person. There are no merits or means tests for suspected victims prior to accessing legal services, nor are applicants required to make any contribution to the Legal Aid Board. The Civil Law (Miscellaneous Provisions) Act 2011¹⁰ (**Appendix 4**) authorizes the Legal Aid Board to provide legal advice on a statutory basis in relation to criminal matters to alleged victims of trafficking.

- d. The Respondent has established a number of consultative structures to inform the work of the relevant State agencies and the Interdepartmental High-Level Group. Chief amongst these is a Roundtable Forum comprising representatives from government departments, non-governmental organizations and international organisations, which is empowered to make recommendations to the Interdepartmental High-Level Group. The current membership of this Forum includes the Department of Social Protection, the Irish Naturalization and Immigration Service (INIS), An Garda Síochána, the Department of Health, the Department of Children and Youth Affairs, the HSE, the Victims of Crime Office, Child and Family Support Agency, the Irish Congress of Trades Unions, the International Organisation for Migration (IOM), Ruhama, the Migrants Rights Centre of Ireland (MRCI), the Immigrant Council of Ireland, the Irish Refugee Council, the UN High Commissioner for Refugees (UNHCR), Stop Sex Trafficking, Amnesty International, Act to Prevent Trafficking (APT), the UN Children's Emergency Fund (UNICEF) and

¹⁰ No 23 of 2011

the Irish Society for the Prevention of Cruelty to Children (ISPCC). The Roundtable Forum meets no fewer than three times a year. In addition, there are five working groups similarly made up of expert representatives from the State agencies, NGOs and international organizations that meet regularly to identify and address practical issues that may be identified from time to time. The working groups are charged with deal with Awareness-Raising and Training; the Development and Operation of a National Referral Mechanism; Child Trafficking; and Sexual Exploitation and Labour Exploitation.

- e. In terms of specialist training, some 700 members of An Garda Síochána have received a detailed three-day training course on combating human trafficking. This training course entitled ‘Tackling Trafficking in Human Beings: Prevention, Protection and Prosecution’ has been developed jointly by An Garda Síochána and the IOM. This is an on-going training programme with the next course due to take place in November 2013. More than 3,196 members of An Garda Síochána have received awareness raising training in human trafficking over the past four years. The number of personnel who have received this training represent approximately 28% of the operational strength of An Garda Síochána. A specialized training course was held in September 2009 for solicitors and other staff of the Legal Aid Board who are providing legal aid and advice to potential and suspected victims of trafficking in human beings and refresher training was provided in 2012.

- f. The National Referral Mechanism (‘NRM’) is an umbrella term used to describe: (i) the comprehensive consultation structures involving governmental, non-governmental and international organizations; (ii) the process by which a suspected victim of human trafficking is identified; (iii) the range of assistance and support services available to

potential and suspected victims of human trafficking; (iv) how potential and suspected victims are referred or can apply to access each of those services.¹¹ This embraces all aspects of victim assistance from the initial encounter with a relevant State agency to finding longer-term solutions for a victim's plight, including access to work or training, where applicable. The NRM in Ireland has been developed based on recommendations by the Organization for Security and Cooperation in Europe (OSCE). A process map which illustrates how the various agencies of the Respondent interact with each other is appended to the 2013 Review.¹²

13. A third evidential criticism of the Complaint is that the Applicant conspicuously chooses to ignore, in particular, the existence of the "Blue Blindfold" website;¹³ which is a central feature of the Respondent's efforts to raise public awareness of the phenomenon of human trafficking under the slogan, "*Don't Close Your Eyes to Human Trafficking*" and uses the now well-recognized symbol of the blue blindfold that was first used by the Human Trafficking Centre in the United Kingdom. The website was launched in October 2008 and re-launched in January 2011 in conjunction with the Department of Justice in Northern Ireland.¹⁴ The website describes the very real problem of human trafficking; outlines common indicators of trafficked persons, including children; catalogues the State supports that are available to victims of trafficking; expounds on both Irish and international developments in the area. Perhaps most importantly, the website (which has achieved international recognition) provides a mechanism that can be, and has been, used by people, victims and third parties alike, who wish to report alleged or suspected incidents of human trafficking. It is also possible for victims of

¹¹ <http://www.justice.ie/en/JELR/Pages/WP09000005>

¹² 2013 Review Appendix 3

¹³ <http://www.blueblindfold.gov.ie>

¹⁴ <http://archive.merriionstreet.ie/index.php/2011/01/dermot-ahern-launches-campaign-to-raise-awareness-of-human-trafficking>

human trafficking to use the website to report their plight, without having to visit a garda station. This website is monitored on a daily basis by HTICU. To date in 2013, almost 400 e-mails have been received via the Blue Blindfold website, all of which have been assessed by the HTICU and appropriate action taken. The website has recorded in excess of 10,000 visits since 2008.¹⁵ The use of social media networks as a method of raising awareness is also relevant. The AHTU Facebook page has been a valuable method of raising awareness of the issue of human trafficking.

14. Fourthly, the Applicant's Complaint relies overwhelmingly upon out-dated and irrelevant material and statistics to make its case – which is reason by itself to dismiss the Complaint. In its Decision to admit the Complaint, the Committee explicitly reserved this matter to consideration as part of its Decision upon the Merits. The Respondent submits that, in respect of at least one very significant document, the Applicant's reliance on out-dated material may well have the objective result of misleading the Committee and could shroud progress that the Respondent has made in combatting human trafficking of both adults and children and the fact that it has been internationally acknowledged. Although this may be an honest mistake on the part of the Applicant, it is difficult to see why so much is made (uncritically) of the contents of the US State Department's Trafficking in Human Persons Report (TIP) 2011¹⁶ (**Appendix 5**) when the Trafficking in Human Persons Report (TIP) 2012¹⁷ (**Appendix 6**) was published on 19 June 2012 and was available to the Applicant for several months prior to the lodging of the Complaint but is not referred to at all. Certain criticisms of the Irish approach to human trafficking that were contained in the earlier Report were subsequently excised by the US State Department and not repeated in the later Report. At the very least, the Committee should call upon the Applicant to

¹⁵ 2013 Review 21

¹⁶ <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>

¹⁷ <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>

explain why they have neglected a later and revised version of the same Report and, moreover, chosen to not to draw attention to substantial revisions in favour of the Respondent.

