

Social Fieldwork Research (FRANET)

Severe forms of Labour Exploitation

Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States

Ireland, 2014

FRANET contractor: Milieu, Belgium

Author: Robert Mooney, UCD, RTI Applied Research Centre (ARC)
University College Dublin

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Categories of interviewees:

Nine categories of experts working in the context of labour exploitation took part in the interviews and focus groups:

M – Monitoring bodies (such as labour inspectorates, health and safety bodies)

P – Police and law enforcement bodies

S – Victim support organisations

J – Judges and prosecutors

L – Lawyers

R – Recruitment and employment agencies

W – Workers' organisations, trade unions

E – Employers' organisations

N – National policy experts at Member State level.

FG – Focus Group

Throughout this report, references to these groups as 'M', 'P' etc. are to be understood as referring to the above-named 9 categories.

Where [M(X)] appears, this denotes the group from which the referenced interviewee came, in addition to the number of interviewees from that group referenced (for example, if a statement is supported by references to three interviewees from the M group, two from the S group and one from the J group, the reference will read '[M(3); S(2); J(1)]'. Likewise, if a statement is supported by statements from interviewees who participated in focus groups (in the following example, a lawyer), the reference will read '[FG(L)]'.

For data protection reasons, no names of interviewees have been mentioned.

Executive Summary

The issue of migrant communities and their exploitation is relatively recent in Irish history¹, with Ireland traditionally a country of outward migration². Ireland has, with relative urgency, drafted and implemented legislation to manage the issues that relate to immigration. This includes the establishment of Garda units (the Garda Victim's Liaisons Office, the *Garda* National Immigration Bureau) and state organisations (National Employments Rights Authority, Reception and Integration Centre). The NGO sector (such as the Migrant Rights Centre Ireland, Immigrant Council of Ireland), in response to the issues raised by a rapid increase in the immigrant population in Ireland has become a significant contributor to addressing this issue in Ireland, accessing these communities and acting as a liaison between victims and state organisations. All the NGO organisations examined in this study contribute significantly to reducing the conditions that lead to migrant and immigrant exploitation and support those who may find themselves being exploited to extricating themselves from these conditions.

The key themes that arose during the research are as follows:

- The existence of parallel communities which are difficult for authorities to reach and in which labour exploitation may remain hidden;
- Language barriers present significant issues in outreach programmes and the provision of information to communities of foreign nationals.
- There are specific sectors of the economy in which the vast majority of the exploitation of migrant communities takes place. The main areas identified in the research include the domestic sector (as evidenced in the case studies which were available to the research) and cleaning, farm labourers, restaurants, and, although outside the scope of this project, illegal areas of the economy such as cannabis production and prostitution.
- There is a lack of awareness of the severity and conditions of labour exploitation in Ireland among the majority of the population. Increased public awareness campaigns would significantly increase awareness which in turn could reduce opportunities for situations of exploitation to exist.
- It is the general opinion of interviewees that very few cases are reported; of those that are, very few are brought to official organisations and even fewer are prosecuted. Most cases are settled, and even in these cases enforcing the settlement (e.g. in the case of payment of wages) is difficult to achieve.
- Lack of language of the host country and the legal status of the individual are the biggest issues identified that lead migrants to increasing vulnerability and open them up to exploitation. They are also the biggest obstacles to their coming forward and seeking a way out of their situation.
- There is a coherent and growing network of national, non-state and voluntary organisations working in the area that are developing a coherent network which shares information and work together relative to their strengths.

¹ Figures of 17,200 immigrants in total to Ireland in 1987, rising to peak of 151,100 in 2007, and dropping off significantly to 55,900 in 2013:

www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2013/#.UvoQWPvJXGo.

All hyperlinks were accessed on 14 February 2014.

² www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2013/#.UvoQWPvJXGo.

- How exploitation is defined varies significantly from one individual and/or organisation to another. Different individuals and organisations have different definitions of exploitation, with most understanding that there are significant variations in the severity of incidents of exploitation.
- Those who claim to be trafficked for labour exploitation have access to increased protections, including accommodation and asylum in law in Ireland. This, while ensuring that those most at serious risk of harm and being exposed to slave like conditions are cared for, has created issues for the those who monitor these issues and enforce compliance measures. As a result of this situation, an individual who is illegally working in Ireland can claim that they were trafficked to avail of these services. For example: In cases where there is obvious exploitation, action is taken and they might be referred to the Human Trafficking Unit or to a shelter. However if the exploitation case does not relate to trafficking and the migrant worker is undocumented, then the priority is to remove the person from Ireland. There are currently no entitlements for individuals, such as back pay of wages, post-removal or post-deportation, which presents a significant issue of concern, as employers who have exploited workers cannot be prosecuted for exploiting an illegal worker.

As a qualitative research project, a purposive non-probability sampling approach was taken. In this approach, members of the research population are chosen on the basis of their characteristics to reflect breadth and diversity of the research topic. The sampling frame identified units within the target population which ensured comprehensive coverage of the topic in Ireland, sufficient numbers to give a depth to the knowledge, and some geographical dispersion: although it should be noted that the majority of the fieldwork was conducted in Dublin, as that is where the majority of the institutions working in this area in Ireland are located. All methodological requirements for field research as detailed by the FRA were met, including 30 interviews with a range of stakeholders spanning the subcategories as prescribed; one focus group with a range of stakeholders representing the different subcategories the purpose of which was to gather information and to identify any similarities and differences with respect to their responses; and 10 case studies gathered from a range of sources and analysed. Finally a synthesis report was produced providing an overview of the research establishing its context in terms of labour exploitation in Ireland.

1. Introduction

The sample was drawn up in accordance with the FRA Guidelines. The agreed list was compiled from consultations with the FRANET contractor for Ireland at the time (Milieu). In total, 30 individual interviews were carried out in accordance with the categories and target groups identified; one focus group with as diverse a range of participants from across the target groups; and 10 case studies as prescribed by the FRA methodology. All interviewees were at management level or above in their respective organisations. They were initially contacted via email and followed with a phone call to their office to secure the interview.

An Garda Síochana (the Irish Police) proved difficult to secure an interview with due to the requirements to adhere to a strict interview application vetting procedure which is time consuming and took significant follow up with administration. Secondly, the judiciary were reluctant to commit to be interviewed due to the need for them to remain impartial. It was, however, possible to secure willing participants in most other groups. Most of the interviews took longer than 60 minutes (as foreseen in the guidelines), due to the high number of questions and the extensive knowledge of interviewees. This in turn prolonged the duration of the fieldwork. In addition there are few, possibly only one or two actual cases of labour exploitation that have made it to prosecution in front of the courts, and therefore, an interview with a prosecutor was not possible.

Every attempt to meet the FRA guidelines was made, and in most cases was successful. Four professionals working at public institutions; four officials working in relevant sectors of law enforcement; six professionals working for victim support services; three prosecutors or judges; three lawyers with expertise in the field of laws regulating the employment of migrant workers; three representatives of recruitment, employment or temporary work agencies; three representatives of organisations representing migrant workers, and organisations advocating the rights of workers; three representatives of employer organisations, and one policy expert in the field of trafficking or labour exploitation at the national level.

Exactly 15 male and 15 female respondents were interviewed with at least a male and female respondent included in each category (with the exception of category N where there was only one participant).

There were seven interviewees who had 10 years or less experience working in the area of labour exploitation, the vast majority of 14 interviewees had between 10 and 20 years' experience, with five having between 20 and 30 and four having 30 or more years of experience.

The vast majority of interviews were conducted in Dublin due to this being the geographical base for many of the institutions involved in the area. Two interviews were carried out in Cork, and one interview was carried out in Carlow. The rationale for carrying out interviews in Cork is to ensure that NGO and expert opinion was captured outside Dublin. The inclusion of the South East region added geographical diversity to this case selection. Cases emerged from across the entire country. The cases examined were taken from a diverse range of geographical locations where this information was available. It is important to note that even where this information was available, where a case occurred and where it was examined are not necessarily geographically connected. Every attempt was made to examine cases that occurred in different regions.

There were only three interviews shorter than 45 minutes; two were with recruitment agencies and one with a police representative due to his/her schedule. Some seven other interviews were between 45 and 60 minutes and ranged across the categories. The remaining 20, and vast majority, of the interviews were over an hour long (10 between 60 and 75 minutes and another 10 over 75 minutes) and ranged across the categories with exception of recruitment agencies. Notably all category W interviews were over 75 minutes.

Twenty-five of the 30, the vast majority of interviews, were conducted face-to face. Due to time constraints on the interviewee and the requirement to complete the fieldwork it was decided that five interviews were to be carried out by telephone. Show cards specifically tailored to the categories in which the interviewees were located were sent to these interviewees by which to choose options during the questions requiring them. All interviews were recorded.

The focus group was attended by four participants from the N, M and W groups. There was a gender balance with two male and two female attendees. Two invited participants from the L and S groups were unable to attend at the last minute which did not leave sufficient time to recruit replacements. Two members of the P groups were invited at the end of interviews to attend the focus group; they were unable to attend.

Ten case studies were analysed and were gathered from a variety of organisations which participated in the research and were downloaded from the Courts Services website.³

³<file:///C:/Users/rmooney/Documents/ARC/Projects/FRA/FRA%20Labour%20Exploitation/Case%20Studies/Husein%20v-%20The%20Labour%20Court%20&%20Anor.htm>

1.1. Interviews

The first of these were professionals working at public institutions (M). A review of the websites of the government's departments responsible for monitoring functions that relate to migrants and the immigrant communities in Ireland was performed. These included the Department of Education and Skills; Department of Health; Department of Jobs, Enterprise and Innovation; Department of Justice and Equality; and the Department of Social Protection. In a second step, key sectors of these departments tasked with inspection, monitoring and implementing legislation were identified, namely: the National Employment Rights Authority (NERA); the Equality Authority; the Labour Relations Commission; the Health and Safety Authority (HSA). A selection of these institutions was contacted who provided a range of expertise and experience in the subject matter. Representatives from these institutions were targeted initially via email, followed with a phone call. Interviews were carried out on the premises of the organisations and ranged between 45 minute and 2 hours.

The second group interviewed were officials working in relevant sectors of law enforcement, such as the police or specialised law enforcement agencies, immigration officers, and border guards (P). Two sections of An Garda Síochána were targeted who work directly with migrants: the *Garda* National Immigration Bureau (GNIB) and the *Garda* Victims Liaison Office (GVLO). In addition, two civilian organisations who have a specific role in the area of immigration oversight in Ireland were targeted.

The third group interviewed were professionals working for victim support services (S). An investigation of official and state, or semi-state, bodies and a review of NGO organisations that fulfil roles in labour exploitation of migrants in Ireland was carried out. Specific organisations that provided a wide range of subject areas (integration, health, citizenship rights) were identified and interviewed. There were no real issues in securing these interviews. Two of these interviews were carried out in Cork, the rest in Dublin.

The fourth group interviewed were prosecutors and judges (J). A circular invitation was sent via the central administrative unit to all Circuit, High and Supreme Court judges. One judge was interviewed. To effectively meet our sample target, representatives from two organisations who oversee legal proceedings relating to migrants rights and labour relations were also interviewed.

The fifth group interviewed were lawyers with expertise in the field of laws regulating the employment of migrant workers and representing migrant workers in cases relating to exploitation (independent lawyers or lawyers working e.g. in trade unions or labour chambers) (L). A private law firm and lawyers who work with two NGOs that work in the field of providing support to victims of labour exploitation were targeted and interviewed.

The sixth group interviewed were representatives of recruitment, employment or temporary work agencies (R). An email and phone campaign to over 40 agencies yielded three results. The other agencies either did not respond or were not willing to participate. The reasons were not given. Every effort was made to interview a variety of agencies who engage in employment of an assortment of labour types (unskilled, skilled, part time, etc.). Two agencies who manage only skilled labour were interviewed and one who employed a significantly larger number of unskilled workers were interviewed.

The seventh group interviewed were the members of organisations representing migrant workers and organisations advocating the rights of workers (W). A targeted email campaign was conducted. One large general union organisation was interviewed representing workers directly; one representing a group of trade unions and the largest NGO who represent immigrant and migrant workers in Ireland were interviewed, giving a depth and breadth of experience in this category.

The eighth group interviewed were employer organisations (E). A certain reluctance to be interviewed was evident in these groups as they seemed cautious about the research topic. Nevertheless three organisations were engaged representing a general employers' organisation, and specific sectors including the construction sector and the hotels/catering/cleaning sector, where labour exploitation of migrant communities has been specifically identified.

The final representative interviewed was a national policy expert on human trafficking/labour exploitation.

1.2. Focus Group

From the interview participants, participants were selected for the focus group who represent a diverse range of perspectives across the categories. Six individuals were invited to participate and agreed to take part, including a national policy expert, a member of a public institution, a private lawyer, a representative of a migrants' rights organisation, and a member of a support service unit. Two representatives of the P group were asked to take part following interview; unfortunately this was not possible without processing another request through An Garda Síochána headquarters which would not have been possible within the fieldwork timeframe. Unfortunately, the morning of the focus group, the private lawyer and support service participants could not attend due to illness. The focus group was conducted regardless with four individuals (two male and two female): one from the N group; one from the M group and two from the W group.

One contentious issue that was specifically addressed by the research manager which arose during a number of interviews, and was not addressed in main focus groups questions, was the exploitation of migrants who live within 'parallel communities'. These parallel communities block access to individuals who are separated from the majority population by culture, language and ethnicity. Gaining access to these communities represents a critical issue for monitoring and investigating authorities.

1.3. Case studies

One significant case study that is ongoing in the Irish courts is of note: the Hussein -v- The Labour Court & Anor.⁴ All other case studies were gathered from the MRCI, the HSA, NERA, EAT, and through the online Courts Service of Ireland facility.⁵

Evidence from the analysis of case studies indicates the extent to which victims of severe labour exploitation struggle in accessing justice. In the overwhelming majority of cases

⁴<file:///C:/Users/rmooney/Documents/ARC/Projects/FRA/FRA%20Labour%20Exploitation/Case%20Studies/Hussein%20-v-%20The%20Labour%20Court%20&%20Anor.htm>.

