

**Mandates of the Special Rapporteur on trafficking in persons, especially women and children;
;the Special Rapporteur on adequate housing as a component of the right to an adequate
standard of living, and on the right to non-discrimination in this context and the Special
Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related
intolerance**

Ref.: AL IRL 1/2023
(Please use this reference in your reply)

27 June 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on trafficking in persons, especially women and children;; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 44/4, 52/10 and 52/36.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **case of a non-EU / EEA national, who was identified as a victim of trafficking but was not provided with appropriate accommodation or assistance by the State**. As a result, she remained in a situation of continued vulnerability, without specialized assistance and safe accommodation, exposed to further of re-trafficking and re-victimization. This case is analyzed against concerning general trends related to lack of adequate accommodation for third country (non-EU / EEA) nationals, including migrants, asylum seekers, refugees and victims of trafficking in Ireland.

According to the information received:

Ms. [REDACTED], a national from Brazil, with two children, aged 8 and 17, and currently pregnant, was formally identified as a victim of trafficking in May 2019. A criminal investigation was undertaken in relation to the alleged criminal offenses against Ms. [REDACTED].

Ms. [REDACTED] was granted a residency permit in June 2019 on the basis of the Administrative Immigration Arrangements for the Protection of Victims of Trafficking (AIAs). The permit was renewed five times during a period of three years and in June 2022, she received a renewable two-year residency permit. In December 2019, Ms. [REDACTED]' two children entered Ireland to reside with her.

Accommodation in direct provision

As an identified victim of trafficking in 2019, Ms. [REDACTED] was eligible to reside in Direct Provision accommodation – the accommodation provided to asylum seekers in Ireland, including victims of trafficking. In the following 4 years, Ms. [REDACTED] was moved to 4 different locations. At the time of the submission of this communication, she is in the final stages of her pregnancy, while residing with her two sons in one room, with no independent access to cooking facilities or private space, causing her and her children additional stress and anxiety, and limited opportunity for private and family life. Ms. [REDACTED]

██████ has reported to a psychologist of the Health Services Executive that she has experience harassment and felt unsafe in the mixed gender accommodation that she was placed in within the Direct Provision. This situation continued to cause difficulties for Ms. ██████ to effectively recover from the traumatic experience of having been exploited as a victim of trafficking, or to receive the specialised assistance to which she was entitled as a victim of trafficking.

Multiple applications for local authority housing support

In September 2019, Ms. ██████ applied for housing support to Dublin City Council, her application was approved and placed on a waiting list pending availability of suitable accommodation for her housing needs. However, in June 2020, the application was refused on the basis that she did not hold a five-year residence permit. A second request made on 16 November 2021 remained unanswered and according to information received, the request was refused due to the temporary nature of her visa, which at the time had a validity of 6 months. A third request was made around September 2022 when Ms. ██████ was granted a two-year residence permit, in accordance with the AIAs. No written response was communicated to Ms. ██████ regarding the outcome or status of her application.

According to the information received, Ms ██████ was informed by Dublin City Council that the decision on her housing support application would depend on the outcome of the criminal trial of Ms. ██████' alleged traffickers. Due to the absence of any final response, on 3 January 2023, Ms. ██████ submitted a subsequent application to the local authority in the area wherein she currently resides. Very shortly after she provided evidence in the criminal trial of the persons accused of the trafficking offenses against Ms. ██████, she was informed that she has been approved for social housing. Given comments made by the representative of Dublin City Council some months prior to this approval, Ms. ██████ is concerned that the approval of her accommodation application, was contingent on her participation as a witness in the criminal proceedings. A written confirmation of the decision to approve her request for social housing remains pending at the time of issuing this communication, while Ms. ██████ still remains living in the Direct Provision accommodation.

Complaint to the Minister of Justice

In July 2022, Ms. ██████ submitted a complaint to the Minister of Justice regarding concerns related to the state's failure to provide her with safe and appropriate accommodation.

Situation of inconsistent and inadequate provision of accommodations for victims of trafficking

According to the information received, there is concern that the migration status of a victim of trafficking, and whether a victim of trafficking is a national of a European Economic Area (EEA) member state, appears to have implications for the victim's eligibility for accommodation. EEA nationals can receive support from both Ireland's International Protection Accommodation Service (IPAS) as well as the services for persons in situations of homelessness.

Situation of non-EEA applicants for international protection

Non-EEA nationals, victims of trafficking who are applicants for international protection are eligible for accommodation and are referred to the International Protection Accommodation Services. Repeated concerns have been raised by the Council of Europe Group of Experts on Action against trafficking in Human Beings, UN treaty bodies, and the Irish Human Rights and Equality Commission, concerning the absence of specialised and safe accommodation for victims of trafficking, and the absence of a statutory framework for protection of victims' rights to assistance.¹

As victims of human trafficking are recognised as a vulnerable category of international protection applicants, they are entitled to a vulnerability assessment, to ensure that their rights as victims of trafficking, are met to specialised assistance and protection. According to the information received, however, vulnerability assessments are not carried out in a systematic manner and the rights of victims of trafficking to specialised assistance and accommodation are not ensured.