15. To highlight individual instances of the foregoing: at its Footnote (9), the Applicant quotes the 2011 TIP and complains that the Respondent ought to separate the sexual abuse of children and child pornography clauses from the Criminal Law (Human Trafficking) Act 2008¹⁸ (**Appendix 7**) to ensure trafficking offences prosecuted thereunder “*can be tracked under accepted definitions*”. This recommendation from the 2011 TIP was removed from the 2012 TIP. The Applicant will not be aware, but this was possibly because the US State Department was unfamiliar with Irish legislative drafting and misinterpreted certain provisions of the 2008 Act. The AHTU made an official response to the US Embassy in Ireland in 2011 as follows:

“It appears there is a misunderstanding of the provisions in the 2008 Act. The 2008 Act has specific discrete provisions on human trafficking – Section 2 covers the trafficking of children for the purposes of labour exploitation and removal of organs; Section 3 covers the trafficking of children for the purposes of sexual exploitation and Section 4 on the trafficking of persons other than children (adults). While Sections 2, 3 and 4 include other offences – selling/purchasing etc. of children, sexually exploiting/taking etc. a child, selling/purchasing etc. of persons – all of the trafficking offences are discrete provisions. The maximum penalties for all of the offences in Sections 2, 3 and 4 are life imprisonment and, at the discretion of the court, a fine. The definition of ‘sexual exploitation in relation to a child’ for the purpose of the offence of trafficking a child for sexual exploitation includes sexual abuse and exploiting children through pornography and prostitution in order to cover all potential forms of

¹⁸ No 8 of 2008

child trafficking for sexual exploitation. Trafficking offences in the 2008 Act are distinct from other offences in the legislation and are intentionally broad in scope, in particular, to maximise the protection afforded to children. Offenders are liable to life imprisonment. Accordingly it is not necessary to separate the sexual abuse of children and child pornography clauses from the 2008 Act.”
(Emphasis original.)

The criticism of the 2008 Act contained in the 2011 TIP is repeated wholesale by the Applicant in the Complaint. But this criticism is no longer made by the US State Department in the 2012 TIP (or indeed the Trafficking in Human Persons Report (TIP) 2013,¹⁹ which was published on 19 June 2013.) The Respondent submits that the Applicant knew or ought to have known that the TIP had been revised in 2012 to remove the reference to the 2008 Act above; however, the Applicant adduced the out-dated and inaccurate material from the 2011 TIP as evidence herein.

16. Moreover, as cited at its Footnote (8), the Applicant quotes the 2011 TIP to the effect that “*local observers continued to express concern over the lack of use of the 2008 anti-trafficking law to prosecute trafficking offenders in Ireland*” which, once more, is not repeated in the 2012 TIP. Thereafter the Applicant takes yet further quotes from the 2011 TIP (cited at Footnotes (12) and (13) of the Complaint) that –

“... NGOs take responsibility for providing support to the uncertified victims. In addition, NGO experts continued to assert that many more trafficked children and adults in Ireland remain unidentified and could not benefit from the increased protections put in place for them. While the government formalized procedures to guide officials in the identification and referral of victims, NGOs report that better

¹⁹ <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

institutional cooperation among key stakeholders is needed to achieve a reliable identification process to locate other potential trafficking victims in Ireland.”

Again, these individual criticisms from 2011 have been almost entirely removed in the 2012 revision of the TIP, which states instead that the Respondent reported the use of systematic procedures to guide officials in the identification and referral of victims, albeit that NGOs assessed that better institutional cooperation among key stakeholders is needed in order to identify same. The Applicant nonetheless makes submissions based on the earlier Report rather than the later. The Respondent requests that the Committee should (i) consider the contents of the 2012 TIP by way of comparison with the 2011 TIP and (ii) disregard any submissions from the Applicant that rely to any extent upon the contents of the 2011 TIP.

17. One further, discrete example of the Applicant’s use of irrelevant sources or sources of limited value is in its reference to research by Patricia Stapleton and her 2011 conference paper Human Trafficking in Ireland: Identifying Victims of Trafficking (Appendix 8).²⁰ The author herself admits certain research limitations in the body of the paper, one of which was as follows:

*“Additionally, the phenomenon of child trafficking was deemed to be outside the scope of this research as it raises different political and ethical issues. Therefore this research focused solely on the experiences of trafficked women (over the age of 18) for sexual exploitation.”*²¹

Given that the subject matter of the Complaint is the alleged inadequate protection of children against trafficking, it is alarming that the Applicant has

²⁰ <http://www.ucc.ie/en/media/academic/appliedsocialstudies/docs/PatriciaStapleton.pdf>

²¹ *ibid.* 197

sought to adduce evidence in the form of research that itself expressly disavows any relevance to the topic. Yet again the Respondent would request that the Committee would disregard this evidence and any submissions resting on same.

18. A fifth criticism of the selective use and deployment of evidence by the Applicant is in its almost complete failure (bar some minimal passing references) to draw the Committee's attention to the Respondent's ready embrace of treaty obligations to act against human trafficking and its adherence thereto. The Respondent signed the United Nations Palermo Protocol on 13 December 2000 and ratified same on 17 June 2010 (**Appendix 9**).²² The Respondent also signed the Council of Europe Convention on Action against Trafficking in Human Beings on 13 April 2007 and ratified same on 13 July 2010.²³
19. Sixthly, and finally, the Applicant studiously eschews all and any positive comment from international and expert bodies on the Respondent's approach to human trafficking. The Complaint is crudely unbalanced in this respect. For example, the US State and Department TIP Reports for 2010,²⁴ 2011, 2012 and 2013²⁵ have consistently ranked the Respondent as Tier 1; which is to say a country whose government fully complies with the minimum standards for the elimination of trafficking under the US Trafficking Victims Protection Act 2000, as amended, which standards themselves are consistent with the Palermo Protocol.²⁶

²² United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319

²³ CETS 197

²⁴ <http://www.state.gov/j/tip/rls/tiprpt/2010/index.htm>

²⁵ *op.cit.*

²⁶ *op.cit.*

20. The model utilized by An Garda Síochána for interacting with victims of human trafficking has been described as *“being an enlightened approach to dealing with victims of human trafficking”* by Aidan McQuade, Director of Anti-Slavery International.²⁷ Yury Fedotov, the Executive Director of the United Nations Office on Drugs and Crime complimented Ireland’s approach to human trafficking and held that it is *“a leader in combating trafficking in persons and an innovator in victim care”*.²⁸ It should be further noted that Scott Hatfield, Director of the US Human Smuggling and Trafficking Centre, named the Respondent as *“one of the more advanced countries in the world in combating human trafficking.”*²⁹
21. Most recently, Ms Maria Grazia Giammarinaro, Organization for Security & Cooperation in Europe (OSCE) Special Representative and Co-Ordinator for Combating Trafficking in Human Beings, visited Ireland in January/February 2012 and in her subsequent Report³⁰ (**Appendix 10**) expressed her appreciation for the *“the open, constructive and collaborative approach of the Irish authorities”*³¹ in the course of her visit and praised the Respondent for –

*“very dynamic anti-trafficking policy [having] developed in a short period of time good practices based on a human rights approach and good governance, in line with OSCE commitments and other international standards.”*³²

In addition, the Special Representative and Co-Ordinator was:

²⁷ 2013 Review 65. The comment was made orally during panel discussion at an event in Limerick, December 2010

²⁸ *ibid.* This is extracted from a letter dated 18 March 2011 to the Executive Director of the AHTU.