⁵ www.courts.ie/courts.ie/library3.nsf/PageCurrentWebLookUpTopNav/Home.

analysed, the victims failed to achieve a satisfactory outcome through legal proceedings, and in many cases where victims were awarded compensation, they did not receive any of the monies owed to them. Generally victims had a poor understanding of Irish employment laws and wage structures, which led to them making uninformed decisions. A landmark High Court ruling has increased the difficulty for non-national victims without a legal work permit to seek financial compensation, as under the Employment Permits Act 2003, a contract of employment involving a non-national is substantively illegal in the absence of the appropriate employment permit. A key feature of the case studies is the lack of media attention such cases received. The lack of media attention reflects a lack of public awareness of the issue. This is evidenced in the omission of media attention in the case studies presented as part of the research. The noted exception is the Mohammad Yunus case which attracted quite some media attention as its arbitration reached the high courts and represents a landmark case.

The following evidence was found in the case studies:

- Victims were often misled about the nature of their employment prior to their arrival in Ireland. This was done with the intention of allowing employers to exploit them.
- Victims often lacked an understanding of Irish employment laws. This led them to make uninformed decisions.
- In 66% of the cases analysed, court rulings were made in favour of the victims; however, in the majority of these cases the ruling was difficult to enforce and victims did not receive financial compensation.
- It was found that the low risk to offenders of being prosecuted or having to pay compensation was a key reason for employers to exploit workers.
- Victims who had their physical movements and social interactions restricted by their employers were less likely to report their situation to the authorities.
- Victims regularly had their passports and other important documentation taken from them by their employers upon arrival. This served to further their vulnerability and resulted in them being less likely to report their situation to the authorities.
- Victims were discouraged from reporting their situation due to verbal and physical discrimination by their employers. Employers often threatened to send the victim back to their home country if they disclosed information regarding their situation.
- Victims who worked in service industries and had contact with the general public were more likely to report their situation to the authorities.
- In cases where they were multiple victims, the victims were more likely to report their situation to the authorities and take legal action.
- Victims working as domestic workers suffered the highest levels of exploitation as this sector is not effectively regulated or monitored and workers in almost every case study were undocumented.
- Victims employed as domestic workers were significantly less likely to access justice compared to workers in other sectors.
- In two cases, the victims worked for a substantial period without receiving any payment from their employers.
- In three instances, employment permits were obtained for victims without their involvement in the process.
- None of the case studies analysed detailed any support services availed of by victims of labour exploitation.
- None of the case studies analysed contained any information regarding media attention received by the case.

1.4. Fieldwork timeframe

The fieldwork was carried out between 23 October 2013 and 5 February 2014.

2. Legal framework

1) There is currently no law in place criminalising slavery/servitude or forced/compulsory labour in Ireland. However, on 7 January 2013, the then Minister for Justice Alan Shatter announced that forced labour would be criminalised in Ireland, through an amendment to the Criminal Law (Human Trafficking) Act 2008. This will ensure victims of forced labour will receive greater protection and employers who commit this criminal act can now be prosecuted. Specifically this amendment addresses the lack of specificity in the following:

- The definition of ‘exploitation’ now means: labour exploitation, sexual exploitation, exploitation consisting of the removal of one or more organs, exploitation forcing a person to engage in (a) an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain, or (b) an activity in a place other than the State constitutes an offence under the law of that place and would, if done in the State, constitute an offence and is engaged in for financial gain or that by implication is engaged in for financial gain.
- The definition of ‘labour exploitation’ labour exploitation’ means, in relation to a person (including a child): (a) subjecting the person to forced labour (including forcing him or her to beg, (b) forcing the person to render services to another person, or (c) enslavement of the person or subjecting him or her to servitude or a similar condition or state.

This amendment was enacted in September 2013 by April 2013. See “Shatter Announces Publication of General Scheme of Criminal Law (Human Trafficking) (Amendment) Bill” 7 January 2013.⁶ This legislation was enacted as of September 2013.

2) Section 3 of the Protection of Young Persons (Employment) Act 1996.⁷ Section 3 prohibits the employment of children to do work subject to certain specified exceptions, including:

- Employment of children over the age of 14 to do light work during any period outside the school term provided that—
 - the hours of work do not exceed 7 hours in any day or 35 hours in any week,
 - the work is not harmful to the safety, health and development of the child, and during the period of the summer holidays, the child does not do any work for a period of at least 21 days.
- Employment of children over the age of 15 to do light work during school term time, provided that the hours of work do not exceed 8 hours in any week.

3) Criminal Law (Human Trafficking) Act 2008⁸

⁶ www.justice.ie/en/JELR/Pages/PR13000005.

⁷ Available at: www.irishstatutebook.ie/1996/en/act/pub/0016/sec0003.html#sec3.

⁸ Available at: www.irishstatutebook.ie/2008/en/act/pub/0008/.

- Section 2 of the 2008 Act criminalises trafficking of children for the purposes of exploitation.
- Section 3 of the 2008 Act criminalises the trafficking of a child for the purposes of sexual exploitation.
- Section 4 of the 2008 Act criminalises the trafficking of persons other than children for the purposes of exploitation.
- Section 5 criminalises the soliciting or importuning of a trafficked person for the purposes of prostitution.

Section 5 of the Criminal Law (Public Order) Act 2011⁹ criminalises the directing or organising of begging which includes forcing another person to beg.

⁹Available at: www.irishstatutebook.ie/2011/en/act/pub/0005/sec0005.html#sec5.

3. Labour exploitation and the institutional setting

This section provides an overview of the institutional mechanisms in place at the national level to prevent and fight against labour exploitation by setting out the tasks undertaken by various bodies identified throughout the research. This section presents the results of an analysis of the discussion around the institutional setting in place for carrying out inspections and monitoring employers' compliance with laws protecting the rights of workers; and the assessed elements by the monitoring institutions to identify labour exploitation cases, and an analysis of the empirical material gathered during the fieldwork phase of the research (including interviews, focus groups and case studies) structured around key themes.

The main institutions responsible for monitoring labour exploitation in Ireland are the National Employment Rights Authority (NERA), the Garda National Immigration Bureau (GNIB), the Migrant Rights Centre of Ireland (MRCI), the Irish Congress of Trade Unions (ICTU) and the Services, Industrial, Professional and Technical Union (SIPTU).

3.1. Tasks of institutions involved in preventing labour exploitation and in enabling victims to access justice:

3.1.1. Overview of the institutions identified and their role in prevention and fight against labour exploitation:

The Anti-Human Trafficking Unit of the Department of Justice and Equality¹⁰

The Anti-Human Trafficking Unit (AHTU) was established in the Department of Justice and Equality in February 2008. This unit is responsible for ensuring that the Irish response to trafficking in human beings is coordinated, comprehensive and holistic. A key element of this strategy is the National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009 - 2012 which was published by the Minister for Justice and Equality in June 2009 and is available at www.blueblindfold.gov.ie. A second National Action Plan is currently being developed.

AHTU's mandate, according to one interviewee, is primarily focused on human trafficking whether it relates to sexual exploitation, labour exploitation or removal of organs. The areas covered by the Criminal Human Trafficking Act¹¹ fall within the Palermo Protocol to the UN Convention against Transnational organised Crime,¹² the Council of Europe Convention against Human Trafficking¹³ and the EU Directive on Human Tracking and Protection of Victims.¹⁴ The AHTU are guided by these three international instruments under which they operate. Their job is then to coordinate Ireland's response to human trafficking and make sure they meet the requirements of those instruments domestically.

¹⁰ www.justice.ie/en/JELR/Pages/WP09000005 and www.blueblindfold.gov.ie.

¹¹ Available at: www.irishstatutebook.ie/2013/en/act/pub/0024/index.html.

¹² Available at: www.unodc.org/unodc/treaties/CTOC/.

¹³ Available at: www.conventions.coe.int/Treaty/en/Treaties/Html/197.htm.

¹⁴ Available at: www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:01:EN:HTML.

National Employment Rights Authority (NERA)¹⁵

The National Employment Rights Authority (NERA) was established on an interim basis in February 2007 on foot of a commitment in the most recent social partnership agreement, 'Towards 2016'.

NERA aims to secure compliance with employment rights legislation and to foster a culture of compliance in Ireland through five main functions:

- Information
- Inspection
- Enforcement
- Prosecution
- Protection of Young Persons

According to the most recent data (end 2011), NERA has a staff of 102, including 62 inspectors and 27 information officers.

One interviewee from the M (monitoring bodies) group commented that the organisation is divided into two areas: one is responsible for the provision of information to the general public detailing their employment rights. This constitutes the majority of the organisation's work. Their other key duty is in carrying out labour inspections and supporting prosecutions if necessary. An inspection is carried out with *An Garda Síochána* and an inspector from NERA. There is a standard inspection checklist including employer's registration number with the Revenue Commissioners; a list of employees with PPS numbers and addresses; the dates of commencement of employment for all employees and dates of termination if applicable; check that the employer has given all employees a written statement of terms and conditions of employment; employees' job classification for each employee; a record of annual leave and public holidays taken by each employee; a record of hours worked for all employees; a record of all payroll details; proof employees are provided with written statements of pay; record or register of all employees under the age of 18; and employment permits for each employee, where applicable.

If a case of exploitation is suspected, then the *Garda* may support the victim through the administrative scheme of the Department of Justice. The M group interviewee further remarked that information provision is essential to empower individuals in dealing with possible issues of exploitation in their own language.

Workers taking on extra low or unpaid shifts after normal working hours emerges as a critical issue in the area of exploitation and tax evasion. The interviewee gives an example of an employee working a normal shift during the day for which they legitimately get paid, and then working an illegal shift at night which they will either get for paid in cash or be expected to work this shift for free or little extra benefit. Undocumented workers are particularly prone to exploitation in these instances.

This quote relates to out of hours work:

"It tends to be out of hours, and taking the example of the refuse, we encountered a 3 shift system with 2 shifts on the books but the shift between midnight and 8am was

¹⁵ See also: www.employmentrights.ie/en/.

not. It is the hidden time when they do not expect the regulatory bodies to be checking.”[M(1)]

Generally, these issues arise among the lower paid and unregulated sectors which represent areas where labour exploitation occurs most frequently. Pressures of cost competition can drive organisations to these illegal practices.

Another significant issue arises when these workers remain - and move - within communities, making them difficult to locate and hence support in extracting themselves from these positions of exploitation.

On the problem of parallel communities, one expert from a monitoring body said:

“If we come across an exploited worker of a particular ethnicity, and we start work in dealing with that, regularly they will be moved on within their community to another ... restaurant for a second. So there is a movement within ...communities. One thing about migrants is that, like the Irish in the [United] States, they predominantly stay within their own community. Nothing wrong with it, but it’s a cultural thing, and I think that we do it when we’re abroad, and migrant workers do the same when they’re here, and sometimes you see that if they’ve been exploited they move within the community.”

Garda National Immigration Bureau¹⁶

The *Garda* National Immigration Bureau (GNIB) carries out deportations, border control and investigations relating to illegal immigration and human trafficking. GNIB is based at Dublin 2, is headed by a Detective Chief Superintendent with a *Garda* Staff of two Detective Superintendents, four Detective Inspectors, 24 Detective Sergeants and 180 Detective *Gardaí*. They are supported by 68 civilian staff.

The GNIB was established in 2000 under the direction of the Assistant Commissioner for National Support Services. The GNIB has responsibility nationally for all law enforcement matters pertaining to immigration. The Bureau monitors the movement of non-nationals at all air and seaports throughout the State and along the border with Northern Ireland, with a view to the prevention and detection of illegal immigration. The GNIB investigates breaches of section 2 of the Illegal Immigrants (Trafficking) Act, 2000¹⁷ together with the NERA. The Human Trafficking Investigation and Co-Ordination Unit is a dedicated unit within the GNIB (a unit of the national police force with responsibility for immigration matters). This unit has the responsibility to provide advice, support and where necessary operational assistance to investigations undertaken at district level throughout Ireland. There is no formal legal basis for its work/mandate.

One interviewee outlined the organisation’s mandate as follows:

- The organisation’s primary purpose is the protection of life and property in terms of wellbeing and human rights.
- The organisation’s actions fulfil the primary function of enforcing legislation.

¹⁶ www.garda.ie/controller.aspx?page=31.

¹⁷ www.irishstatutebook.ie/2000/en/act/pub/0029/.

- As human trafficking has recently become a function of legislation, it subsequently has become a focus of the organisation as well.
- There is a legislative hierarchy in place, whereby the seriousness of the crime reflects the severity of the penalties for those offences.
- The interviewee elaborated that the fact that severe labour exploitation carries with it a life sentence is indicative of the fact that it is taken very seriously in the organisation's mandate.

Further, the interviewee suggested that it would not be within the organisation's mandate to promote the rights of migrant workers, but that the GNIB protect the rights of migrant workers, insofar as enforcing the law fulfils this function.

Health

- *Health Service Executive (HSE) Anti-Human Trafficking Team*¹⁸

There is no formal legal basis for the work/mandate of the HSE Anti-Trafficking Team.

The HSE Anti-Human Trafficking Team deals with victims' general and sexual health needs. If necessary, it will also provide counselling. The Anti-Human Trafficking Team will support victims by assigning a key worker who will develop a care plan with the victim which will cover all aspects of the victim's life.

The HSE Anti-Human Trafficking Team has two staff members who carry out assessments on all the needs of a victim of trafficking and make referrals to the appropriate services.

