

Trafficking for Forced Labour in Cannabis Production: The Case of Ireland



INTRODUCTION

Human trafficking for the purpose of criminal exploitation is a form of forced labour. It is a relatively new phenomenon in Ireland, compared with other types of exploitation. National legislation has only very recently recognised and criminalised this type of trafficking¹. As such, there is a shortage of data on this issue. There is no available information stored nationally in relation to the gender and nationalities of victims of trafficking for criminal activities, or perpetrators².

This research is part of a wider European study, to explore responses against trafficking for forced criminal activity led by Anti-Slavery International (ASI) - RACE in Europe. This study focuses on forced labour in cannabis production and is an initial exploration of this phenomenon in Ireland. It is intended to undertake further research in this area in the future as more information becomes available. This study examined the nature and scale of trafficking for cannabis production specifically focusing on cases and reports where Vietnamese and Chinese nationals were involved. The reason for this focus was a trend was identified by ASI of victims being trafficked from Vietnam to Ireland via the UK. This project used a wide range of sources in its research. These included:

- Semi-structured interviews conducted with key individuals from the legal profession, the Anti-Human Trafficking Unit (AHTU) within the Department of Justice and Equality, the Human Trafficking Investigation and Co-ordination Unit within An Garda Síochána, and the Chaplain Service at Mount- Joy Prison.
- Reports from the Central Statistics Office, the Courts Service, the Irish Prison Service and the EU Drug Market Report

- An analysis of Irish legislation and trafficking policy
- An analysis of media articles and press releases
- Parliamentary question
- Case studies provided by the Migrant Rights Centre Ireland (MRCI)

IRISH LEGAL AND POLICY CONTEXT

Several pieces of domestic legislation in Ireland deal with aspects of trafficking for forced labour.

The Illegal Immigrants (Trafficking) Act 2000 makes it an offence to organise or knowingly facilitate the entry into Ireland of another person who one knows or has reasonable cause to believe is an illegal immigrant.

The Employment Permits Act 2006 contains provisions which criminalise elements of a forced labour situation. For instance, Section 23 makes it an offence for an employer to retain their employees' passport, identity papers, and qualification documents, or to make deductions from their wages to pay for recruitment fees, travelling expenses or other fees related to obtaining a job in Ireland.

The Criminal Law (Human Trafficking) Act 2008 was the first comprehensive piece of anti-trafficking legislation in Ireland, incorporating a definition of trafficking modelled closely on the United Nation's Trafficking Protocol. The legislation created offences criminalising trafficking in persons for the purposes of sexual and labour exploitation (including subjecting a person to forced labour) or the removal of their organs. Under the Act, a person found guilty of the offence of trafficking in human beings is liable to a maximum penalty of life imprisonment and, at the discretion of the court, an unlimited fine.

In July 2013 **the Criminal Law (Human Trafficking) (Amendment) Act 2013** transposed the criminal law provisions of EU Directive 2011/36, expanding the definition

1 Criminal Law (Human Trafficking) (Amendment) Act 2013

2 Written response from Garda National Immigration Bureau (GNIB) on 1st of July 2013

of human trafficking for the purposes of criminal activities and forced begging. The new definition of forced labour is based on the International Labour Organisation (ILO) Convention 29 of 1930 on Forced or Compulsory Labour where “forced labour” means a work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily³. This new law expands the definition of exploitation to include forcing a person to engage in an activity that constitutes an offence and as such acknowledges that victims may be exploited through criminal activities.⁴ The Act also defines forced begging as a form of labour exploitation.⁵ These provisions are untested and as such it is unclear whether they represent a defence by prosecuted victims for the crimes they have been forced to commit.

The Director of Public Prosecutors (DPP) has nominated particular prosecutors to deal with cases of human trafficking. There are general DPPs Guidelines for Prosecutors (2010)⁶ which guide prosecutors on which factors should be considered in assessing whether to commence or continue with a prosecution. This includes a consideration as to whether it is in the public interest to prosecute a victim of human trafficking for offences they have been compelled to commit as a result of being trafficked. However, it does not detail the elements of what constitutes human trafficking or forced labour for criminal exploitation. In Ireland, prosecution is at the absolute discretion of the DPP, although an application can be made by way of judicial review to prohibit the trial of a victim as an abuse of process. Whether or not such an application would succeed depends on the level to which the commission of the offence was connected to the exploitation.