²⁹ This comment was made in a radio interview on Kildare FM on 11 October 2012.

³⁰ <http://www.osce.org/cthb/99775>

³¹ *ibid.* Foreword

³² *ibid.* 2

*“very pleased to report that Ireland has established a comprehensive institutional system, building on an effective co-ordination mechanism, as well as on consultation and co-operation with non-governmental organizations, the private sector and international organizations regarding the prevention, protection of victims and the prosecution of trafficking in human beings.”*³³

The Respondent would ask the Committee to admit the said Report (including the Respondent’s formal responses as appended thereto) into evidence and take its content into account in weighing the Applicant’s Complaint.

Developments since the Formulation of the Complaint

22. The Respondent would like to apprise the Committee of one particular development since the formulation of the Complaint that has an especial bearing on the issue of human trafficking and to which regard should be had in the Committee’s deliberations and in any reply hereto from the Applicant. This was the enactment on 9 July 2013 of the Criminal Law (Human Trafficking) (Amendment) Act 2013 (**Appendix 11**).³⁴ This Act extends the scope of exploitative activities criminalized by 2008 Act to comply fully with the relevant criminal law provisions of European Union directives³⁵ and for the first time to define the term “*forced labour*” as used in the principal Act, which definition is based on that employed by the International Labour Organization (ILO).³⁶ The 2013 Act specifically adds forced begging and exploitation of criminal activities to the scope of exploitative conduct criminalized by statute. This amendment to legislation has brought welcome clarity to the criminal law and completely addressed persistent criticism to be

³³ *ibid.* 3

³⁴ No 24 of 2013

³⁵ Directive 2011/36/EU of 5 April 2011 of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [O.J. No L101/2011/1]

³⁶ ILO Convention No 29 (1930) concerning Forced or Compulsory Labour, Article 2

found, for example, in the 2012 TIP³⁷ and the OSCE Special Representative's Report,³⁸ that there was not an autonomous offence of forced labour within the Irish criminal code, which was required to close off any technical legal argument to the effect that to constitute trafficking a necessary element of such an offence was *movement* of victims. In addition, the 2013 Act contains provision to better facilitate children giving evidence in criminal prosecutions for human trafficking offences. It increases, from 14 to 18 years, the upper age threshold for out-of-court video recording of a complainant's evidence and makes provision for video recording the evidence of a child witness (other than an accused) who is under the age of 18 years. It is submitted that there is no potential criticism that may now be levelled at the substance of the Irish criminal law governing human trafficking and the Respondent is fully compliant with all international norms and obligations in this regard, including those arising under the Charter.

The Substantive Complaint: Statistics from An Garda Síochána/The Value of Increasing Prosecution Rates

23. The central basis of the Complaint appears to be an unfair allegation that the Respondent is either unable or unwilling to prosecute, and moreover prosecute successfully, the perpetrators of child trafficking. This is denied by the Respondent. In keeping with the selective use of evidence as described above, the Applicant relies herein exclusively on data related to the year 2010. This is despite the fact that the data for 2011 was accessible by the Applicant when formulating its Complaint.³⁹ The details of convictions secured and cases before the courts are set out in the AHTU's Annual Reports on human trafficking for 2009, 2010 and 2011 (**Appendices 12, 13 and 14**), which are available on the Blue Blindfold website.⁴⁰

³⁷ *op.cit.* 193

³⁸ *op.cit.* 3

³⁹ For example, 2013 Review 61-2

⁴⁰ *op.cit.*

24. The following gives details of prosecutions in the Respondent jurisdiction for the year 2011 as recorded in the 2013 Review:
- a. In 2011, An Garda Síochána initiated 53 investigations relating to allegations of trafficking in human beings involving 57 alleged victims. Of these, 32 (60.4%) were on-going investigations at the end of the year. In 6 (11.3%) cases there was no or insufficient evidence of an offence of human trafficking having occurred in Ireland. In 6 (11.3%) cases investigations were on-going in regard to other offences. Four (7.5%) cases were before the courts. In 3 (5.7%) cases files had been sent to the Director of Public Prosecutions. One (1.9%) case resulted in a conviction related to trafficking in human beings obtained under the Criminal Law (Sexual Offences) Act 1993⁴¹ (**Appendix 15**) and in 1 (1.9%) case the claim of trafficking was withdrawn.
 - b. Four convictions were secured in regard to offences relating to the trafficking of human beings. Two convictions were secured under the Child Trafficking and Pornography Act 1998 (**Appendix 16**).⁴² In one of these cases the accused was an adult female who controlled and sexually exploited a minor for the purposes of prostitution. The accused pleaded guilty and was sentenced to 4 years imprisonment with the final two years suspended. The other conviction involved an adult male who groomed, controlled and exploited the vulnerability of 2 minors by requesting naked pictures from them over a mobile phone in exchange for phone credit. The accused was convicted of an offence under Section 3(2) of the 1998 Act and fined €100.

⁴¹ No 20 of 1993

⁴² No 22 of 1998

- c. One conviction was obtained under 2008 Act. The accused was an adult male who sexually exploited a minor. He was convicted and sentenced to 3 years imprisonment. Another conviction was obtained under the 1993 Act. The accused was an adult male who trafficked undocumented persons into Ireland and then sexually exploited them by way of prostitution. He was sentenced to 2½ years imprisonment with the final fifteen months suspended on condition that he leaves the State on his release and does not return for ten years.
 - d. Two applications for European Arrest Warrants were received from Romania. In both cases the persons sought were Romanian nationals. In one case the person sought was surrendered to the Romanian authorities while in the other case the person had refugee status in Ireland and their surrender was refused by the High Court on this basis.
25. The 2012 Annual Report will be available shortly; however, provisional prosecution and conviction figures for 2012 are as follows:
- a. An Irish male is on bail awaiting trial for charges relating to the sexual exploitation of an Irish minor. Charges were brought under Section 3 1998 Act (as amended by Section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007⁴³ and as substituted by Section 3(2) of the 2008 Act. A trial date has not yet been set for this case.
 - b. Charges were brought against an Irish male under Section 3 of the 1998 Act as amended in relation to the sexual exploitation of an Irish minor. The accused pleaded guilty in June 2012 and was remanded in custody for sentencing in 2013.