- *Health and Safety Authority*¹⁹

The Health and Safety Authority (HSA) was established in 1989 under the Safety, Health and Welfare at Work Act, 1989²⁰ and reports to the Minister for Jobs, Enterprise and Innovation. The Authority has a number of major roles. They are the national statutory body with responsibility for ensuring that approximately 1.8 million workers (employed and self-employed) and those affected by work activity are protected from work related injury and ill-health. They do this by enforcing occupational health and safety law, promoting accident prevention, and providing information and advice across all sectors, including retail, healthcare, manufacturing, fishing, entertainment, mining, construction, agriculture and food services. They are also the lead National Competent Authority for a number of chemicals regulations, including the REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation²¹ and the Seveso II Directive.²² Their responsibility in this area is to protect human health (general public, consumers and workers) and the environment, to enhance competitiveness and innovation and ensure free movement of chemicals in the EU market. Finally, they are a key agency involved in market surveillance and ensuring the safety of products used in workplaces and consumer applications. They have a remit to protect 4.5 million citizens from unsafe products and articles and to enable the international movement and trade of goods manufactured in Ireland.

¹⁸ www.hse.ie/eng/.

¹⁹ www.hsa.ie/eng/.

²⁰ www.irishstatutebook.ie/1989/en/act/pub/0007/index.html.

²¹ www.ec.europa.eu/enterprise/sectors/chemicals/reach/index_en.htm.

²² www.ec.europa.eu/environment/seveso/.

The HSA has a mandate to ensure that all workers are treated equally and are adequately protected under legislation. The HSA carry out inspections, but only into cases of the breach of employment health and safety and not breaches of employment rights. The only concern of the HSA is whether there is an employment relationship between an individual and an employer. It is part of the HSA's mandate to promote the rights of all workers, including migrant workers.

NGO Sector

- *Migrant Rights Centre of Ireland*²³

The Migrant Rights Centre of Ireland is a national non-governmental organisation working to promote justice, empowerment and equality for migrant workers and their families. MRCI operates a Resource Centre and has a national remit. Current priorities include rights for undocumented migrants; criminalising forced labour; protections for migrants in diplomatic households; au pairs; carers, domestic workers, restaurant workers; ethnic profiling and access to education.

One interviewee provided an overview of the organisation as follows:

- The Migrant Rights Centre was set up 10 years ago as a response to the increase in the arrival of migrant workers
- It was initially established as an information centre for migrants
- MRCI evolved into an organisation that supports exploited migrant workers to take cases to the employment courts
- MRCI identifies “trends through the casework on exploitation in particular sectors”

MRCI has a particular focus on protecting the rights of migrant workers, but it has also always tried to work in solidarity with all workers. This is demonstrated by the work that MRCI has carried out in conjunction with the Labour Rights Movement and other civil society organisations.

- *Immigrant Council of Ireland*

The Immigrant Council of Ireland is the leading voice in securing improved rights and protections which benefit Irish citizens, migrants and their families. They offer support, advice and information, while also achieving change through strategic legal action and engagement with lawmakers to make immigration laws fit for purpose. They support individuals gaining access to justice, and since their establishment in 2001, they have hosted a frontline service to meet the immediate needs of people, putting forward clear, evidence based proposals to change Irish law. They also proactively engage in responses to integrate a rapidly changing population as the first Independent Law Centre in the migrant sector in Ireland. The ICI “engages with all Ireland’s media outlets, has a reach in excess of 80,000 per week on social media, and are a go-to service for commentators seeking on and off the record briefings.”²⁴

Their main focus is:

- The introduction of an immigration system which is clear, fair and just for all
- The establishment of an independent appeals service for immigration decisions

²³ See also: www.mrci.ie.

²⁴ See also: www.immigrantcouncil.ie/about-us/organisational-overview.

- Encouraging integration and participation in all aspects of Irish life
- A robust response to racism
- Changes in the law to end sex trafficking

One interviewee [L(1)] described the mandate of the Immigrant Council of Ireland (ICI) as predominantly focusing on the protection of migrant rights in Ireland and supporting migrants in a legal context. The ICI conduct outreach work with general victims of trafficking for labour exploitation and victims who have been trafficked for the purposes of sexual exploitation; it examines issues that concern migrants such a racism and integration, and specifically explores the circumstances that allow labour exploitation to occur. It is part of ICI's mandate to promote the rights of migrant workers in particular. ICI advises migrants of their rights and ensures that "*workers are protected or are aware of the protections that are available to them*" [W(1)].

- NASC The Irish Immigrant Support Centre²⁵

NASC works for an integrated society based on the principles of human rights, social justice and equality; operates a free legal service and walk-in clinic which provides legal advice and information on a range of Immigration, Asylum and Social Protection-related issues; and campaigns and advocates on a range of migrant-related issues on both a national and local level.

NASC promotes the rights of migrant workers in particular, but not of workers in general. NASC lobbies the Department of Jobs regarding reform of the work permit system, and it supports the work of the Migrant Rights Centre Ireland (MRCI) on the issue of "justice for the undocumented." The broad remit of NASC is to support and protect all migrants living in Ireland. NASC does not focus on any specific group of migrants, its services are open to all migrants that live in the Cork area, which includes migrant workers through which NASC becomes aware of labour issues. Initial assessments are carried out by NASC staff when an individual enters the drop-in centre and information is documented; information and evidence is safeguarded; NASC offers initial information and assistance; enacting measures aimed at protecting the victim against further exploitation are problematic, and the actions taken depend on the individual's circumstances; at which time NASC passes on information to other public or private institutions that can follow up. NASC does not have a formal checklist. One S group interviewee stated that the creation of such a checklist would be beneficial.

- Cairde²⁶

Cairde is a community development organisation working to tackle health inequalities among ethnic minority communities by improving ethnic minority access to health services, and ethnic minority participation in health planning and delivery. Cairde aims to have a measurable impact on the delivery of primary health care to a selected number of disadvantaged ethnic minority communities in Dublin. Cairde works with disadvantaged ethnic minority communities from the continent of Africa; Eastern Europe and the Baltic states.

One S group expert summarised the organisation's main aim as the provision of advocacy in terms of health. The organisation's political mandate is focused on social determinants of

²⁵ See also: www.nascireland.org/.

²⁶ See also: www.cairde.ie/.

health such as employment. They work in cooperation with other agencies because other agencies might have more expertise. They work to empower people to bring their cases forward to the employment tribunal. They record and collect data for different issues that are encountered. Part of the institution's mandate is to indirectly promote the rights of migrant workers. They work with different migrant groups where they provide information about the entitlements of workers. This would especially pertain to health status.

3.1.2. Summary review of institutional setting and monitoring in Ireland

This section sets out the institutional setting in place for carrying out inspections and monitoring employers' compliance with laws protecting the rights of workers.

NERA is the body tasked with carrying out inspections and monitoring compliance with labour law and employment rights. NERA have very clear guidelines and a public document entitled *An Employer's Guide to NERA Inspections*.²⁷ In summation the guidelines cover the necessity and context of what constitutes an employment situation; the location of inspections detailing what constitutes the workplace; the reason for inspection; the power of the inspectors; the inspection itself (examination of records and interviewing of employees); and what procedures are in place if non-compliance (minor to serious) is detected.

NERA carries these inspections out with the *An Garda Síochána*. Although other institutions have specific roles in applying legislation (the Labour Court²⁸, Employment Appeals Tribunal²⁹, Equality Tribunal³⁰, the courts,) it is these institutions that have the direct mandate to carry out inspections.

There are two types of inspections. There is the normal inspection when the employer receives up to two weeks' notice which rarely results in uncovering any form of illegality or exploitation.

Other inspections are not announced, conducted out of hours (usually between 6pm and 8am and at weekends). There are a number of them conducted every night and this is when labour exploitation is uncovered.

It is the view of NERA that the easier aspect of this work is in the area of carrying out inspections, and monitoring is significantly more challenging. Inspections are carried out on a one off and under strict guidelines. Monitoring is a longer term issue and means trying to identify the situation of employers and employees over time. This is complicated when a worker is fully documented and working legally moving from employer to employer throughout their career. However it is extremely difficult to monitor the activities of individuals over time when they are trying to hide their activities.

The concentration was originally on the protection of young persons in the past, but NERA now also investigates compliance with work permits; it is during this type of inspection that

²⁷ www.labourcourt.ie/en/Publications_Forms/Employers_Guide_to_NERA_Inspections.pdf.

²⁸ www.labourcourt.ie/en.

²⁹ www.workplacerelations.ie/en/Workplace_Relations_Bodies/Employment_Appeals_Tribunal/.

³⁰ www.labourcourt.ie/en/Workplace_Relations_Bodies/Equality_Tribunal/.

cases of exploitation most frequently arise. In the case where an employee does not have a work permit, both the employer and the employee can be prosecuted.

In the last year (2013), and for the first time, NERA have exercised search warrants and bench warrants³¹ in to effectively deal with really difficult cases. The trend they are noticing, particularly around the ethnic restaurants or ethnic communities, is that individuals who may be the victims of exploitation can be moved within an ethnic, or 'parallel community' from job to job.

NERA have traditionally not prosecuted the employee, and tried to prosecute the employer: e.g. breach of work permit regulation; not having records under national minimum wage; not having the hours documented - NERA will prosecute the employer for several offences.

Emerging trends include au-pairs, care workers and domestic workers where there exists a significant issue in identifying specific employment duties an employee is employed for and what their terms and conditions of employment are defined as.

People are considered as both being in Ireland illegally and as victims. The legislation however is clear that if they are illegally staying in Ireland they will be returned to their country and it is very difficult to keep them in Ireland long enough to properly investigate the case. This slows the process down significantly. It can take up to one or two years for a case to be assessed in the labour court.

This quote relates to the treatments of perceived victims of labour exploitation

“Our concern has always been that people are first seen as breaching immigration law, and it is reflected now in that we find it very difficult to get reflection recovery periods or immigration stamps for people in possible/potential forced labour situations, we cannot get them at all, which slows down the process in the Department of Justice Immigration Section.... There is a bridging visa scheme, we know that is going to be put on a statutory footing. Where someone has a work permit we can help them, where someone has no work permit it is more difficult, but they could have humanitarian concerns in their cases. The recovery and reflection period, the narrow interpretation of it within the Irish process have been identified, and we will need to address it. Not to say that we will resolve it, but we will be addressing it within the context of the new national action plan, which is just starting at the moment, so we will be looking at what the problems we experienced during the first one were, and trying to work through them. I am not promising a conclusion or a success in it, but at least it is going to be looked at over the next few months.” [M(1)].

Elements assessed by the monitoring institutions to identify labour exploitation cases:

The Employers checklist of elements assessed by NERA and the *An Garda Síochána* as detailed in the Employers Guide to NERA Inspections are:³²

- The employer’s registration number is with the Revenue commissioners

³¹ This is a process that is initiated by the court pro se in order to attach or arrest a person. An order that a judge, or group of judges, issues directly to the police with the purpose of directing a person’s arrest.

³² See also: www.labourcourt.ie/en/Publications_Forms/Employers_Guide_to_NERA_Inspections.pdf.

- A list of all employees including full names, addresses, and PPS (Personal Public Service)³³ numbers
- Dates of commencement and dates of termination of employment
- Written terms of employment for each employee
- Employee's job classification
- A record of annual leave and public holidays taken by each employee
- Hours worked by each employee (including start and finish times)
- Payroll details, including gross to net, rate per hour, overtime, deductions, commission, bonuses, and service charges
- Evidence that employees are provided with payslips
- A register of employees under 18 years old
- Details of any board or lodgings provided
- Employment permits or evidence that a permit is not required as appropriate for non EEA nationals or Bulgarian or Romanian citizens

The legislation NERA are appointed to carry out their duties under include:

- Industrial Relations Act 1946 to 2004
- Protections of Young Persons (Employment) Act 1996
- Organisation of Working Time Act 1997
- Parental Leave Act 1998
- National Minimum Wage Act 2000
- Carers Leave Act 2001
- Employees' Provision of Information and Consultation act 2006

The legislation/acts they are authorised to implement include:

- Redundancy Payments Act 1967 to 2003
- Employment Agency Act 1971
- Protection of Employment Act 1977
- Protection of Employees (Employees Insolvency) Act 1984 to 1991
- Payment of Wages act 1991
- Section 2.1 and 2.2 of the Employment Permits Act 2003
- Sections 18, 19, 23, 25, 27 of the Employments Permits Act 2006

Case Study Example

The Labour Relations Commission³⁴ is the court of the Rights Commissioners who present cases of labour exploitation to the court. Rights Commissioners operate as a service of the Labour Relations Commission and are independent in their functions. They investigate disputes, grievances and claims that individuals or small groups of workers refer under specific legislation and issue the findings of their investigations in the form of either decisions or non-binding recommendations, depending on the legislation under which a case is referred.

³³ A Personal Public Service Number (PPS Number) is a unique reference number that helps a person access social welfare benefits, public services and information in Ireland. See www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/personal_public_service_number.htm.

³⁴ www.lrc.ie/document/More-on-the-Rights-Commission/4/745.htm.

One example is the case of a circus worker from Morocco. The victim was recruited through an acquaintance and deceived regarding the nature of his/her employment. He/she was informed that they were being recruited as a driver; however the job entailed working in the circus. The victim was subjected to excessive working hours, poor wages and poor working conditions. This provides the following example of the workings of the court not only in providing access to justice for individual victims but supporting evolving legislative mechanisms mitigating future possibilities for exploitation of workers.

Section 22(1) of the Industrial Relations Acts 1990 requires an employer to maintain records, in a prescribed form, showing compliance with the Act. Failure to comply with this requirement, without reasonable cause, amounts to a criminal offence. However, no cause of action accrues to an employee by reason of his or her employer's failure to maintain the requisite records.

Section 22(3) provides as follows:-

“(3) Without prejudice to subsection (2), where an employer fails to keep records under subsection (1) in respect of his or her compliance with a particular provision of this Act in relation to an employee, the onus of proving, in proceedings before a rights commissioner or the Labour Court, that the provision was complied with lies on the employer.”