Victims’ Directive 2012/29/EU which is to be transposed by 2015 is an opportunity to address the rights of victims. The Directive gives minimum rights, supports, and protection to all victims of crime. In particular it requires that certain information should be provided to victims on their first contact with the Gardaí. On request victims should also be provided with information and reasons as to why an investigation has been discontinued or why there was a decision not to prosecute. This will be an important development as currently victims are not provided with the reasons for the decision not to prosecute.

³ Section 1(c) of the Criminal Law (Human Trafficking) (Amendment) Act 2013

⁴ The Criminal Law (Human Trafficking) Amendment Act section 1 (a) (d) (i) expands the definition of exploitation to include forcing a person to engage in— an activity that constitutes an offence and that is engaged in for financial gain or that by implication is engaged in for financial gain.

⁵ The Criminal Law (Human Trafficking) Amendment Act section 1 (b) (a) expands the definition of ‘labour exploitation’ as subjecting the person to forced labour (including forcing him or her to beg).

⁶ Guidelines for Prosecutors Director of Public Prosecutions (Nov 2010), accessed on www.dppireland.ie/filestore/documents/Guidelines_-_Revised_Nov_2010_eng.pdf

Anti-Trafficking Policy Provisions

An Anti-Human Trafficking Unit (AHTU) was set up in the Department of Justice and Equality in 2008 to coordinate the Government’s response to human trafficking. A National Action Plan (2009 - 2012) for the prevention and prosecution of human trafficking and the protection of victims was established in June 2009. This contains a range of measures designed to deal with individuals and gangs involved in trafficking in people as well as the development of awareness campaigns and the collection of up to date data on the nature and extent of trafficking. A second National Action Plan is currently being developed. The AHTU proposes to incorporate the expanded definition of forced labour into this plan and to develop safeguarding guidance material to reflect the complexities and subtleties of trafficking for criminal exploitation⁷.

An Garda Síochána established the Human Trafficking Investigation and Co-ordination Unit in 2009. The Unit oversees all investigations where there is an element of human trafficking and provides advice, guidance and operational support for investigations.

In June 2008, the ‘Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking’ were introduced which provide for certain immigration-related protections for persons identified as suspected victims of human trafficking. The administrative arrangements provide for a period of recovery and reflection⁸ and also, in certain circumstances, either a renewable temporary or permanent residence permit.

Protection measures for victims of trafficking are not included in the Criminal Law (Human Trafficking) Act 2008 or in the Criminal Law (Human Trafficking) (Amendment) Act 2013. However, there is a commitment to introduce protections in the forthcoming Immigration, Residence and Protection (IRP) Bill. There is no time frame for the legislation. The Administrative Immigration Arrangements constitute the interim protection measures for the victims of trafficking and will remain in place pending the enactment of the IRP Bill. These arrangements in effect create the National Referral Mechanism.

⁷ Interview with AHTU staff member 15th May 2013

⁸ A person who has been identified by a member of An Garda Síochána not below the rank of Superintendent in Garda National Immigration Bureau as a suspected victim of human trafficking may be granted a permission to remain lawfully in the State for a period of 60 days (a “recovery and reflection period”). The purpose of this period is to allow the person time to recover from the alleged trafficking and to escape influences of the alleged perpetrators of the trafficking so that the person could make an informed decision as to whether to assist Gardaí or other relevant authorities in the investigation

NATURE AND SCOPE OF TRAFFICKING FOR FORCED CRIMINAL EXPLOITATION

Context

The 2013 European Union (EU) Drug Market Report⁹ noted that Ireland has experienced an increase in the domestic cultivation of cannabis in the last five years. In 2012 there was substantial media coverage on raids of cannabis farms as part of Operation Nitrogen and Operation Wireless; intelligence-led operations targeting cannabis cultivation in Ireland.¹⁰ As a result of these operations, both running for the past few years, a substantial number of cannabis farms across Ireland were identified and dismantled. During 2011 there were 500 growing houses located under the above-named operations resulting in over 26,000 cannabis plants, with an estimated value of €10.5m, being seized.¹¹

An Garda Síochána reported that the production of cannabis has become more sophisticated, with higher-yield and higher-potency crops being cultivated. Cannabis farms are also much more difficult to detect due to more ingenious and clandestine cultivation techniques. For instance, in April 2013 the Gardaí discovered a sophisticated underground bunker constructed from two 40-foot long containers, with heating and lighting equipment, hidden beneath a caravan. This cannabis grow house was described as the most “ingenious and sophisticated” that the police had come across.¹²