⁴³ No 6 of 2007

In addition to the prosecutions taken under the 1998 and 2008 Acts, investigations into suspected trafficking offences led to prosecutions for other offences:

- c. An investigation involving suspected child trafficking, smuggling, and social welfare fraud was initiated in 2012. There was insufficient evidence for trafficking charges and a charge was brought against an Irish male under the Criminal Justice (Theft and Fraud Offences) Act 2001 (**Appendix 17**).⁴⁴
 - d. A Chinese male was arrested and charged arising from an investigation relating to a large number of Chinese minors going missing having been placed in accommodation provided to asylum seekers. He was subsequently convicted of an offence, contrary to Section 2 of the Illegal Immigrants (Trafficking) Act 2000⁴⁵ (**Appendix 18**) in July 2013 and given a three year suspended sentence, having been in custody for a considerable time. He has since been deported to China.
26. In addition to aforementioned investigations into human trafficking offences in 2012, 11 investigations into sexual offences against 19 Irish minors were found to involve one or other of the constitutive elements of human trafficking. The necessary constitutive elements for a child trafficking offence under the 2008 Act involve an *act* and a *purpose*. The act can be one of procuring, recruiting, transporting, harbouring, placing a child into the control of another person or receiving the child or providing the child with accommodation or employment for the purpose of the sexual or labour exploitation of the child or for the removal of a body organ and prosecutions were subsequently taken under Section 3 of the 1998 as amended. The alleged

⁴⁴ No 50 of 2001

⁴⁵ No 29 of 2000

exploitation of the victims involved child pornography and sexual offences, including indecency and sexual assault:

- a. An Irish female pleaded guilty to offences relating to the sexual assault and the sexual exploitation of an Irish minor in addition to the possession of child pornography. The charges preferred were contrary to Section 2 of the Criminal Law (Rape) (Amendment) Act 1990⁴⁶ (**Appendix 19**) and Sections 3 and 5(1) of the 1998 Act as amended. The accused was sentenced to 3 years imprisonment.
- b. An Irish male was arrested for attempting to sexually exploit an Irish female minor in 2011. The accused was charged with one count under Section 3 of the 2008 Act in addition to a number of other charges. He pleaded guilty to child trafficking for the purpose of sexual exploitation and was sentenced to 12 years imprisonment.
- c. An Irish male was charged with one count of Section 3 Criminal Law (Human Trafficking) Act 2008 in addition to a number of other charges in regard to offences against a minor. In December 2012, the accused man was convicted and sentenced to 4 years imprisonment backdated to October 2011, when he originally went into custody.
- d. As a result of international cooperation with Interpol and British Police Authorities, two counts of sexually exploiting a minor contrary to Section 3 of the 2008 Act were subsequently preferred against a further accused, an Irish male, in addition to 117 other charges. The accused pleaded guilty to all charges. He was sentenced to 4 years imprisonment to run concurrently on each of two charges for possession of child pornography. In April 2013 a sentence of ten years

⁴⁶ No 32 of 1990

was imposed on the accused in respect of the remaining 115 charges, two of which are under the 2008 Act.

- e. Another accused, an Irish male, was charged with possession of child pornography contrary to the 1998 Act. The accused pleaded guilty and was subsequently sentenced to 2½ years imprisonment and placed on the sex offenders register. There was no victim identified during this investigation.
 - f. An Garda Síochána investigated allegations of the prostitution of a Nigerian female minor. The accused, also a female Nigerian national, was charged with 1 count of trafficking of an illegal immigrant and a further 6 counts of controlling prostitution/brothel keeping contrary to the 2000 Act and the 1993 Act. The alleged crimes in this case all occurred prior to the enactment of the 2008 Act. The accused was convicted and sentenced to 3 years imprisonment for the prostitution offences.
27. In any event, the Respondent would contend that prosecutions are not by themselves a fair measure of the effectiveness of law enforcement. Account must also be taken of policing measures aimed at prevention and creating a hostile environment for traffickers and of international co-operation. While in many cases An Garda Síochána will, due to the international nature of this issue, engage in investigations, sometimes of a comprehensive nature, the arresting charging and convicting of suspects will take place in another jurisdiction:
- a. For example, in February 2010, following cooperation with the police force of Northern Ireland and the Welsh police, three persons (two Irish Nationals and one South African) were investigated on charges of human trafficking, prostitution and money laundering. They pleaded

guilty to the prostitution and money laundering offences and received prison sentences of 7, 2 and 4½ years for these offences respectively. The human trafficking charges remain on file. A total of six victims of human trafficking were identified and rescued in Ireland in the course of the investigation.

- b. In September 2010, An Garda Síochána provided assistance to the Kent Police in England in the investigation of the circumstances surrounding two Czech females trafficked from Prague to the United Kingdom through Ireland for the purposes of sexual exploitation. In November 2010 a vital witness was available in Dublin to give evidence via video link to the Kent Crown Court in the case of 3 Czech males who were charged with six human trafficking offences. They pleaded guilty and were subsequently sentenced. Two of the accused were sentenced to 10 years on each of 2 counts of trafficking to run concurrently and to serve a minimum of 5 years. The third accused was sentenced to 3 years on each of 2 counts of trafficking.
 - c. A trial relating to international child trafficking took place in the Netherlands in the absence of the accused in September 2011. He was sentenced to 6 years imprisonment. The accused was initially arrested in Dublin and transferred to the Netherlands to face charges there.
28. Although it is an unalterable truism – applicable to any jurisdiction – that it would be a good thing if more perpetrators of child trafficking offences were prosecuted and convicted than at present, it is of concern to the Respondent that the Applicant does not even begin to consider the possibility that there may be low trafficking rates generally in Ireland and this explains an allegedly low prosecution or conviction rate. The Respondent has also maintained, most recently in response to OSCE Special Representative’s Report, that given the nature of child trafficking offences it can take a significant amount of time to

gather the evidence (in some cases this is dependent on co-operation outside the jurisdiction) to enable prosecutions to proceed.⁴⁷ As it happens, however, low conviction rates are recognized as a problem worldwide, matching other rare crimes such as murder and kidnapping in European jurisdictions.⁴⁸ The Respondent is not distinguished negatively in this regard and ought not to be singled out for condemnation as it has been by the Applicant.