In *Jakonis Antanas v Nolan Transport*, this Court held as follows in relation to the application of Section 25(4) of the Organisation of Working Time Act 1997, which is similarly worded to Section 22(3) of the Act: -

The burden on a respondent of proving compliance with the Act arises in proceedings in which a complaint of non-compliance is made. It is clear from Section 27(2) of the Act that the jurisdiction of the Rights Commissioner is invoked by an aggrieved worker, or his or her trade union, by presenting a complaint to a Rights Commissioner that his or her employer has contravened a relevant provision of the Act in relation to him or her. The subsection goes on to provide that where a complaint is made the Rights Commissioner shall give the parties an opportunity to be heard and to present to the commissioner any evidence *319 relevant to the complaint.

This suggests that the evidential burden is on the claimant to adduce such evidence as is available to support a stateable case of non-compliance with a relevant provision of the Act. It seems to the Court that, as a matter of basic fairness, the claimant should be required to do so with sufficient particularity as to allow the respondent to know, in broad terms, the nature of the complaint and the case which they are expected to meet. As was pointed out by Lord Devlin in *Bratty v Attorney General for Northern Ireland* [1963] A.C. 386³⁵ an evidential burden is satisfied where the evidence adduced is sufficient to “suggest a reasonable possibility”.

The respondent should then be called upon to put the records required by Section 25(1) of the Act in evidence showing compliance with the relevant provision in issue. If records in the prescribed form are produced the legal burden will be on the claimant to satisfy the Rights Commissioner, or the Court on appeal, that the records ought not to be accepted as evidence of compliance. Thus the claimant will bear both the evidential and the legal burden of proving,

³⁵ www.vanuatu.usp.ac.fj/courses/la205_criminal_law_and_procedure_1/Cases/Bratty_v_AG.html.

on the balance of probabilities, that his or her rights under the Act were contravened in the manner alleged. If the claimant fails to discharge that burden he or she cannot succeed.

Where records in the prescribed form are not produced, and the claimant has satisfied the evidential burden which he or she bears, it will be for the respondent to establish on credible evidence that the relevant provision was complied with in relation to the claimant. The respondent will thus be required to carry the legal burden of proving, on the balance of probabilities, that the Act was not contravened in the manner alleged by the claimant. If the respondent fails to discharge that burden, the claimant will succeed.

What that means in practical terms is that the Respondent must satisfy the Court that it is more probable than not that the Act was complied with in respect to the matters complained of by the Claimant. If the Respondent does not do so or if the probabilities are equal, the Claimant will succeed. That is a reversal of the normal rule of evidence which requires that he who asserts must prove.

3.2. Forms and frequency of incidents of labour exploitation encountered by experts in their work; economic areas affected

3.2.1. Forms and frequency of labour exploitation encountered

Forms of labour exploitation	Code											Total
		E	J	L	M	N	P	R	S	W		
Slavery	1	0	0	1	1	1	0	0	0	2	5	
Forced labour, including bonded labour	2	0	0	3	1	0	2	0	5	3	14	
Child labour	3	0	0	1	0	0	1	0	2	1	5	
Trafficking for labour exploitation	4	0	1	2	1	1	4	0	2	2	13	
Moving beyond the categories mentioned so far	5	0	1	0	3	0	1	0	2	1	8	
None/Don't know	99	3	1	0	0	0	0	1	1	0	6	

Figure 1: Frequency of forms of labour exploitation reported

The majority of respondents had come across cases of forced labour (14) and trafficking for labour exploitation (13). Child labour (5) and slavery (5) were not as prominent. In addition it became apparent that different respondents had different understandings of what was meant by exploitation, and specifically severe exploitation.

The E group reported either 'none' or 'don't know'. The J groups encountered mostly cases of trafficking and prostitution. The L group encountered a variety of forms of exploitation, including all key areas (slavery, forced labour, child labour, trafficking), although mostly forced labour. The M group also experienced a variety of types of labour exploitation, with the exception of child labour (slavery, forced labour, including bonded labour, trafficking). The P group mostly experienced forced labour and trafficking. The N participant experienced slavery and trafficking in his/her professional work. The R group reported either 'none' or 'don't know'. The S groups came across mostly forced labour, with some cases of child labour and

trafficking arising also, yet no cases of slavery. The S groups came across mostly slavery in some cases, most significantly forced labour, with some cases of child labour and trafficking arising also, yet no cases of. Overall, the vast majority of responses gathered in the interview fall either into the categories of forced labour (usually debt bondage) or trafficking.

Type of worker	Code	E	J	L	M	N	P	R	S	W	Total
Skilled worker e.g. electrician, foreman, motor mechanic	1	0	0	0	0	0	0	0	0	0	0
Semi-skilled worker e.g. bricklayer, bus driver, cannery worker, carpenter, baker	2	0	1	1	0	0	0	0	1	0	3
Unskilled worker e.g. labourer, porter, unskilled factory worker	3	2	2	0	2	1	1	1	1	3	13
Farm worker e.g. farm labourer, tractor driver, fisherman	4	0	0	1	1	1	2	0	1	2	8
Service occupations e.g. waiter, care-taker, domestic worker	5	2	1	3	4	1	3	0	3	3	20
Sales occupations e.g. shop assistant	6	0	1	1	0	0	0	0	1	0	3
Clerical occupations e.g. clerk, secretary	7	0	0	0	0	0	0	0	0	0	0
Professional and technical occupations e.g. engineer, accountant	8	0	0	0	0	0	0	0	0	0	0
Other	9	0	1	1	2	0	1	0	2	0	7
-please specify		0	0	0	0	0	0	0	0	0	0
Don't know	99	2	0	1	0	0	1	0	0	0	4

Figure 2: Frequency of type of work by respondent category

Frequency of cases	Code	E	J	L	M	N	P	R	S	W	Total
twice or more than twice a week	1	0	0	0	0	0	1	0	0	2	3
once a week	2	0	0	2	1	0	0	0	0	0	3
less than once a week but at least twice per month	3	0	1	0	0	0	0	0	1	0	2
once a month	4	0	0	1	1	1	1	0	2	0	6
twice or more per year	5	0	1	0	2	0	1	0	1	0	5
once a year or less	6	2	0	0	0	0	0	1	1	0	4
other (please specify)	7	0	0	0	0	0	0	0	0	0	0
don't know	99	0	0	0	0	0	0	0	1	1	2

Figure 3: Frequency of cases

The majority of cases were either brought to the attention of the organisations once a month (6) or twice or more per year (5). The P and W groups, representing the frontline organisations, reported hearing about cases twice or more a week, while the E, R and S groups all reported hearing of cases less than once a year.

Identify cases	Code	E	J	L	M	N	P	R	S	W	Total
Proactively looking for cases	1	0	0	0	2	0	2	0	0	1	5
The case is brought to your attention by another institution (public)	2	0	0	1	3	1	2	0	4	3	14
The case is brought to your attention by another institution (private)	3	0	0	2	3	1	1	0	1	2	10
The case is brought to your attention by a private person/individual	4	0	0	3	4	0	2	0	2	3	14

Other (please specify)	5	0	0	1	0	0	0	0	1	0	2
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Figure 4: How cases are identified

It is clear that there is a variety of ways of hearing about cases across the M group, with a small majority of cases brought by individuals, while the majority of cases brought to the S group are through other public institutions. The M, P and W groups proactively look for cases. This lack of outreach programme is identified as a critical issue in addressing labour exploitation in Ireland.

3.2.2. Most important occupations and sectors of labour exploitation

The focus group participants identified the domestic sector (au pairs, cleaning, care workers and restaurant sector (especially ethnic restaurants), the construction industry, fishing and the agricultural industry (mushroom picking and fruit farms) as the main areas where labour exploitation occurs.

Among the interviewees, the domestic sector was identified as the most problematic area (see fig.4). A particular issue raised by a number of interviewees was a situation where an employer does not recognise him or herself as an employer, and the person hired to work in the home is supplied with live in accommodations and some small 'pocket money' and accommodation in exchange for work.

Referring to the domestic sector in particular, the N group participant in the focus group commented:

"The sector that caused the most investigations was the domestic sector by far. It has always been a vulnerable area because workers can work in isolated conditions and so on... There was this traditional notion of an au-pair scheme as a cultural exchange, which is still intact, but moving on from that people are recruiting au pairs under similar conditions, pocket-money conditions, and not understanding or recognising that these are in fact workers. If you employ someone in your home fulltime to care for your elderly relative or for your children, then they are de facto workers, so that's a whole new area that we're seeing." [N(1)]

The majority of cases that respondents were aware of concerned service occupations (20), unskilled workers -including construction- (13), and farm workers (8) (fig.3).

Referring to a significant issue in Ireland, namely domestic workers working in foreign embassies, a lawyer who works in a private organisation has the following opinion:

"Individuals were recruited in mostly Eastern European countries. They were brought to Ireland under false pretences. They were led to believe that they would be working in medical care in Ireland. The work would be more closely described as a servant... Embassies represent a small number, but a significant issue. Migrant workers are usually from the diplomat's country. As the employer has diplomatic immunity they cannot be prosecuted for breach of employment law such as unfair dismissal. He gives the example of a girl who once she became pregnant was made redundant from her employment. She could do nothing and had no legal recourse." [L(1)]

3.2.3. Most frequent occupations of exploited migrant workers and most frequent economic sectors

Type of Economic sector (with codes)	Codes	Frequency
Construction	43 and 44	6
Restaurants and mobile food service activities	61, 63 and 64	15
Cleaning and non-diplomatic households as employers of domestic personnel	120, 121, 122, and 123	16

Figure 5: economic sector reported where migrant workers are most frequently exploited (total)

The economic sectors identified by the interviewees vary significantly, with 6 identifying 'Construction', 15 identifying 'Accommodation and food service activities' and 16 identifying 'Activities of households as employers' as the main economic sectors where exploitation occurs.

3.2.4. Functions of organisations and institutions involved in supporting victims of labour exploitation in Ireland

Institutional Functions	Code	E	J	L	M	N	P	R	S	W	Total
Monitoring/carrying out inspections	1	2	0	0	2	0	0	1	0	2	7
Policing (inspections, protection measures, investigations)	2	0	0	0	3	0	0	1	0	2	6
Advising/supporting victims of labour exploitation	3	1	0	3	2	0	3	0	3	2	14
Criminal justice functions	4	0	1	1	1	1	0	0	0	1	5
Advocacy of rights of workers	5	2	0	3	1	0	0	1	5	3	15
Other	6	2	2	0	1	0	0	0	1	1	7
-please specify		0	0	0	0	0	0	0	0	0	0
Don't know	99	0	0	0	0	0	0	0	0	0	0

Figure 6: Organisational mandates by group

A significant number (15) of the experts interviewed identified their role as advocating on behalf of workers, with (14) saying their organisation has a role advising/supporting victims of labour exploitation.

Organisations function	Code	E	J	L	M	N	P	R	S	W	Total
Documenting/assessing the situation	1	0	0	0	2	0	2	0	4	2	10
Safeguarding information or evidence;	2	0	0	0	2	0	1	0	4	2	9
Offering initial information and assistance to victims;	3	0	0	0	2	1	3	0	6	2	14
Enacting measures aimed to protect the victim against further exploitation ;	4	0	0	0	2	1	2	0	4	2	11
Passing on information to other public or private institutions that can follow up.	5	0	0	0	2	0	3	0	5	3	13
Don't know	99	0	0	1	1	0	0	0	0	0	2

Figure 7: Organisations function

In total, of the 30 interviews conducted, 14 organisations offer advice to victims, 13 pass on information, and 11 enact measures to protect them from future harm, and 9 safeguard evidence. The majority of these organisations have some case study information which, if shared through a national database, could support effective networking and victim support while streamlining the procedures accessing justice.

3.2.5. Factors contributing to labour exploitation of migrant workers in Ireland

Contributing to labour exploitation	Code	E	J	L	M	N	P	R	S	W	Total
Migrant workers do not have a contract written in a language they understand, or do not have a contract at all;	1	3	3	2	2	0	1	0	5	2	18
Migrant workers are not properly informed about their entitlements as concerns wages, working conditions, annual leave etc.;	2	2	3	1	4	1	0	0	4	2	17
Employers withhold wages or pay considerably less than what they are obliged to pay;	3	0	1	3	4	1	1	0	2	1	13
Parts of what is paid flows back to employers, e.g. for fees which the employer owes to recruiters or for food or services provided by the employer;	4	0	1	0	1	1	0	0	1	0	4
The migrant worker depends on the employer beyond the employment contract, e.g. as concerns accommodation or employment of family members	5	0	1	1	3	0	0	0	0	1	6
Employer does not pay social security contributions;	6	0	0	0	1	0	1	0	3	0	5
Migrant workers are not allowed to go on annual leave;	7	0	0	0	0	0	0	0	1	0	1
Migrant workers are restricted in their movement, either by physical barriers or by practical means, such as withholding travel documents;	8	0	1	1	1	1	0	0	1	1	6
The employer adds to the migrant worker's isolation by impeding communication e.g. communication to representatives of labour unions or to labour inspectors;	9	0	0	0	0	1	0	0	2	1	4
The migrant worker is subjected to physical violence or to threats of such violence;	10	0	0	0	0	0	0	0	1	0	1
The worker's health conditions are impaired, e.g. through labour-intensive work or long hours;	11	0	0	1	0	0	0	0	1	0	2
Other (please specify)	12	0	0	0	0	0	0	0	0	0	0
Don't know	99	1	0	0	1	0	1	0	0	0	3

Figure 8: Factors contributing to labour exploitation

Little disagreement was found among respondents, with the majority (18) agreeing that the major issues contributing to labour exploitation are not having a contract written in a language they understand, or not having a contract at all (18), migrant workers do not know their rights (17) and employers withhold wages (13).

4. Risks and risk management

There was little divergent opinion with respect to risk factors between the different professional groups with regards to key issues that open migrants up to exploitation.