Ms. ██████████ was accommodated in Direct Provision, the accommodation available to asylum seekers in Ireland, and was required to make repeated applications for housing support.

According to the information received, despite the existence of a dedicated housing circular on providing housing support specifically to victims of trafficking, regardless of nationality, refusal of access to housing by local authorities may be due to continuing confusion arising from a housing circular, which states that non- non-EEA nationals holding residency permits of less than five years, would be not entitled to housing support.

Concerns have previously been raised by the UN Committee on the Elimination of Racial Discrimination (CERD) regarding the system of Direct Provision, noting inadequate regulation or accountability measures, (CERD/C/IRL/CO/5-9, para 37b). Specifically, in relation to victims of trafficking, CERD recommended that legislation should be enacted to provide victims of trafficking with rights to specialized assistance and legal protection irrespective of nationality or immigration status, (CERD/C/IRL/CO/5-9, para 42c). Concerns have also been raised by the UN Human Rights Committee relating to the lack of gender-specific accommodation for victims, especially sexually exploited, trafficked women and girls (arts. 7–8 and 24 ICCPR) (CCPR/C/IRL/CO/5, para.31). The Committee also concluded that the State should ensure that assistance to victims is not conditional upon cooperation with the competent authorities in investigations and criminal proceedings (para.32(b)).

The Irish Human Rights and Equality Commission has highlighted the existence of conflicting policies at national and local authority level, and their impact in preventing eligible victims of trafficking from exiting Direct Provision and

¹ Evaluation Report: Ireland (Third Evaluation round) GRETA (2022)12, paras. 202-205, and see: Irish Human Rights and Equality Commission “Contribution to the 4th Progress Report on the Fight against Trafficking in Human Beings in the European Union”, available at: <https://www.ihrec.ie/app/uploads/2022/03/Contribution-to-the-4th-Progress-Report-on-the-Fight-against-Trafficking-in-Human-Beings-in-the-European-Union-.docx> (especially pp 22-24)

securing access to housing.²

We recall Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings (Assistance to victims), which states: “States shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least: a standard of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance.” Further Article 12(6) provides that States, “shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.” We highlight the repeated concerns raised by the Council of Europe Group of Experts on Action against Trafficking in Human Beings, most recently in its Third Evaluation Report, and its recommendation:

“[...] to set up, as a matter of priority, specialized accommodation facilities for victims of THB [trafficking in human beings] and to ensure that accommodation is gender-sensitive, appropriate and safe, and that victims are provided with specialized services. In addition to better support and protection of the victims, this would also be in the interest of the investigation. Further, the authorities should enact statutory rights to assistance and protection for possible victims of trafficking, as specified in Articles 10 and 12 of the Convention, regardless of the victims' nationality or immigration status.” GRETA (2022) 12, p.56

While we do not wish to prejudge the accuracy of these allegations, we wish to express our concern that the provision of accommodation support to victims of trafficking may be linked to cooperation in criminal proceedings, and that eligibility for housing assistance of victims of trafficking, and their rights to specialized assistance and protection are not fully understood by all relevant actors. We would also like to express concern that despite recognition of victims of trafficking as a vulnerable category of protection applicants, entitled to special needs assessment and to having such needs met, vulnerability assessments are neither carried out in a systematic manner nor the needs arising from such vulnerabilities comprehensively assessed in a timely manner. We highlight the importance of ensuring that assistance to victims of trafficking, including of safe housing, is not conditional upon cooperation with a criminal investigation into the serious crime and serious human rights violation of trafficking in persons. There are serious concerns that current policy and practice fails to comply with the State's obligations arising under international law, to protect trafficking of persons, and to ensure effective assistance and protection of persons at risk of trafficking, including while seeking asylum.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

² Irish Human Rights and Equality Commission, Trafficking in Human Beings in Ireland Evaluation of the Implementation of the EU Anti-Trafficking Directive, June 2022

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on how Ireland ensures that victims of trafficking have access to adequate housing, including before the completion of criminal proceedings against the alleged perpetrators, regardless of whether they come from EEA and non-EEA, countries in line with the principle of non-discrimination.
3. Please provide information about any systematic assessments to victims of trafficking because of their increased vulnerabilities in order to safeguard them protect and prevent them from being re-trafficked.
4. Please explain how Ireland justified the placement in Direct Accommodation of vulnerable women victims of trafficking in human beings, and their children; and whether it considers this to be adequate, appropriate and safe housing given their specific vulnerabilities, including the risk of re-trafficking.
5. Please explain whether the eventual positive response to Ms. [REDACTED] application for housing support was contingent upon cooperation with a criminal investigation into her experience of trafficking, and / or on the successful criminal prosecution of those accused of trafficking.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Siobhán Mullally
Special Rapporteur on trafficking in persons, especially women and children

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

K.P. Ashwini
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to bring to your Excellency's attention to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), adopted on 15 November 2000, and ratified by Ireland on 17 June 2010, which aims. to (i) prevent and combat trafficking in persons, paying particular attention to women and children; (ii) protect and assist the victims. of such trafficking, with full respect for their human rights; (iii) promote cooperation among States Parties in order to meet those objectives (article 2).