29. Furthermore, even to concede the Applicant may have phrased its Complaint somewhat infelicitously, the Respondent is alarmed by the seeming preoccupation on the Applicant's part with increasing prosecution and conviction rates for child trafficking offences at all costs: this has little or no express regard for the need to preserve the integrity of the criminal process and for other relevant rights that must be respected, and are indeed cherished, by the Respondent, especially the right to a fair trial and the presumption of innocence. These rights are protected at common law, under the Irish Constitution and under Article 6 of the European Convention on Human Rights. Within such necessary confines, the Committee may be assured that the Respondent is committed absolutely to bringing those guilty of child trafficking offences to justice. It should be noted, too, that in the Respondent jurisdiction, the investigative and prosecutorial functions are wholly separate in respect of indictable offences, that is, those offences sufficient serious to warrant a jury trial. An Garda Síochána are charged with the investigation of crime; the Director of Public Prosecutions (DPP) decides whether or not a prosecution should be initiated following submission of an investigation file from the Gardaí. The DPP is, therefore, reliant on the results of the enquiries of An Garda Síochána as to any suspect's status or background. In cases of human trafficking, An Garda Síochána consult as necessary in relation to practical issues with the Office of the DPP. Dedicated personnel within the

⁴⁷ *op.cit.* 14

⁴⁸ United Nations Office on Drugs & Crime (UNODC) Global Report on Trafficking in Persons 2012 (**Appendix 20**) [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf] 86-9

Office of the DPP are assigned to cases involving human trafficking. This allows for specialised knowledge of the issues involved in these types of cases to be built up institutionally.

The Substantive Complaint: Victim Identification/Failure to Identify Victims

30. The Respondent acknowledges in the NAP that the identification of suspected victims of human trafficking remains one of the most difficult problems facing any counter-trafficking strategy, not only because traffickers themselves seek to avoid detection, but also because suspected victims for numerous reasons often go to great lengths to hide their experiences from state authorities.
31. That said, experience in Ireland has shown that persons who are victims of human trafficking come to official attention in a number of ways. This may be in circumstances where Gardaí identify victims during the course of investigations. They may also be referred to An Garda Síochána from the HSE or other agencies and NGOs, or where a person as part of their asylum claim reveals to the Office of the Refugee Applications Commissioner (ORAC) that he or she may have been a victim of human trafficking.
32. Further, while it is acknowledged that the discovery of child victims is an enormous challenge for law enforcement authorities in Ireland and elsewhere An Garda Síochána is ever vigilant in the pursuit and discovery of victims of this criminal activity. The Garda National Immigration Bureau (GNIB) has placed great emphasis on monitoring suspicious movements of children and young people into, within and out of the State. For this purpose Operation Snow was put in place in 2008. In Dublin Airport alone, this operation has resulted in about 100 minors being placed in the care of the HSE during 2011 and 2012. The placing of the minors in care arose as a consequence of immigration officers identifying a suspicious aspect to their arrival in the

State. More often than not, following an examination of the circumstances involved in such cases, what was initially identified as suspicious movement was actually an instance of family reunification. Still the actions taken by Gardaí in the course of Operation Snow are an indication of the diligence exercised by the Respondent in identifying the potential for minors who are victims of human trafficking to be moved into the State from elsewhere.

33. As a further example of the priority given by the Respondent to the detection of human trafficking and smuggling of children at the border and our willingness to cooperate with our international partners: during the Irish presidency of the Council of the European Union earlier this year, the Irish representative on the Management Board of Frontex (the European Border Agency) hosted a meeting in Dublin to discuss the development of a manual for those involved in implementing immigration controls, to equip such persons in tackling the trafficking and smuggling of children.
34. It is not true, as the Applicant alleges, that the average waiting time for a victim to be officially identified as a potential victim of trafficking is six months. A person is a potential victim of trafficking the instant that he or she makes him or herself known to Gardaí as such. The terms ‘potential’ and ‘suspected’ are terms that are used at the various stages in the identification process with regard to those who present as victims of human trafficking and are defined in the document Statement of Roles and Responsibilities for State Organisations, Non-Governmental Organisations and International Organisations in Ireland engaged in cooperation regarding the prevention, protection of victims and prosecution of trafficking in human beings (**Appendix 21**), which is publically available on the Blue Blindfold website.⁴⁹

⁴⁹ [http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/ACJN-8YSMSH1751575-en/\\$File/Statement%20of%20Roles%20and%20Responsibilities.pdf](http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/ACJN-8YSMSH1751575-en/$File/Statement%20of%20Roles%20and%20Responsibilities.pdf)

35. The purpose of this Statement is to outline the roles and responsibilities of all the relevant parties referred to throughout this document that are involved in (i) protecting potential and suspected victims of human trafficking and (ii) combating trafficking in human beings. The intention is that the Statement will provide greater clarity in terms of the following:

- the process of identification,
- the range of available services and assistance measures,
- how these services may be accessed and
- the part played by the relevant organisations at each of these stages.

It is of note that this document was drawn up in consultation with the State, NGO and international organisation that are members of the relevant working group. This document defines the terms 'potential victim' and 'suspected victim' for the purpose of this document as follows:

- a. A *potential victim* of human 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, international organisations *et cetera* 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 An Garda Síochána. All persons who are referred to An Garda Síochána as potential victims shall be offered the protections and assistance set out in the NAP for this group.
- b. A *suspected victim* of human trafficking means a person who has been assessed by An Garda Síochána and for whom a member of An Garda Síochána not below the rank of Superintendent in GNIB has reasonable grounds to believe that he/she is a victim of trafficking in human beings. While 'reasonable grounds' are not the same as evidence, in the context of contemplation of any criminal offence, in order for reasonable grounds to exist that a person is a suspected victim of human trafficking, the Garda Superintendent must be in

possession of sufficient information to afford reasonable grounds for that belief. The standard of reasonable grounds as traditionally defined is “*a standard for what is fair and appropriate under usual and ordinary circumstances; that which is according to reason; the way a rational and just person would have acted*”. An Garda Síochána will endeavour to identify suspected victims within a maximum period of 31 days. This timeframe is subject to (i) the potential victim providing all necessary and relevant information to An Garda Síochána to enable them to make a decision based on reasonable grounds and (ii) the availability, at the time in question, of any other required information that is necessary for such a decision to be made. The Respondent’s position is that a person will not be removed from the jurisdiction during the identification process to determine if there are reasonable grounds to believe that the person may be a victim of human trafficking.