4.1. Identification of common risk factors for labour exploitation

4.1.1. Risk factors overview

Legal and institutional setting	Code	E	J	L	M	N	P	R	S	W	Total
Low risk to offenders of being prosecuted and punished	1	0	2	3	3	1	3	1	5	3	21
Low risk to offenders of having to compensate exploited migrant workers	2	0	2	2	3	1	3	1	4	3	19
Lack of institutions effectively monitoring the situation of workers in sectors of economy where labour exploitation occurs	3	2	1	3	3	0	1	1	5	3	19
Corruption in the police	4	0	0	0	0	0	0	0	0	0	0
Corruption in other parts of administration	5	0	0	0	0	0	0	0	0	0	0
Other (please specify)	6	0	0	0	0	1	2	0	1	0	4
Don't know	99	1	2	0	1	0	0	0	0	0	4

Figure 9: Legal and institutional risks

Notably, most respondents viewed a low risk to offenders of being prosecuted (21) or having to compensate employees (19) and a lack of institutions monitoring these issues in the economy (19) as the main institutional reasons why exploitation occurs, while no respondents viewed corruption in the police or the administration dealing with migrants issues in Ireland as an issue.

Personal characteristics	Code	E	J	L	M	N	P	R	S	W	Total
Migrant worker has a low level of education;	1	1	2	2	1	0	2	1	2	2	13
Migrant worker does not know the language of the country of workplace;	2	3	2	1	3	1	3	1	4	2	20
Migrant is not allowed to enter into employment;	3	2	1	2	1	1	1	1	3	1	13
Worker comes from a country the nationals of which are often exploited in the destination country;	4	0	0	1	1	0	1	0	0	1	4
Worker is prone to discrimination on behalf of their race	5	1	1	0	1	1	0	0	2	2	8
Worker is prone to discrimination on behalf of their sex	6	0	0	1	1	0	1	0	0	0	3
Worker has experienced extreme poverty at home;	7	0	0	2	1	0	1	0	1	1	6

Other (please specify)	8	0	0	0	0	0	0	0	0	0	0	0
Don't know	99	0	1	0	1	0	0	0	0	0	0	2

Figure 10: Personal characteristic risk factors by professional group

In relation to the personal characteristics of the individual, the majority viewed the migrant not knowing the language of the country of the workplace as the main contributing factor putting them at risk of exploitation (20), followed by other critical issues including low levels of education (13), the lack of the right to work (13), and, finally, with extreme poverty at home (6) and racial discrimination (8) as notable but not highly significant factors. Again respondents answered relatively consistently across professional groups.

At the workplace	Code	E	J	L	M	N	P	R	S	W	Total
The migrant works in a sector of the economy that is particularly prone to exploitation	1	1	2	1	3	1	3	1	3	3	18
The migrant works in relative isolation with few contacts to clients or to people outside the firm	2	1	1	3	3	1	3	1	4	2	19
The migrant worker is not a member of a trade union	3	1	1	0	2	0	1	0	0	2	7
The migrant works in a precarious or insecure situation of employment, e.g. formally not employed but self-employed	4	1	0	2	1	1	2	0	2	2	11
The migrant worker is not directly employed by the business/organisation for which they work	5	0	1	2	1	0	0	0	2	0	6
The migrant worker is employed as a posted worker by a foreign company	6	0	0	1	0	0	0	0	0	0	1
The migrant is a seasonal worker	7	0	0	0	0	0	0	0	1	0	1
Other (please specify)	8	0	0	0	0	0	0	0	0	0	0
Don't know	99	2	2	0	1	0	0	0	1	0	6

Figure 11: workplace characteristics opening a migrant worker up to exploitation

The majority of respondents viewed that the migrant working in relative isolation with few contacts to clients or to people outside the firm (19) and the migrant working in a sector of the economy that is particularly prone to exploitation (18) as the key workplace characteristics that open migrant workers up to exploitation.

The case studies suggested that the major risk factors include victims being misled about the nature of their employment prior to their arrival in Ireland; a lack of understanding of Irish employment laws; a low risk to offenders of being prosecuted or having to pay compensation; victims having their physical movements and social interactions restricted by their employers; victims having their passports and other important documentation taken from them by their employers upon arrival; victims being actively discouraged from reporting their situation through verbal and physical threats by their employers; victims in the domestic workers sectors suffering due to a lack of regulation in the sector; and a lack of public awareness of labour exploitation as evidenced by a lack of media attention.

4.1.2. Risk factors: analysis

Employment status

An important risk factor is that often, a migrant does not have legal status to work in the country: this radically reduces the employee's options to seek other employment, radically reduces their likelihood of seeking support from the authorities, and isolates them from other

workers. A significant issue in Ireland is that specific work permits are granted to employers and not employees, which binds the employee to the employer and gives an unequal measure of control to the employer. In these cases if the employee leaves the employer they find themselves in a situation where they have no legal permit to work in the country. Lack of knowledge about immigration rules in Ireland compound this issue.

This is a comment on the difficulties created by the Irish work permit system.

“One of the key issues for us is the work permit system, and how it is structured, and how the power balance between the employer and the employee is weighed heavily in the employer’s favour.” [S(1)]

This is a comment on the risks around the current work permit system:

“If they are outside the EU and they are coming in on a work permit, which, in the first instance, as I understand it at the moment, has to be applied for by the employer. So that presents certain difficulties, I think, for the employee because they are dependent on the employer to get them the work permit.” [M(1)]

This is a comment on eastern European nationals who have been trafficked into the country for the purposes of prostitution:

“Many eastern European nationals who were trafficked into prostitution in this country (Ireland) are in effect economic migrants. They end up in that situation because of economic needs.” [L(1)]

Language barrier

The language barrier was the most significant risk factor related to the personal characteristics of the migrant identified by 30% of respondents. This was followed by the status of the worker with the belief that any worker who is undocumented is open to increased risk of exploitation as this is used to control individual, they have no choice but to stay with the employer and they fear being deported.

This is a comment on education and language as risk factors that contribute to exploitation.

“There are definite adversities for people who have low levels of education and language barriers, and who are required to have work permits.” [J(1)]

Inability to prosecute employers

A significant issue is the transience of the business and the employer. These businesses can just close down and open up under a different name if cases are made against them, making it extremely difficult to enforce labour exploitation laws.

This refers to the transient nature of some businesses:

“You go in and the owner today is not the owner when you go in next week. In other words, they cause obstacles for us by moving the owner or moving the thing, and it is sort of that I am a director one week director of a different company the next week, but the same trade is being carried out, and what we have done, it was about 18 months ago that we started doing it and it is been very productive in the last 12 months, as not only do we prosecute the company, but we actually prosecute the director for employment law offences, and that makes the person sit up very quickly.” [M(1)]

This is a comment on the low number of prosecutions relating to labour exploitation:

“The low numbers of prosecutions would be an indicator that there is difficulty in prosecuting crimes (relating to labour exploitation).” [L(1)]

Other important risk factors (additional to the categories provided in the questionnaires)

Fear of the authorities

Fear of the authorities as identified by a significant number of respondents, which exists as a cultural issue brought with migrants who come from countries where authorities might have been corrupt further dissuades the migrant from reporting their situation.

This is a comment on the attitudes of migrants towards the authorities:

“Some people are distrustful of the police everywhere, and I do not know if that is particular to migrant workers as such necessarily, and it can be particular to certain nationalities depending on their experiences in their home countries.” [P(1)]

Parallel communities/ pre-existing relationship with the employer or pre-existing exploitation

A pre-existing relationship with the employer possibly involving familial ties, identified by a significant number of respondents, and a pre-existing exploitation of the individual were also identified as preventing individuals from reporting cases of exploitation.

This is a comment on how the social standing of a migrant in their country of origin can represent a risk factor:

“The migrant worker’s own class or social standing in his country of origin would be a risk factor (in terms of labour exploitation).” [S(1)]

This is a comment that employment in a family situation may also be a space where exploitation occurs

“I think part of the problem is our law seems to presume that the safest happiest place for everybody is with their family, and I do not know why it still does that given all the evidence that has come forward. ... I think challenging that is something that the trade unions have to be very strong on, and an employer is an employer. It does not matter if it is your father who is your employer. In fact, it is probably even more problematic if it is your father.” [W(1)]

This is a comment on how immigrants may have been exploited from an early age and before they arrived in the state: that it is a chain, or a typology of exploitations across the life-stages that spans countries and leads certain people to be trafficked into Europe to be further exploited:

“What is not mentioned here is that the exploitation did not start here, it started sometime before the person arrived in the state. It may not be the same exploitation. They may have been exploited as children, as adults they are trafficked in to do work. There may be different stages of exploitation at each life stage.” [S(1)]

This is a comment on how migrant workers are often exploited by employers with the same country of origin:

“I come back to a parallel community: they are often exploited by their own nationals. I am not saying Irish people do not but I think you come across that parallel community again: they will deal with or try to deal with issues.” [M(1)]

A recurrent theme in the interviews was that of ‘parallel communities’. These are communities whose members belong to the same ethnic, cultural or national minority group in which migrants are employed. This was identified by a number of interviewees and in the focus group. There are networks based in cultural settings where migrants access information in the first instance which may create knowledge deficits and embed the individual in a situation where the perpetrators of exploitation are in the role of a trusted advisor. Critical issues relating to these parallel communities include: widespread isolation of the victim; little disagreement; remaining within these communities dissuades migrants from accessing information regarding their employment rights; this isolation can encourage further misinformation being propagated (this is especially prevalent with regards to workers’ rights and rates of pay); cultural mistrust of the police and officials brought with them from their country of origin; these issues result in increased difficulties in gaining access to these communities by authorities to effectively monitor and investigate cases of exploitation.

This quote relates to the interviewee’s identification of the problem of accessing victims of exploitation within migrant communities

“If we come across an exploited worker of a particular ethnicity, and we start work in dealing with that, regularly they will be moved on within their community to another ... restaurant for a second. So there is a movement within ...communities. One thing about migrants is that, like the Irish in the states, they predominantly stay within their own community. Nothing wrong with it, but it is a cultural thing, and I think that we do it when we are abroad, and migrant workers do the same when they are here, and sometimes you see that if they have been exploited they move within the community.” [M(1)]

Lack of public awareness

A lack of public awareness and societal prejudices are also noted as contributing factors which further isolate migrants and prevent them from coming forward and reporting exploitation as they believe that they might not be believed or taken seriously. In addition, it is the opinion of a number of respondents that there is a lack of general public awareness of the existence of labour exploitation in Ireland and further that the availability of cheap products and services is, in some instances, possible only through the exploitation of others.

Referring to the needs for consumers of goods and services to be aware of the possibility that cheap products may be made available only through the exploitation of the work of others:*“I think the role of intermediaries (is important) as well; there is reluctance on the part of the person who is buying the final product to look behind the supply chain, and they’d be the first people complaining about the corporate failings and all of that. But I think there is a reluctance to examine deeply how many people are in between your contract and the people who are actually delivering the goods or the services. So you’d have everything from employment agencies to criminal gangs involved.” [W(1)]*

In particular, two respondents [P(1); M(1)] suggested that there exists a culture in Ireland which stems from the Irish emigrant culture in which working illegally in other countries, or in

fact in Ireland and not declaring this work to the authorities (known as 'off the books' 'cash in hand', or 'under the table') has supported a public acceptance of migrants working in Ireland under similar conditions:

This is a comment on the cultural issues in Ireland that contribute to the existence of irregular employment situations:

"There is a cultural problem in Ireland, stemming back to Irish people working in an irregular fashion." [P(1)]

A strong feeling that increased awareness campaigns would be extremely beneficial to minimising the opportunities for workers to be exploited was brought up in the focus group.

In the focus group, the issue of consumers, retailers and those who are responsible for remaining ignorant to the labour conditions under which cheap products and services are made available arose.

This quote highlights that more public awareness around cheap services and products is required to combat labour exploitation: i.e. if the demand for cheap produce is removed this goes some way to addressing the systemic opportunism of exploitative employees

"I think the role of intermediaries as well, there is reluctance on the part of the person who is buying the final product to look behind the supply chain, and they would be the first people complaining about the corporate failings and all of that. But I think there is a reluctance to examine deeply how many people are in between your contract and the people who are actually delivering the goods or the services. So you would have everything from employment agencies to criminal gangs involved." [W(1)]

Social awareness:

"That is the big problem. Hence the need to ask questions such as: How do you create awareness? How do you make people know what their rights are? And I would say: with great difficulty." [M(1)]

Other key risk factors identified

Other notable risk factors are skills deficits, low levels of education of the worker, in some cases a low level of intelligence was identified disabling the individual from understanding that they are being exploited and also identifying ways in which they can extract themselves from these situations. Finally, one respondent argued that some people who are above a certain age and single and have few familial ties are also open to exploitation as it is less likely that their disappearance will be noticed by the family.

4.1.3. Role of recruitment agencies

Agencies are viewed as having a critical role in employment systems by a significant proportion of the interviewees, especially the authorities, employment groups, and agencies themselves. They have a large degree of influence and are the first point of contact for many migrant workers. Significantly, it is through this point of contact that migrants can be informed of their rights. These pre-emptive measures can reduce vulnerability for migrant workers. In addition their main functions are to assure that all legal employment regulations are adhered to by the employee and employer before entering into a working relationship which establish

legal employee and employer working conditions and documents the worker's status in the country. This supports the implementation of legislation and policy, raises awareness of employee rights, establishes clear working conditions through a job description, should ensure that clients (employers) agree to a code of practice, and in some cases insists on an induction/mentoring for a new employer. There is a national body in Ireland called the National Recruitment Federation (NRF), and typically, agencies are vetted through this federation. It was also felt that interventions in cases of labour exploitation tend to be effective if the employee has the support of a recruitment agency. If all these issues are addressed effectively, they act as significant measures preventing opportunities for individuals to be exploited in the first instance which is considered the most beneficial for all involved.