Further we recall Article 6 of the Palermo Protocol, "Assistance to and protection of victims of trafficking in persons", which provides in paragraph 3(a) for the provision of "appropriate housing", and Article 14(2), which requires States to ensure compliance with internationally recognized principles of non-discrimination in implementation of measures set out in the Protocol, and specifically to protect against discrimination on the ground that a person is a victim of trafficking in persons.

We would also like to draw your Excellency's attention to the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) ratified by Ireland on 1 November 2010. Article 12 (Assistance to victims), paragraph 6 states that State Parties will adopt legislative or other measures to ensure assistance to a victim is not conditional to their willingness to act as a witness. We would also like to draw your Excellency's attention to Article 12(1) which sets out the obligation for State Parties to adopt legislative and other measures needed to assist victims of trafficking adequate standards of living for their subsistence, through such measures as appropriate and secure accommodation.

We recall Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings (Assistance to victims), which states: "States shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least: a standard of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance." Further Article 12(6) provides that States, "shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness." We highlight the repeated concerns raised by the Council of Europe Group of Experts on Action against Trafficking in Human Beings, most recently in its Third Evaluation Report, and its recommendation:

"[...] to set up, as a matter of priority, specialized accommodation facilities for victims of THB [trafficking in human beings] and to ensure that accommodation is gender-sensitive, appropriate and safe, and that victims are provided with specialized services. In addition to better support and protection of the victims, this would also be in the interest of the investigation. Further, the authorities should enact statutory rights to assistance and protection for possible victims of trafficking, as specified in Articles 10 and 12 of the Convention, regardless of the victims' nationality or immigration status." GRETA (2022)12, p.56

We would also like to draw your Excellency's attention to Article 11(5) of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011/36/EU), adopted on 15 April 2011 which states that assistance and support measures, "shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

We recall General Recommendation no.38 of the Committee on the Elimination of All Forms of Discrimination against Women, which recommends, at paragraph 93, that States, "Provide immediate access to a sufficient number of adequately funded, well equipped, shelters, and separate units for victims of sexual violence and enforced prostitution within shelters and crisis centres, which are safe, accessible, and appropriate for trafficked women and girls, including women accompanied by children, with specially trained staff that focus on the provision of tailored assistance to victims according to standard operating procedures ensuring their dignified treatment in a confidential manner." (CEDAW/C/GC/38)

We wish to remind your Excellency's Government of the obligations it assumed upon ratification on 8 Dec 1989 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), in particular concerning right of everyone to an adequate standard of living for himself and his family, including adequate housing (article 11(1)). In its General Comment No. 4 clarifying obligations under the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) emphasized that "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head [...]. Rather it should be seen as the right to live somewhere in security, peace and dignity."

With regard to State obligations concerning racial discrimination in the enjoyment of the right to adequate housing, we wish to refer to the provisions of article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, acceded to by Ireland on 21 March 1968, as well as article 2(2) of ICESCR, which must be read in conjunction with article 11(1). We recall that the CESCR, in its general comment No. 20 on non-discrimination, has clarified that the right to adequate housing applies to everyone, including non-nationals such as stateless persons and migrant workers, regardless of legal status and documentation.

We would also like to refer to the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43) - presented to the Human Rights Council by the former Special Rapporteur on the right to adequate housing - which state that asylum seekers and women, along with other groups, are disproportionately represented among those living in homelessness, in informal accommodation and inadequate housing, and are often relegated to the most marginal and unsafe areas. These groups often experience intersectional discrimination as a result of their housing status.

We recall Article 4 of the European Convention on Human Rights (ECHR), and the object and purpose of the Convention, "as an instrument for the protection of

individual human beings”, which requires that its provisions be interpreted and applied so as to make its safeguards “practical and effective”. (*Rantsev v Cyprus and Russia* (Application no. 25965/04), para.275). As stated by the European Court of Human Rights in *Rantsev* (para.282), “trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. Further the Court stated, that, “In the Court’s view, the duty to take operational measures under Article 4 of the Convention has two principal aims: to protect the victim of trafficking from further harm; and to facilitate his or her recovery.” (*V.C.L. and A.N. v. The United Kingdom*, (Applications nos. 77587/12 and 74603/12), para.159).

Further we recall Article 1 of the Charter of Fundamental Rights of the European Union, under which human dignity is recognized as inviolable, that must be respected and protected. We also recall the recent judgment of the High Court of Ireland, *S.Y. (A minor suing by his next friend Aoife Dare) v. The Minister for Children, Equality, Disability, Integration and Youth, Ireland and the Attorney General, the Child and Family Agency* [2023 175 JR]. in which it was held: “that the Minister’s failure to provide to the applicant the “material reception conditions” pursuant to the European Union (Reception Conditions) Regulations 2018 was unlawful”; and (ii) “that the failure by the Minister to provide to the applicant the “material reception conditions” pursuant to European Union (Reception Conditions) Regulations 2018 is in breach of the applicant’s rights under Article 1 of the Charter of Fundamental Rights of the European Union.” (at p.22)