36. In the light of the foregoing, the suggestion that the Department of Justice and Equality is (to use the Applicant’s expression) “*expanding the semantics of human trafficking [and] this is preventing effective identification, prolonging the ordeal for victims and creating a situation whereby potential victims are reluctant to come forward and identify themselves as ‘trafficked’.*” is wholly rejected. The assessment is speculative and argumentative. The Statement of Roles and Responsibilities, as well as the categorization of victim within it, was formulated to provide greater clarity to all organisations in relation to the identifications and provision of care to victims.
37. Moreover, the use of such terms as potential victim or suspected victim is not pejorative and does not affect the treatment afforded or services provided to that person. This may have led to some confusion on the part of the Applicant or created an unjustified concern of stigma attaching to victims. While there is no registration process whereby a person is finally certified or labelled as ‘a

victim', for all practical purposes as soon as a victim of human trafficking becomes known to An Garda Síochána, that victim is treated as such until there are compelling reasons to believe the person is not a victim and the case is closed. It is important to emphasize that accommodation and all protections and services are immediately made available from the first point of contact when a potential victim is referred to or discovered by An Garda Síochána. For that reason the Respondent does not accept that any victims at all "*remain unidentified and could not benefit from the increased protections put in place for them*" as the Applicant alleges.

38. The numbers of victims of human trafficking for the years 2009, 2010 and 2011 have been published in the relevant Annual Reports for those years (**Appendices 12, 13 and 14**).⁵⁰ The 2012 Report will be available shortly. The number of victims recorded in these Annual Reports is inclusive of all reports made irrespective of how the victim has first been identified (for example, An Garda Síochána, NGO's, ORAC, HSE *et cetera*). It is not the case that "*little is known of the victim identification process or how victims are identified at a national level*". The Respondent rejects such a contention out of hand. The NAP sets out the procedures used to identify victims of trafficking.⁵¹ The process is also set out in the Statement of Roles and Responsibilities above, which was drawn by the State organisations, NGOs and international organisations that are engaged in cooperation regarding the prevention, protection of victims and the prosecution of traffickers. The model used is that recommended by the IOM according to which the screening process to determine if a person is a victim of trafficking consists of two stages. The first is an assessment of the varying indicators that can be evaluated before an interview can take place, followed by a detailed interview with the individual. Garda officers performing identification apply general indicators outlined by the United Nations Global Initiative to Fight Human

⁵⁰ *op.cit.*

⁵¹ NAP 132-37

Trafficking (UN.GIFT), (**Appendix 22**)⁵² as updated by the Delphi Indicators (**Appendix 23**) developed by the ILO and the European Commission.⁵³ According to the above-mentioned Statement of Roles and Responsibilities, An Garda Síochána should take account of all information that is available to them when making the reasonable grounds decision (including information provided by the suspected victim, governmental bodies, NGOs and international organizations). Determination has to be made as early as possible following the provision of all information necessary to enable a determination to be made.

39. With regard to the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking ('AIA'),⁵⁴ which have been in place since June 2008, it ought to be noted by the Committee that these only apply where a foreign national is identified as a person suspected of being a victim of human trafficking *and* the Minister for Justice and Equality is required to consider that person's immigration status in the State. The document sets out the administrative immigration arrangements whereby such a person may be granted a period of recovery and reflection in the State and may also in certain circumstances be granted one or more periods of temporary residence in the State. The vast majority of persons who are identified as victims of human trafficking are not people who are dealt with under the AIA. These are people who include asylum seekers, EEA nationals and Irish nationals as outlined in the Annual Reports of Human Trafficking in

⁵² http://www.ungift.org/doc/knowledgehub/resource-centre/UNGIFT_HT_indicators_English.pdf

⁵³ Operational Indicators of Trafficking in Human Beings (March 2009)

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf

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<http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf>

Ireland.⁵⁵ Because these people are in the jurisdiction lawfully, they do not require the formality of a period of recovery and reflection pursuant to the AIA in order to stay in Ireland. Only a person who presents as a potential (adult) victim of human trafficking who may have an underlying immigration issue need rely on the AIA to be afforded the period of recovery and reflection, which when granted suspends any immigration inquiry. The Respondent stresses absolutely that access to all support services is available to *all* victims of human trafficking from their initial contact with An Garda Síochána. These services include Reception Integration Agency accommodation, access to medical services and legal services. All potential victims of human trafficking are guaranteed that they will not be removed from the State during the identification process. This is true for potential victims who have subsisting permission or entitlement to stay in Ireland and for those awaiting a determination on whether or not they are designated suspected victims of human trafficking under the AIA.

40. While the Applicant is critical of alleged delay in identifying victims, the Respondent would submit that the imposition of a strict timeframe would make little practical difference to potential victims, who are able to access accommodation, medical and legal support services from the first point of contact with GNIB and prior to a determination (in the very small number of cases that it is necessary) on granting a recovery and reflection period. To rush headlong into a final determination whether or not a person is a victim of human trafficking for the sake of speed alone would not necessarily help that person. A decision made quickly at an early stage would very likely have to be made on very little information, without the opportunity to take into account the complications of a individual's unique circumstances. A negative decision at this early stage, possibly made because there is not enough information to hand, could well be harmful to a victim's recovery and also affect a victim's cooperation with the Garda investigation. Nonetheless

⁵⁵ *op.cit.*

HTICU have given a commitment that they will endeavour to make a recommendation on a recovery and reflection period within one month of their first contact with the person and where possible, within 5 days, if there is sufficient information available at the time. Where possible, the Gardaí will adhere to this policy as a matter of priority.

41. Naturally this process takes time and is dependent of the potential victim meeting with An Garda Síochána and providing an account of their experiences. The outcome of the interview will assist the Garda Superintendent in being satisfied that there are reasonable grounds for believing that the person is a victim of human trafficking. Ultimately, the Garda Síochána will seek to document the allegations in a statement. Where there is insufficient information for the Superintendent to have reasonable grounds for believing that a person is a victim of trafficking, the case remains open and every effort is made to gather additional information from the potential victim or other sources. The Garda Síochána is committed to making the process for the identification of victims as effective as possible and welcomes input from other agencies and NGOs in this regard.