One respondent from a recruitment agency made the distinction between Irish recruitment agencies and non-Irish agencies that recruit employees from abroad and place them in jobs in Ireland. This interviewee suggested that the foreign agencies are unregulated, located in other jurisdictions, and may not have a legal basis, and hence might be responsible for the exploitation of migrant workers. The general consensus was that regulated recruitment agencies in Ireland upheld employment law.

This is a comment on the provision of information on migrant workers to hotels:
"It is about training the hotels to make sure that they know something about the country where the employee is from."

This is a comment on how mechanisms of standard-setting and accreditation make an impact:
"Through policing would be the first way of doing it, but through education as well."

This is a comment on employment, placement and recruitment agency best practice:
"If you are recruiting on behalf of another organisation, you make sure that you know exactly the situation that the employee is going to be in, and exactly what job they are going to be doing." [E(1)]

The agency can be a point of contact for both the employer and the employee, and then they can ensure that all the relevant information on rights and entitlements is distributed to both parties. The general consensus emergent from the interviews and focus group discussions is that agencies play a significant role and that there is not a specific monitoring agency for recruitment agencies and that there should be one: NERA carry out this role, but do not have enough resources to do this effectively.

4.2. Prevention measures aimed to reduce the risks of labour exploitation and the obligations of specific organisations in this area

NERA is the state organisation tasked with the provision of information regarding employment rights. The Anti-Human Trafficking Unit, Garda National Immigration Bureau³⁶, Reception and Integration Agency, and the Garda Victims Liaison Office (GVLO) also provide

³⁶ See www.blueblindfold.ie.

information through their websites and engage to greater or lesser degrees in outreach programmes and publication in local language newspapers have also been published to disseminate employee rights information to migrant communities.

For example, the GVLO works closely with marginal communities, conducting community policing and outreach activities:

“Garda liaison officers work on a local level getting to know communities [and] the GNIB carry out training courses in identifying labour exploitation of migrant communities.” [P(1)]

The Citizens Information Bureau, MRCI, ICI, Cairde, Integration Centre, IOM, and NASC all advocate on behalf of migrants.

4.2.1. Prevention measures

A critical issue identified earlier is reducing the fear of officials and state organisations by victims and migrant communities. A central task is to break down barriers between state support organisations and victims themselves. Promising practices to reduce these fears include:

- The NGO sector, particularly the MRCI, NASC, the IMI and Cairde all play a critical role in provide outreach services to migrant communities.
- NERA’s Guide to Employment Rights³⁷ and Information for Employers and Employees is published in 14 languages: English, Irish, Arabic, Chinese, Czech, French, Latvian, Lithuanian, Polish, Portuguese, Romanian, Russian, Slovak and Spanish³⁸.
- The AHTU also provide information in these languages and frequently publish information in local language newspapers.
- One W group interviewee suggested that language barriers have largely been overcome by the trade union SIPTU. This has been achieved by employees with a variety of language skills, translation services and English speaking SIPTU members who speak on behalf of colleagues. Family members of SIPTU members also act as translators occasionally. SIPTU does not have a specific language interpretation policy.
- GVLO have an outreach campaign where they work with local communities in their local setting, including Mosques.
- The NGO sector and the unions all provide different direct advocacy and the provision of information to victims of labour exploitation and provide a support service bridging this gap.
- Unions are attempting to put measures in place to prevent exploitation and to more swiftly and more severely charge perpetrators of exploitation.

For example, SIPTU’s mandate to protect the rights of workers in general and of migrant workers:

³⁷ www.workplacerelations.ie/en/Publications_Forms/Guide_to_Employment_Rights_NERA_.pdf.

³⁸ www.workplacerelations.ie/en/Publications_Forms/Other_Language_Publications/.

“However, there would be specific focus on migrants and prioritising it to the extent to which we have officials who speak a variety of languages, who reach out to the migrant community. There is a gap within the trade union movement in terms of providing a services to exploited workers, such as is provided by the Migrant Right Centre.” [W(1)]

One respondent stated that a service of a national organisation should devote a certain amount of its time to assisting non-members who are in need of assistance; especially in areas of the economy prone to exploitation: such as domestic workers. This is a comment on trade union membership:

“And organising efforts in sectors which are prone to high levels of exploitation. And, organising those sectors, because the view would be the best solution to combat exploitation is by becoming a member of a trade union and joining.” This is a comment on action taken towards exploited mushroom pickers in Ireland: “Seven, eight years ago we started to organise exploited mushroom workers here in Ireland. It’s a huge industry.” [W(1)]

Employee federations (CIF) negotiate with trade unions at a national level on rates of pay for all workers together, including migrant workers. If there are agreements in place on rates of pay, CIF ensures that all its members are aware of this information. The information does not target migrant workers specifically.

There was very little awareness or knowledge of pre-departure programmes in place by the Irish government.

This is a comment on pre-departure information programmes:

“I recognise the government would probably do it in the high-skill area when they are directly recruiting – or have done in the past. In our sectors, if they are issuing a work permit they might send out some information with it, but that all depends on whether the person could access that.” [E(1)]

It was generally agreed that internal and international standards are important. All respondents were aware of these standards. However, the large majority of respondents were not aware of the details of these standards and what their role could be in the implementation of such standards. However, two interviewees in particular stated that standard-setting and accreditation can have an important role to play in terms of distributing information and ensuring that Irish employment legislation is complied with.

Commenting on the role of international standards

“I think their contribution would be in providing information, first of all, and secondly, ensuring compliance with Irish legislation.” [E(1)]

4.2.2. Protection against repeated exploitation

If the victim is a victim of trafficking, they can avail of the National Referral Mechanism which includes: accommodation, medical care and planning, psychological assistance, material assistance, legal aid and advice, access to labour market, vocational training and education,

police services, crime prevention, repatriation, compensation, translation and interpretation services.³⁹

³⁹ See section 5 for more information.

5. Victim support and access to justice

5.1. Victim support, including available support services⁴⁰

The Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality ensures that legislation is up to date and reflects the current needs of the migrant communities, coordinating Ireland's response to human trafficking (including the national referral mechanism) and ensuring that they meet the requirements of those instruments domestically.

Specific instruments cover the Criminal Human Trafficking Act (2008, 213), fall within the Palermo Protocol to the UN Convention against Transnational organised Crime, the Council of Europe Convention against Human Trafficking and the EU Directive on Human Trafficking and Protection of Victims. They also act as a coordination unit for different agencies who have a direct support service mandate and who work with migrant communities. There exist consultative structures in their national referral mechanism which includes high level groups which have senior officials from different departments. All of this is laid down in the national action plan. There is also a round table group which includes senior people within NGOs, and there are five working groups: one of which is on labour exploitation. In these groups there would be representatives from trade unions, MRCI, ISME, and the international organisation IOM as well as the UNHCR. These groups inform the review of the national action for managing human trafficking and labour exploitation. Their role is to coordinate policy.

One interviewee from the W group referred to problems in identifying the victims by the police, and determining whether the case is a criminal or civil issue, pertaining to employment or trafficking rights. The holistic approach they take offers the opportunity to minimise the complexity of the reporting of abuse and bring all forms of exploitation together under one organisation and under one system.

The anti-human trafficking measures are summarised below:⁴¹

Legislation	Criminal Law (Human Trafficking) Act 2008 provides for penalties of up to life imprisonment and – at the discretion of the court – an unlimited fine for trafficking of persons for the purposes of labour or sexual exploitation or for the removal of a person's organs. The 2008 Act builds on the Child Trafficking and Pornography Act 1998.
Administrative Immigration Arrangements	Pending the enactment of the Immigration, Residence and Protection Bill, the Administrative Arrangements for the protection of victims of trafficking provide for the granting of a 60 day recovery and reflection prior for persons who have no legal basis to remain in the country. This can be followed by a six month renewable temporary residence permission where the trafficked person is to assist <i>An Garda Síochána</i> or other

⁴⁰ Promising activities are identified in chapter 7.

⁴¹ Go to www.justice.ie/en/jerlpages/wp09000005 for more information.

	relevant authorities in any investigation or prosecution in relation to the alleged trafficking.
Anti-Human Trafficking Unit	The Anti-Human Trafficking Unit (AHTU) established in the Department of Justice and Equality in February 2008, is working diligently to ensure that the Irish response to trafficking in human beings is coordinated, comprehensive and holistic. A key element of this strategy is the National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009 – 2012. ⁴² A second national action plan is near completion.
Other dedicated anti-human trafficking units	The <i>Garda</i> national Immigration Bureau, the Anti-Human Trafficking Team in the Health Service Executive and the Human Trafficking legal team in the Legal Aid Board.
Services available under the national referral mechanism	The services vary depending on the status and requirements of the victim: victims of trafficking can avail of a larger range of services than victims of labour exploitation. They include accommodation, medical care and planning, psychological assistance, material assistance, legal aid and advice, access to labour market, vocational training and education, police services, crime prevention, repatriation, compensation, translation and interpretation services.

Figure 12: Summary table of support services and mechanisms open to victims of trafficking and labour exploitation

This relates to the identification of individuals as victims and the support mechanisms that are put in place:

“They [inspectors and the Gardaí] will look for indicators of human trafficking and that will supersede their immigration status and seek to put them in the protection of the anti-trafficking framework, both the accommodation, medical and legal support. The front line as the point of contact, inform the potential victims that the services exist. The person does not go to the legal aid board; they will try and make contact and see if they want to make contact with the LAB or not. Sometimes an NGO will ring someone within the GNIB who needs accommodation and support, which will refer them to RIA (Reception and Integration Agency) immediately and try and figure out what the story is afterwards: they try to get them out of the situation first and then see what the merits of the case are. “[N(1)]

The National Employment Rights Authority is the organisation, with the *An Garda Síochána*, who carry out inspections of working conditions in Ireland, and is in many cases the organisation that has first contact with the individual. It is important that the individual be formally recognised as a victim to begin the process of processing their claim. The victims, if undocumented, may be treated simultaneously as a victim of exploitation and as illegally residing in the country. The Reception and Integration Agency (RIA) is the agency who is responsible for housing victims once they have been identified as victims of labour exploitation. The RIA carries out the following functions:

- RIA take cases referred for accommodation from the NERA and *An Garda Síochána* including the victims of trafficking and those seeking asylum. This facility is not

⁴² www.blueblindfold.ie.

available for those who are victims of labour exploitation and do not fit into these categories.

- The RIA services are available for free.
- RIA accommodation centres are operated by private companies.
- Staff would be aware of patterns of use of the accommodation: for example, if someone in the asylum seeking accommodation leaves at 10 pm and returns at 6 am and is dressed in a certain manner indicating that they may be engaged in prostitution.
- They host presentations to create awareness among individuals engaged in the field.
- They have a child and family support unit which includes health and education support and an accommodation support. There is a child and family welfare triptych. In that unit there may be disclosures made regarding trafficking.
- The direct provisions is not based on legislation, it is based on administrative decision.
- Other examples include free fuel, school clothing and footwear schemes: they are not legislated for.
- Trafficking is similar to the direct provisions/ asylum measures as direct provision do not only refer to accommodation but to health and financial support also. The policy focuses on mainstreaming services. All victims are eligible to public health services, the same as an Irish citizen. They will get a medical card, and pocket money of €19.10 per week.
- There are also primary and secondary education and English language courses for victims. This relates to asylum seekers and victims of trafficking, and does not necessarily relate to victims of labour exploitation.

The *Gardaí* will present people to RIA and ask them manage the case, observe the person and refer them to medical screening, counselling and psychological services. The main reception centre near Dublin airport has an onsite health centre. They will be notified to process a case. Financial supports, clothing etc. are made available. This is currently only available to victims of trafficking.

This is a comment on the referral mechanisms and its effectiveness:

“What do you need? You need to give someone food and shelter and healthcare, that is your first port of call. That is done immediately; the referral into RIA kicks off a whole series of other measures.” [S(1)]

Support services are available to all victims of labour exploitation, and when they are accessed they are free. However, there are certain support services which are only made immediately available to victims who identify themselves as being trafficked for exploitation such as health services (through the HSE), clothing and accommodation (through the RIA). Only victims of trafficking have access to immediate support services. Migrant workers who have been subjected to labour exploitation cannot avail of these services, and are usually only offered legal support in addressing a crime. Victim support services are available free of charge to victims who have been trafficked. Generally all services provided by NGOs are available to all victims of labour exploitation. There have been some instances where victims have been found to be working without documentation and when identified through an inspection immediately claimed that they were trafficked: identifying which of these claims are true and which are fallacious poses significant issues for the inspectors and the *Gardaí*.

It was a widely held view that more deterrents to stop employers hiring workers with an irregular status would be an effective strategy.

Repatriation	<ul style="list-style-type: none"> • AHTU • IOM Ireland 	<p>The Anti-Human Trafficking Unit (AHTU) of the Department of Justice are responsible for the implementation of Criminal Human Trafficking Act which falls within the Palermo Protocol to the UN Convention Against Transnational organised Crime, The Council of Europe Convention Against Human Trafficking and the EU Directive on Human Trafficking and Protection of Victims. It would primarily be their role to oversee the repatriation of victims of trafficking.</p> <p>The International Organisation for Migration (Ireland) IOM's work in Ireland is focused on the Voluntary Assisted Return and Reintegration Programme, which provides immigrants with help returning to their native country.</p>
Health, medical care and planning, psychological assistance	<ul style="list-style-type: none"> • HSE • HSA 	<p>Health, psychological and social care are the responsibility of the Health Services Executive. The Health and Safety Authority manage claims of victims and has a mandate to ensure that all workers are treated equally and are adequately protected under legislation.</p>
Legal aid and advice	<ul style="list-style-type: none"> • Legal Aid Board • EAT • NERA • MRCI • ICI • Cairde • NASC • Private solicitors⁴³ 	<p>Legal advice is provided by a number of state agencies such as the Employment Appeals Tribunal and the Equality Authority, National Employment Rights Authority.</p> <p>In a significant number of cases the first point of contact for victims is a member of an NGO, specifically the Migrant Rights Centre Ireland, Irish Immigrant Council of Ireland, Cairde, NASC- The Irish Immigrant Support Centre and in some cases. Some cases are also reported through private solicitors.</p>
Accommodation, material assistance, vocational training and education,	<ul style="list-style-type: none"> • RIA 	<p>Reception and Integration Agency of Ireland would provide victims with accommodation, clothing, food and support in accessing education.</p>
Compensation, translation and	<ul style="list-style-type: none"> • NERA • EAT • Legal Aid Board 	<p>The National Employment Rights Authority would support victims pursuant of compensation, with support from the Employment Appeals Tribunal, the</p>

⁴³ This list is not exhaustive.

interpretation services	<ul style="list-style-type: none"> • Equality Authority • <i>An Garda Síochána</i> 	Equality Authority and the Legal aid board. NERA would also provide translation services.
Police services, crime prevention,	<ul style="list-style-type: none"> • <i>An Garda Síochána</i> 	It is the role of <i>An Garda Síochána</i> to protect the victim against further victimisation.

Figure 13: service providers and their main roles

5.2. Access to justice and other mechanisms to empower victims

5.2.1 Overview

Overall while these mechanisms exist, few severe cases reach prosecution in Ireland.⁴⁴ A J group expert clarified that civil law claims are not dealt with by the criminal justice system. The civil and criminal justice systems can work in parallel, but there is no crossover. A significant number of cases of this nature are brought before the Equality Tribunals, the Employment Rights Authority, and the Rights Commissioners are heard by the Rights Commissioners and a financial agreement settled.

While an initial complaint can be lodged through an intermediary, if an individual wants to bring a case to prosecution they must be present at an official hearing.

5.2.2 Access to justice and the NGO sector

The general consensus among most interviewees is that while there are a number of state mechanisms available for victims to avail of, and that state supported services outlined above provide for victims, the NGO sector plays a vital intermediary role engaging victims in the first instance and empowering them to accessing mechanisms to achieve justice. The main organisations that fit this category of support services interviewed as part of the research were the Migrants Rights Centre of Ireland (MRCI), the Immigrant Council of Ireland, NASC and Cairde.

The MRCI

The MRCI duties can be summarised as follows: assessing a situation where labour exploitation is suspected; keeping confidential records; offer initial support and assistance to victims; enacts protection mechanisms for the victim from further exploitation, with a particular emphasis on safety. Information is passed on and MRCI deals directly with the Work Permit Section in the Department of Social Protection, *An Garda Síochána* and NERA.

The MRCI provides information about rights and entitlements as a preventative measure; advocates for people in their cases with government departments; and tries to project

⁴⁴ See section 4 for more details.

awareness on a community level of the importance of employers complying with the rights of workers.

This is a comment on the general attitude of the state towards possible victims:

“Now, the state would say: ‘Look, we give them bed and board. We provide them with subsistence. They get their health check. There is nothing stopping you at the Migrant Rights Centre from sending them an application into General Immigration.’ That is fine and well, but General Immigration will not act unless the Gardaí believe they are a suspected victim.” [W(1)]

This is a comment on the identification of suspected victims of human trafficking:

“Our view is that the identification of victims in the early stages needs to be taken out of the hands of the Garda National Immigration Bureau, because we believe it is a dual function. You know, they are charged with investigating it and then they are also charged with saying: ‘Okay, we believe this person is a suspected victim,’ which triggers a set of rights.” [W(1)]

This comment reflects the general appreciation of the efforts of other organisations who work supporting victims of labour exploitation yet who operate with different mandates and under different constraints.

“So I appreciate that other [organisations] are working with different constraints and so on, but I think if we can look at putting victims at the centre and saying: “okay, how can we address this”. We had some interesting discussions last year with the Department of Enterprise, Jobs and Innovation, and it was interesting because the officials there took a problem solving approach. I think there is a practical example where we were saying that the work permit system is problematic, and they came back with questions on that. I think a problem solving approach is what we need, maybe we need to employ it now, there is a huge opportunity with the new action plan around human trafficking, we have a forced labour law framework in place now that needs to be tested and see how it works to our advantage, and I think we just need to solve the problems rather than saying: “this is the way it is, we cannot budge on this”, because everyone gets frustrated.”[W(1)]

The ICI

The core brief of the ICI is to create ‘a system that is fair and just to all; including immigrants’. This system would ensure that migrants are treated fairly and equitably with Irish people, and it would provide avenues of regularisation if labour exploitation leads to an undocumented situation from an immigration point of view. In general terms it is not part of the institute’s mandate to promote the rights of workers in general, but it is part of its mandate in relation to migrants.

In cases where there is obvious exploitation then action is taken and they might be referred to the AHTU or to a shelter. However, if the exploitation case does not relate to trafficking and the migrant worker is undocumented, then the priority is to remove the person from Ireland. There are currently no entitlements for individuals, such as back pay of wages, post-removal or post-deportation, and this is a problem as employers who have carried out exploitation can get away without serious sanction.

One interviewee stated that the civil justice system is not effective in this area. There is currently no provision in Irish law for compensation to be paid to workers who have been in an irregular employment situation.

This is a comment on how exploitation can occur due to migrant workers not being aware of their rights:

“It is coupled with the lack of knowledge that what might have been okay or what seems okay from the perspective of where they came from originally might not be okay here, and that they are in fact entitled to more than they are getting.” [L(1)]

This is the interviewee commenting on important risk factors regarding personal characteristics and initial situations upon arrival in Ireland:

“Not being allowed to enter into employment would be a big one; prone to discrimination; and the worker has experienced extreme poverty at home, so they would not necessarily see exploitation as quickly as we would.” [L(1)]

NASC

To reiterate, the broad remit of NASC is to support and protect all migrants living in Ireland.

It is part of NASC’s remit to promote the rights of migrant workers in particular, but not of workers in general. NASC lobbies the Department of Jobs regarding reform of the work permit system, and it supports the work of the Migrant Rights Centre Ireland (MRCI) on the issue of “justice for the undocumented.” One interviewee from NASC identified the following as the key support duties they perform:

- Initial assessments are carried out by NASC staff when an individual enters the drop-in centre and information is documented.
- Information and evidence is safeguarded. NASC offers initial information and assistance.
- Enacting measures aimed at protecting the victim against further exploitation are problematic, and the actions taken depend on the individual’s circumstances.
- NASC passes on information to other public or private institutions that can follow up.

NASC does not have a formal checklist. The interviewee stated that the creation of such a checklist would be beneficial.

This is a comment on the work that NASC carries out in relation to the work permit system:

“What we (NASC) work on specifically (in relation to the prevention of labour exploitation) is that we lobby and advocate for changes around the work permit system, because for the work that we do here, that is a key systemic issue.” [S(1)]

This is comment on innovations that NASC would like to see implemented relating to immigration law:

“We (NASC) would look for a pathway to regularisation, or an opportunity for migrant workers to regularise their status.” [S(1)]

This is a comment on the lack of prosecutions against employers who have exploited migrant workers:

“Look at the statistics, there are little or no prosecutions against employers who have been exploiting their migrant workers, and it’s nearly always migrant workers that are the ones who are being exploited.” [S(1)]

Cairde

The organisation’s main aim is the provision of advocacy in terms of health; their political mandate is focused on social determinants of health such as employment; they work in cooperation with other agencies because other agencies might have more expertise; they work to empower people to bring their cases forward to the employment tribunal; they record and collect data for different issues that are encountered. Part of the institution’s mandate is to indirectly promote the rights of migrant workers. They work with different migrant groups where they provide information about the entitlements of workers. This would especially pertain to health status.

One interviewee stated that a central problem relates to migrants’ legal status. As immigrants cannot get medical cards, this can result in health problems. Since many victims of exploitation are undocumented immigrants, the level of protection they can receive is minimal and they rarely come forward to complain. Those individuals with immigration status may not want to leave their exploitive circumstances because they are not entitled to social welfare or other protections. The interviewee believed it would be beneficial if they could provide some form of protection for these people if they come forward.

This statement pertained to an S group interviewee’s belief that current monitoring practices regarding undocumented migrant workers were insufficient in dealing with exploitation:

“The department of justice would usually monitor the workplaces that they suspect have undocumented workers in. But this is from the point of view of looking for undocumented people rather than looking for whether work conditions were upheld.” [S(1)]

These statements were in relation to difficulties arising from immigration status being dependent on work:

“It is extremely difficult to bring these cases to fruition...By the time the case is heard and a decision is made it can take a year or a year and a half...” [S(1)]

The main problems in accessing justice were engaging the parallel communities, informing individuals of their rights in a language they understand, accessing justice in the case of the victims who do come forward due to cumbersome and time consuming legal issues, and receipt of compensation where proceedings are found in favour of the employee.

Evidence from the analysis of case studies indicates the extent to which victims of severe labour exploitation struggle in accessing justice. In the overwhelming majority of cases analysed the victims failed to achieve a satisfactory outcome through legal proceedings and in many cases where victims were awarded compensation they did not receive any of the monies owed to them. Generally victims had a poor understanding of Irish employment laws and wage structures which led to them making uninformed decisions.

Sections 3.1, 5.1 and 5.2 identify the state organisations and NGO sectors and the service they provide which acts as an overall support mechanism to migrant workers. Other services include:

- Recruitment Agencies who provide employment rights information to their employees and vet employers to minimise possible exposure to victimisation
- Private legal firms who advocate on behalf of individual clients
- Employer organisations who ensure their members adhere to strict codes of conduct
- The Citizens Information Bureau who provide up to date information on all citizens' rights across the country

6. Attitudes

A significant number of interviewees (11) suggested that in the long run, intervention serves the general situation of migrants in Ireland, however, in the short term, possibly individual migrants may not benefit from such proceedings. This is particularly true if they are in an irregular situation as they face the risk of deportation. Significant issues that reduce the efficacy of the resource to justice for the victim are the length of time it takes for any case to be prosecuted (current crime frames are between one and two years); the low level of prosecution; the fear of deportation; the fear of repercussion to the self and one family; and that living under conditions of exploitation in Ireland are better than living in the host country of the migrant. The general opinion was that the measures currently being implemented served the rights of the migrant communities in general and in the long term by addressing systemic issues of exploitation, (such as the more effective implementation of legislation; increase efficacy of outreach programmes meeting the needs of migrant communities; and increased effective networking of monitoring and inspections agencies in the area in Ireland) but possibly not individuals in the short term.

An interviewee from the NGO sector summarised this issue:

“The time commitment of such a claim must be measured in years. Most people in these situations cannot take time off, and they do not know how much money a claim may actually cost them in the end. Language difficulties come into play, and there is additional support needed there as well: time is not on their side.” [S(1)]

This is a comment on whether interventions into situations of labour exploitation serve the interests of the migrant victim:

“I would imagine that in the short-term, for some individuals, it might make matters worse, but in the longer term these things (employment laws) have to be enforced and employers have to be educated.” [J(1)]

This is a comment on the value of interventions:

“Migrant workers may lose their jobs or be forced to return to their country of origin (if interventions are made into situations of labour exploitation), but in the long-term people coming from other counties will benefit, and regard has to be had for the larger picture.” [J(1)]

This is a comment on how migrant workers will sometimes accept exploitation because they have experienced worse conditions in their country of origin:

“Notwithstanding the poor conditions in which they (migrant workers) might be exploited, they still might be economically better off than they would be at home.” [J(1)]

6.1. Why do more migrant workers who are victims of labour exploitation not come forward and seek a way out of their situation?

	Code	E	J	L	M	N	P	R	S	W	Total
Lack of effective monitoring of relevant areas of economy	1	0	0	0	2	0	1	0	3	1	7
Lack of targeted support service provision available to victims	2	0	0	0	1	0	0	0	2	1	4
Victims are not aware of their rights and of support available to them	3	0	3	0	2	0	2	0	2	0	9
Victims fear retaliation from the side of offenders against them or against family members	4	0	1	0	0	1	2	0	2	2	8
Victims suffer from feelings of shame	5	0	0	0	0	0	0	0	1	0	1
Victims believe that speaking to authorities is not worthwhile or they would not benefit from subsequent proceedings	6	0	2	0	0	0	1	0	3	2	8
Victims believe that proceedings are too bureaucratic and costly	7	0	1	0	0	0	0	0	1	0	2
Victims fear that if their situation became known to the authorities, they would have to leave the country	8	0	0	0	2	1	2	0	4	2	11
Victims do not trust that the police in particular would treat them in a sympathetic manner	9	0	1	0	0	0	1	0	2	0	4
Victims perceive being jobless as worse than working in exploitative conditions	10	0	1	0	2	1	0	0	5	1	10
Other-please specify	11	0	0	0	0	0	0	0	1	0	1
Don't know	99	0	0	0	1	0	0	0	0	0	1

Figure 14: Factors that significantly account for the fact that not many migrant workers who have been exploited severely come forward

The main reasons identified by interviewees and in the focus group were fear of being deported (11); being jobless as worse than working in exploitative conditions (10); victims being unaware of their rights (9); fear and mistrust of authorities (8), and fear of repercussions and for the safety of themselves and family members not in the country (8) are also significant factors.