42. In terms of support offered during encounters with An Garda Síochána, the police encourage victims to have a legal representative, care worker or even a friend with them during interviews with them. The number and pace of the interviews are largely determined by the victim and detailed statements are only taken when the victim is comfortable making them. The Respondent would reject any suggestion that there is a lack of sensitivity or experience in interviewing traumatized persons. The members of An Garda Síochána who are involved in the investigation of human trafficking offences are all experienced investigators with considerable experience in dealing with persons who are, in many instances, vulnerable. An Garda Síochána places a significant emphasis on developing trust and understanding with each victim and encourages the victim to tell his or her story at the speed and in a manner

with which the victim feels comfortable. The HTICU interview victims of human trafficking in a comforting and empowering manner, which was commended domestically and internationally, as mentioned previously at Paragraph (20) of these Observations. And it cannot be stressed more forcefully that the grant of a recovery and reflection period under the AIA is not dependent on a potential victim providing a witness statement to Gardaí.

43. Furthermore, and perhaps most significantly, the Applicant fails to make adequate distinction in this regard between the Respondent's treatment of adults and children who are identified as potential victims of trafficking. It is important to highlight that most of the child victims of trafficking in Ireland have not needed immigration permission under the AIA (again, because they are Irish or EU or EEA nationals or have subsisting legal residence in the jurisdiction). But this is taken to be much less a immigration than a welfare issue in any event. Child victims of trafficking are, as a rule, referred to the mainstream HSE child protection services by An Garda Síochána; some are identified by the mainstream social work service or the service for unaccompanied minors. The provisions and full protection of the Child Care Act 1991⁵⁶ as amended are applied to identified child victims of trafficking. All children who are identified as victims of trafficking are subject to a full care order and are therefore awarded a guardian to act on their behalf.

44. Nonetheless, in the rare event they should be required, the revised AIA have due regard to the role of the HSE in the welfare of victims of child trafficking. Paragraph 11 also allows for the possibility of victims being granted recovery and reflection permissions of longer than sixty days, while Paragraph 15 disapplies the six-month limit to the temporary residence permission as is the case for adult victims. Instead permission is granted having regard to the arrangements in place for the care and welfare of the child. For children in the care of the HSE under Section 3 of the 1991 Act as amended, it is the function

⁵⁶ No 17 of 1991

of the HSE to promote the welfare of the child and in the performance of this function they are to regard the welfare of the child as the first and paramount consideration. Long-term solutions are provided within Paragraphs 20 to 22 of the AIA for child victims of trafficking once they reach the age of majority. Until then, permissions are granted with due regard to the arrangements that are in place for the care and welfare of child victims. Where the child is a victim of trafficking, the HSE will usually at the very least have a supervisory role in respect of the child if that child has not been placed in their care. Temporary residence permissions for children in the care of the HSE will normally be granted until the child is eighteen years of age. For children who are in the care of their parent or legal guardian, however, temporary residence permissions will be granted with due regard to the status of the parent or legal guardian.

45. The Respondent would agree with the Applicant that extra sensitivity is needed when dealing with child victims of human trafficking. It is of particular note, therefore, that child-specialist interviewers within An Garda Síochána are required by law to be used to interview all children under 14 years of age. The HSE acts *in loco parentis* for all child trafficked victims in relation to their status within the State (as further described below) and also in relation to their claim as trafficked victims. HSE social workers ensure that all child victims have access to legal aid and accompany children to interviews as required.
46. On a related issue, the Garda Racial and Intercultural Office in Dublin has also developed a brief guide to Cultural Diversity and Equality. This guide creates awareness on the various traditions, religions, ethnic minorities and the importance of interculturalism in Irish Society. A representative from the Garda Racial and Intercultural Office contributes to all training courses that are run within An Garda Síochána in relation to human trafficking. For the purpose of assisting in the identification of potential victims of human

trafficking, it is of vital importance that members of An Garda Síochána are aware of issues pertaining to cultural diversity.

The Substantive Complaint: Children & Young Persons

47. It is an untruth that “*there is no system in place for recording cases centrally*” as the Applicant alleges. A Data Collection Strategy was developed in 2009 for the purpose of understanding the nature and extent of human trafficking in Ireland, including child trafficking. And, as stated previously, the numbers of victims of human trafficking, including minors, have been collated and published in the AHTU’s Annual Reports for the years 2009, 2010 and 2011. The 2012 Report will be available shortly.
48. The Complaint makes no reference to the special measures taken by the Respondent to support child victims of trafficking and to create a protective environment for them. These measures are set out in the NAP which, in recognition of the particular vulnerability of trafficked children and their need for a high level of protection from the State, has a chapter devoted especially to responding to child trafficking.⁵⁷ The following paragraphs describe some of the key measures taken.
49. The current position is that the HSE has responsibility, under the 1991 Act as amended and the Children First Guidelines, (**Appendix 24**)⁵⁸ to make all necessary provisions for any unaccompanied children identified as potential or suspected victims of trafficking. Where an unaccompanied child is identified as an alleged victim of trafficking he or she will be immediately referred to the Social Work Team for Separated Children Seeking Asylum (‘SCSA’). Services provided by the HSE to alleged child victims of trafficking include:

⁵⁷ *op.cit.* 167-88

⁵⁸ <http://www.hse.ie/eng/services/Publications/services/Children/cf2011.pdf>

- Initial counselling and debriefing provided by an experienced HSE psychologist.
- An advocacy/support service to assist them in dealing with other services.
- A multi-disciplinary assessment of children's needs is conducted over time, this is adapted to the child's individual experience and capacity. A Care Plan is generated on the basis of this assessment and incorporates all the services required to meet the child's needs, including the most appropriate placement recommended.
- The allocation of a social worker to oversee and implement individual Care Plans.
- A range of placement options is made available and the protection level and care required is taken into account when deciding on placement options.
- Full medical screening with referral to more specialist medical services, if required.
- Assessment in relation to immigration status and linkage to the asylum process and advice regarding all options available.

50. The NAP outlines how the HSE had devised a National Operational Plan for all separated children. A principle of this policy is that all children in the care of the HSE should receive the same standard of care. The current position is that separated children seeking asylum have been removed from hostel care and placed instead in foster homes. Placement of separated children seeking asylum is on a national basis and the Dublin-based SCSA Intake and Assessment Team provide social workers and other relevant staff and agencies with appropriate training to enable this service to be provided nationwide. The placement of a child is solely the remit of the HSE Child Protection Team and is influenced by the child's individual assessment, including a risk assessment.