In discussing the key issues that affect trust between the Garda/Police and possible victims, one interviewee highlighted that the cultural barriers can raise problems in effective management of investigations:

“We have to bear in mind that getting the police to the scene does not provide security to the victim and a secure feeling to talk. It is simply the fact that people of a certain

nationality are more open to talking to people from their own community than talking to a Garda.” [L(1)]

The interviewee also stated that prejudices exist on the part of some members of the Garda and that these manifest as misunderstandings which also lead to barriers of communication between parallel communities and the effective engagement between these communities and the police force:

“Prejudices are there and closer collaboration with communities would undoubtedly find more relevant details and be more effective and may change the rational of successfully investigated case outcomes.” [L(1)]

This comment refers to the fact that being in a situation of exploitation in this country can still be better than being unemployed, or even employed, in the country of origin of the migrant:

“One reason is that despite suffering from exploitation, migrant workers might still find themselves in a more prosperous economic situation than they experienced in their native countries. Another reason is the lack of empowerment experienced by victims. Lack of education and fear of the authorities are other reasons.” [J(1)]

This is a comment on the attitude of police towards victims during a raid:

“While people are earning below the minimum wage they are still earning enough to send money home and it is actually mutually beneficial to some extent while being illegal. Quite often the person in this situation may be unhappy that the Gardaí have shown up; they had a plan, they are not being put under duress, they are there for cheap labour and send money home.” [S(1)]

6.2. What are the most important factors to migrant workers who are victims?

Most important factors to migrant workers who are victims	Code	E	J	L	M	N	P	R	S	W	Total
To be safe and to be protected against further victimisation	1	0	1	2	1	1	1	0	3	2	11
For their family to be safe	2	0	1	1	1	0	2	0	1	1	7
To be able to stay and to make a living in an EU country	3	0	2	1	2	0	2	0	5	1	13
To see that offenders are held accountable and that justice is done	4	0	0	1	1	0	0	0	1	1	4
To be respected and to see that their rights are taken seriously	5	0	1	2	0	0	0	0	1	1	5
To be in a position to economically support other family members	6	0	0	0	2	1	3	0	4	1	11
To receive compensation and back pay from employers	7	0	1	2	2	1	0	0	1	1	8
To be able to return home safely	8	0	0	0	0	0	1	0	1	1	3
Other (please specify)	9	0	0	0	0	0	0	0	0	0	0
Don't know	99	0	0	0	1	0	0	0	0	0	1

Figure 15: The most important factors to migrant workers who are victims

The three most important factors to migrants who are victims are to be able to stay and make a living in an EU country (13); to be safe and to be protected against further victimisation (11) and to be in a position to economically support other family members (11).

6.3. Measures which would most improve the way labour exploitation is addressed in the country

Mostly improve the way labour exploitation is addressed	Code	E	J	L	M	N	P	R	S	W	Total
Improve legislation against labour exploitation and its implementation	1	0	0	1	0	0	2	0	1	2	6
Improve legislation to allow better access to justice and compensation	2	1	0	1	2	1	1	0	3	1	10
More effective monitoring of the situation of workers in the areas of economy particular prone to labour exploitation	3	2	1	1	2	0	2	0	3	1	12
Measures to ensure that all workers know their rights	4	2	3	1	3	1	2	0	2	0	14
Measures to ensure that all workers have access to labour unions	5	0	2	0	0	0	1	0	0	1	4
More effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system	6	2	1	2	0	0	1	0	2	0	8
Setting up of specialised police units to monitor and investigate labour exploitation	7	1	0	0	0	0	0	0	1	0	2
Regularising the situation of certain groups of migrant workers with an irregular status	8	1	0	1	0	0	0	0	2	2	6
Regularising the situation of migrant workers once they have become victims of severe labour exploitation	9	0	0	0	1	1	0	0	3	1	6
Measures addressing corruption in the administration	10	0	0	0	0	0	0	0	0	0	0
More training of police, labour inspectors and other authorities	11	0	0	1	1	0	1	0	0	0	3
Police and courts taking labour exploitation more seriously	12	0	0	1	0	0	0	0	0	1	2
Don't know	99	0	0	0	1	0	0	0	1	0	2

Figure 16: Measures which would improve the way labour exploitation is addressed in Ireland

The opinion of the majority of respondents was that while a significant amount is being done, and a lot has been achieved in a short period, including the establishment of several government committees, passing new legislation, establishing organisations to monitor and inspect cases of labour exploitation of migrant communities and support victims, there is always room for improvement.

The main ways in addressing this are to increase measures to ensure individuals know their rights (14); more effective monitoring of the situation of workers in the areas of economy

particular prone to labour exploitation (12) and improve legislation to allow better access to justice and compensation (10), called a 'one stop shop' for lodging of complaints and seeking justice. This 'one-stop-shop' (which was suggested by one J and one M group interviewee) can be described as a single location where a victim can come in the first instance to report their situation, access measures to extricate themselves from their situation and proceed with processing a complaint against their alleged perpetrators of the victimisation. This would consolidate aspects of the work conducted by the MRCI and the ICI, An Garda, NERA, the Rights Commissioners, RIA, the Employment Appeals Tribunal, the Labour Courts and other agencies.

A common perception among respondents was there are requirements to develop more effective coordination and cooperation between labour inspectorates, the police and other parts of administration as well as victim support organisations and the criminal justice system, (8).

6.4. Interviewee comments

Some additional pre-emptive, proactive and preventative measures were also suggested by respondents which can be summarised below.

- *New technologies*

Effective employment of new technologies to prevent trafficking and illegal entry and manage cases across institutions once they are presented was identified by interviewees who are involved in the inspection and monitoring and implementation areas (the Gardaí, RIA, NERA).

Identifying trafficking at the point of entry to the country as well as false documentation could pre-emptively identify potential victims of trafficking before they enter the country. Establishing a central data base for cases across government departments would be one technological improvement, for example. Currently RIA referrals are entered and managed on spreadsheets. It would be preferable to have a central database where members of different departments (official organisations) could access cases. It is possible to gain access to either the initial reporting of cases from the NGO sector, or the results of cases from the Tribunals or Courts: it is difficult to match up these cases as coherent narratives. This is a critical problem and where the effective networking of organisations could support the establishment of an anonymised database of cases, as suggested by the respondent. This would allow in depth knowledge of an individual's history and a more effective identification of critical issues. This would be effective allowing all organisations access to accurate case data from beginning to end and a more detailed understanding of the process victims go through to successfully extricate themselves from situations of exploitation.

This is a comment on whether enough is being done to deter employers from labour exploitation:

"More could be done to make illegal work less palatable to an employer, and I think then we would have a clearer picture of what kinds of needs are required in the economy." [P(1)]

- *A one stop shop, better communication and more integration of services*

MRCI is the main NGO which is active in labour exploitation prevention and investigation and the other organisations are The Human Trafficking Investigation Coordination Unit of the Garda National Immigration Bureau.

One stop shop:

"I think it could be made easier for the victim to come within the referral system." [N(1)]

There are information sharing and mutual training programmes implemented between state agencies, and between the main organisations involved to try to develop some coherent system. It is not yet comprehensive.

Communication and networking

"We view exploitation as being employment rights as our area, but forced labour per say and slavery would be more human rights breaches, and therefore would be in the lap of the Garda and the Department of Justice." [M(1)]

A clear definition of labour exploitation is also critical: the complexity is not clear and a standardised stratification of classes of exploitation needs to be established:

Clear definition of labour exploitation:

"It seems that we've got labour exploitation here and then we've servitude forced labour, but I think in between there's a continuum in there." [W(1)]

International cooperation is also critical, not only in terms of information sharing but in terms of sharing strategic approaches to minimise opportunities for labour exploitation.

International cooperation

"In 2014, we will be sending a number of our inspectors to a number of European countries, four inspectors as far as I know, to look at labour inspection in various aspects in those countries, just to see what other people are doing with the key problems." [M(1)]

Joint working initiatives, workshops and contacts on a national level and international levels are excellent and should be encouraged for future work.

National and international cooperation

"Last year we did a joint project with ICTU. It was led by the International Trade Union Confederation and part of it was working with unions and MRCI and ICTU primarily. We did some work with unions on how to embed responses to forced labour, then we also as part of this project, ICTU and ourselves, we ran a seminar which was great, loads of people came which was brilliant, loads of inspectors came, and we had the Belgian Labour Inspectorate over, and we looked at challenges and case studies. From that, what we are doing is, we have a paper which we're going to turn into key elements for labour inspectors in identification of forced labour. We're working with...[NERA] ...but we're always looking for how we can work even more closely together in the future on particular cases as well. We are looking at those kinds of initiatives into the future, how to build on some of the testing out work that we did this year ...to look at how, around victims, again it's the more extreme end, to look at victim protections. [Our conference before Christmas]

was very useful in terms of looking at other models and the way other countries do it and so on. So we can feed some of that learning into the work this year, the review of the national action plan, but also working with the trade unions around how do we tackle the issue on a continuum basis and work together more effectively.” [W(1)]

- Simplification of legislation and access to justice

This is being pursued through the development of the new anti-human trafficking action plan, a reconfiguration of the Employment Equality Authority and the Rights Commissioners, and through amendments of legislation such as the expansions of the Human Trafficking Act in 2013.

In summary, victims of labour exploitation would benefit greatly from more effective monitoring and inspections, more resources and capacity given to NERA, many more targeted victim support services, access to effective remedies and compensation for victims of labour exploitation, including irregular migrants, an increase in safe migration pathways into the country, more information made available about the rights of migrant workers in different languages, NERA needs to be allowed to identify victims of trafficking, and better support services need to be provided to victims of trafficking.

7. Conclusion and any other observations, including contentious issues from interviews/focus groups

Overall, while there are few cases of severe labour exploitation in Ireland, and the severity of the cases varies significantly, it remains a serious breach of human rights as enshrined in national and international law. In the last two decades, with the growth in the immigrant population in Ireland a significant number of state institutions (AHTU, GNIB, NERA, HSE, RIA) have been established to prevent, investigate and implement support measures for victims and address cultural issues concerning mistrust between the state organisations; especially the police. It was widely believed by the interviewees, without exception, that there was no corruption in the police or public administration in this area. A significant number of NGOs in Ireland play pivotal roles in bridging the gaps between the victims and the official authorities (MRCI, ICI, NASC, Cairde), addressing the issue of access to parallel communities and creating situations of trust between the victim and official support services. However, the lack of criminal prosecutions for labour exploitation is a strong indicator that investigations and outreach strategies can be improved.

Significant legal obstacles remain in Ireland which makes it difficult to prosecute employers. These include the ability of an employer to liquidate a business and start a new business which voids the individual of responsibility in any legal sense. A landmark case is that of the Mohammad Yunus case where the individual, although found to be a victim of severe labour exploitation, was not eligible to bring a case against the employer to court as he did not have a legal status to work in the country. The case has been a landmark issue which has caused concern in official and non-state organisations alike, as it absolves the employer of any obligations to the employee even under conditions of exploitation. It is being appealed to the high court and the Irish government is looking to amend legislation to address this anomaly. This is being addressed in legislation at the moment via the AHTU. There have been some positive developments in Ireland regarding fighting against labour exploitation, such as the expansion of the Human Trafficking Act in 2013, but more attention needs to be paid to cases of labour exploitation that are unrelated to human trafficking and address issues where an employee is working illegally in the state, but should still be able to avail of their rights not to be exploited.

Interventions can have negative consequences for migrant victims, such as the loss of employment and/or deportation, but in the long-term such interventions create awareness and decrease the possibility of labour exploitation of migrant workers taking place in the future. Despite suffering from exploitation, migrant workers might still find themselves in a more prosperous economic situation than they experienced in their native countries.

The focus of the Equality Tribunal is narrow, and its only concern is whether an employee has been treated less favourably than other employees. It is focused exclusively on discrimination in the work place rather than exploitation. The civil justice system can be effective in enabling regular migrant workers to claim compensation, but it is not open to irregular migrant workers. People are entitled to information regarding issues such as wages, working conditions and annual leave under the Terms of Information Act.

The issue of migrants living within parallel communities remains a barrier to allowing victims to avail of services aimed at them. Within these communities, victims remain cut off from access to justice via poor language skills, isolation, poor education, a lack of knowledge of their rights, and embeddedness in the trusted community. Effective outreach programmes are being developed and implemented by a number of organisations (NERA and the AHTU), institutions (GLVO) and non-state organisations (MRCI, ICI, NASC, Cairde) to address these issues. In addition, increased networking and information sharing between these organisations is proving effective. Specific measures include the publication of information by NERA in 14 languages regarding workers' rights; the publications by AHTU in local foreign language newspapers; outreach programmes addressing and engaging parallel communities' through workplace, sport, parishes, and publication. The specific aims of the GVLO is to reduce fear and mistrust and also cultural misunderstandings/ bringing cultural issue from the police.

The length of time for cases to be prosecuted (one to two years) also represents a significant barrier to accessing justice for victims who do come forward. Measures to address these waiting times are also being reviewed by state authorities through a reconfiguration of the Employment Appeals Tribunal and the Rights Commissioners.

How exploitation is defined represents a significant issue which arose in the context of the interviews. Exploitation is understood very differently by different respondents. In some cases it refers to any form of exploitation which includes pay, hours worked, and in others it refers specifically to severe forms of exploitation such as slave or bonded labour, extremely poor working conditions, deprivation, or sexual exploitation. Nonetheless, good cooperation exists between all organisations that have the victim's wellbeing at the centre of their concern. However, more intensive cooperation between organisations could mitigate these uncertainties. New strategies and method for cooperation are being reviewed by MRCI, NERA, ICIC, the AHTU and other organisations.

Language barriers are the largest personal obstacles for migrants seeking ways out of situations of exploitation, while a lack of education, skills deficits and societal prejudices are among the other personal characteristics that open individuals up to the risk of exploitation.

Methods by which to disseminate employment rights information are critical in addressing labour exploitation in Ireland. Effective distribution of information to migrant workers about their rights and entitlements is crucial if more exploited workers are going to come forward to the authorities. Employment and recruitment agencies should require that prospective clients agree to a code of practice regarding employees before conducting business with them.

A central database for all cases which would be accessible to all government departments, and to NGO's under restricted conditions, would benefit the implementation of strategies to minimise misidentification of cases and fast track the possibility of access to justice for legitimate claims.

Mechanisms of standard-setting and accreditation play a role by policing, but also through the provision of information and educational training for employers of migrant workers.

Up to date legislation, resources, and increased cooperation between national and international organisations with more data on the subject area will continue to close opportunities for exploitation and enhance support mechanisms and their effectiveness,

allowing those who do find themselves in situations where they are being exploited to extricate themselves from this situation.