51. It is vital to recognise that the HSE have the structures in place to provide services to these children on a nationwide basis. It is part of the remit of local child-care managers to interact with service providers such as teachers, health care professionals to ensure the provision of appropriate care to these vulnerable minors. Training aimed at raising awareness of human trafficking is provided to care workers and social workers.
52. The HSE is also currently developing an operational plan that will progress the decentralisation of SCSA. This aims to increase the range of placement options including increasing the number of foster placements. This has enabled the closure of hostels where children had previously been accommodated in large numbers. It is envisaged that this development will facilitate the HSE in providing increased protection for potential victims of trafficking. Since January 2010 all newly-arrived children are placed in a registered children's home where a multi-disciplinary assessment takes place. A period of up to 6 weeks follows, after which they are placed in foster care. Both these interventions allow for an assessment of risk as well as an assessment of need to take place and identify whether the child is a victim of potential trafficking. The registered children's homes are contracted out by health services to private service providers. All Units are compliant with the Respondent's Health Information and Quality Authority Standards.
53. The 2013 Review details how in the two years since the publication of the NAP there have been a number of developments which have has a positive impact on the prevention of child trafficking and the support of child victims in Ireland, which include:
- Establishment of a working group on child trafficking having NGO, International Organisations and State agency representation.

- Training and awareness-raising which has been provided to a wide range of frontline personnel, including Gardaí, educational professionals, ORAC, HSE and Legal Aid Board staff.
- Awareness-raising initiatives aimed at children and young people, including a film festival in October 2010, a Civil, Social and Political Education module developed for secondary schools and presentations in a number of third-level institutions, a social media video/photography awareness raising competition aimed at third level students.
- The adoption by the HSE of the ‘Equity of Care’ principle for separated children which has led to the closure of hostels and the placement of children within foster care settings.
- Strengthened interagency co-operation between the HTICU and the HSE, which has led to a reduction in the numbers of unaccompanied minors going missing.
- The publication of the revised Children First National Guidelines for the Protection and Welfare of Children in July 2011, which it is intended will be put on a statutory basis.

54. There have also been numerous awareness-raising initiatives specifically targeted at migrant communities, which will help to protect vulnerable children from possible exploitation, such as:

- An article was published in a number of editions of a Romanian newsletter entitled *‘Informati’*. The article was published in both Romanian and English.
- In December 2009, the *‘Thai Ireland’* newsletter put a link to the Blue Blindfold website on their website www.thai-ireland.com.
- An article and image in Metro Éireann newspaper in April 2011 and a separate image in the newspaper in May 2011. The newspaper describes itself as *“Ireland’s only multicultural newspaper”* with a

circulation of 10,000 copies every fortnight and 400,000 online readers.

- Awareness-raising training has been provided to Garda Ethnic Liaison Officers working with migrant communities.

55. The Respondent would request that the Committee would take note of certain other relevant developments as follows:

a. Guide for the provision of services to child victims of trafficking

A Guide for service-providers to child victims was developed to provide information to those who work with or come into regular contact with children on signs that indicate a child might be a victim of trafficking; on what services are available; and on what action should be taken where there are suspicions that a child may have been trafficked. As part of this process and in line with awareness-raising objectives in the NAP, an art competition was run for secondary school students to design a cover for the Guide. The Guide is available on the Blue Blindfold website.

b. Protocol on child trafficking between the HSE and An Garda Síochána

The HSE and HTICU are developing a protocol in relation to unaccompanied minors who arrive at ports of entry in Dublin (usually Dublin Airport). The draft protocol covers such areas as co-operative interviewing, joint training and awareness raising and the sharing of information. It is hoped that the experience gained from operating this protocol will lead to it being rolled out on a nationwide basis.

c. Family reunification function of the HSE (Child and Family Agency)

The SCSA service provides a family reunification function. Where the parentage or legal guardianship of adults entering the State with children is questionable, an immigration officer will refer the family to

the reunification service. Having assessed the situation if the social work service cannot establish parentage or guardianship then the children are taken into care until parentage is established – or indefinitely in the event that this does not occur. This service provides a critical screening function in relation to potential victims of trafficking, since international evidence indicates that young children are easier to traffic. Several children have been identified as house slaves or servants through this process and were immediately taken into care. Should the child be returned to the family in question, the reunification team will notify the Child Care Manager in the local areas requesting him or her to alert all the relevant services (for example, public health nurses, schools, preschools *et cetera*) to ensure that the child is safe and visible in the community. The service introduced an important screening measure some years ago in the form of DNA testing: the numbers of victims presenting fell immediately and significantly. This function is currently being refined and extended to all social work teams throughout the country.

- d. There are also several measures in place in relation to locating and protecting missing children:
 - i. The HSE is responsible for the protection and welfare of children under the 1991 Act and the Children First Guidelines. The HSE is also responsible for the provision of care to all unaccompanied minors. The HSE considers any instance of a child going missing from its care as a matter of the utmost seriousness and does everything within its power to recover any missing child. In tackling this issue, the HSE has strengthened cooperation with An Garda Síochána, in particular HTICU, in relation to the prevention, notification and detection of missing unaccompanied minors.

- ii. The SCSSA Service maintains a database on separated children who go missing from its care. A small subset of these children have been identified as potential or suspected child victims of human trafficking and are at once notified to the mainstream Garda Síochána and the HTICU.
- iii. The Children Missing from Care protocol (**Appendix 25**) – a joint protocol between the HSE and An Garda Síochána lays down formal procedures for inter-agency notification and cooperation in relation to the recovery of children who go missing from care. A review of the operation of the protocol is currently being undertaken by the HSE and An Garda Síochána and is due to be finalised shortly. The protocol recognises that one of the factors to be considered when assessing why and how a child has gone missing is predatory influences on the child, which may relate to others wanting to involve the child in crime, sex child trafficking or drugs. This – along with the experience and knowledge of those who are charged with looking after the child – should ensure that the special vulnerability of separated children who may be at risk of trafficking is considered when dealing with a missing child. It is also worth noting that the Children First Guidelines are emphatic that special attention should be paid to the welfare and protection of children who are living apart from their birth parents and whose first language is not English. Moreover, the HSE’s Child Protection and Welfare Practice Handbook (**Appendix 26**)⁵⁹ – a quick reference document published in September 2011 to support skilled practice within the HSE and other agencies – includes a separate section on the forms of child trafficking and outlines the indicators relevant for the identification of child victims of human trafficking.

⁵⁹ <http://www.hse.ie/eng/services/Publications/services/Children/WelfarePractice.pdf>

Conclusion

56. The Respondent requests that the Committee should consider all of the foregoing evidence and argument and, in the premises, conclude that the Applicant's Complaint is unfounded and ought to be dismissed. The Respondent is not in breach of Article 17 or any other provision of the Charter as alleged or at all.