According to the 2013 EU Drug Market Report, as well as media reports, the commercial cannabis industry in Ireland has been controlled predominantly by Vietnamese and Chinese gangs, although An Garda Síochána have reported “an increase in the number of Irish and Eastern European gangs involved in the industry.”¹³ Articles detailing cannabis farm raids are regularly reported in the Irish media, often noting that the individuals found in them have been charged, and even convicted, for cannabis cultivation. For instance, it was reported that “54 foreigners were arrested in cannabis farm raids as part of Operation Wireless, with the majority of those in custody being Chinese and

Vietnamese nationals.”¹⁴ Other articles have reported cases where Vietnamese or Chinese nationals have been found alone working as the “gardener” in residential or commercial properties which have been converted into cannabis factories.¹⁵

Sentencing and convictions for cannabis production

The Irish Prison Service notes that the number of sentenced committals for controlled drug offences for 2012 was 922 out of total sentenced committals of 13,526¹⁶. The number of prisoners in custody under sentence for 2012 was 704 out of total number of 3,710¹⁷.

In 2013, the Irish Penal Reform Trust¹⁸ found that there were 80 persons of Asian origin in custody for drug related offences. The table gives a further breakdown as follows:

No of persons of Asian origin sentenced	46
No of person of Asian origin on trial/remand	34

50 persons are in custody for cannabis cultivation, of whom 35 have been sentenced. The remaining 15 are currently either on trial or on remand. The number in custody can be further broken down as follows:

No of persons of Asian origin	36
No of EU Nationals	7
No of Irish Nationals	5
No of UK Nationals	2

The MRCI have begun a programme of outreach to prisons in cooperation with legal firms to reach out to potential victims and provide expert advice and conduct assessments of human trafficking. Since the beginning of 2014, MRCI has assisted on 21 cases of potential human trafficking and conducted assessments of some of these cases.

9 EU Drug Market Report / A Strategic Analysis, 2013. *European Monitoring Centre for Drugs and Drug Addiction and Europol*, p. 64

10 Although Operation Nitrogen was established to specifically target cannabis cultivation, Operation Wireless, set up under the direction of the Garda Commissioner, has targeted a variety of organised criminal activities nationwide including cannabis farms.

11 Department of Justice and Equality, Topical Issues Debate Response by Minister Alan Shatter - The law enforcement efforts being taken to prevent the cultivation of cannabis and the trading of prescription drugs, 18th October 2012. Available at: www.justice.ie/en/JELR/Pages/SP12000287 [Last accessed 20th August 2013]

12 The Irish Times, 25th April 2013, “Gardaí uncover underground cannabis growhouse in Cork”. Available at: <http://www.irishtimes.com/news/crime-and-law/gardai-uncover-underground-cannabis-growhouse-in-cork-1.1372389>, Last accessed 20th August 2013.

13 Irish Times, 1st of June 2012, “Garda raid cannabis grow houses”

14 Irish Herald, 21st November 2012. “Triad gangs busted here in cannabis grow hose raids” Available at: <http://www.herald.ie/news/triad-gangs-busted-here-in-cannabis-growhouse-raids-28907167.html> (Last accessed 18th August 2012)

15 Evening Echo, 19th June 2013. “Drug grower brought here from abroad” Available at: <http://issuu.com/tcmeditorial/docs/01ee2013-06-19e0/1> [Last accessed 17th August 2013]

16 <http://www.irishprisons.ie/images/pdf/yearlyoffence12.pdf>

17 <http://www.irishprisons.ie/images/pdf/snapshotoffence12.pdf>

18 Information received from Irish Penal Reform Trust on the 25th of November 2013

Sentencing practices of courts in relation to persons of Asian origin, particularly Vietnamese and Chinese nationals in cannabis production, has been highlighted as a key issue by CCC Nuacht (News Wire). The CCC Nuacht¹⁹ compiled data regarding the sentencing practices for cannabis cultivation within the Dublin area. They found that Chinese and Vietnamese nationals who claimed exploitation or maltreatment make up 75 per cent of those going to prison for large-scale cannabis cultivation²⁰. They recorded 51 convictions for cannabis cultivation over the period 2011 to July 2013 which is broken down as follows:

No of convicted Vietnamese Nationals	14
No of convicted Chinese Nationals	11
No of convicted No of Irish Nationals	18
No of convicted other EU Nationals	8

32 out of 51 were incarcerated for cannabis cultivation. This figure is broken down as follows:

No of incarcerated Vietnamese Nationals	13
No of incarcerated Chinese Nationals	11
No of incarcerated Irish Nationals	5
No of incarcerated Other EU Nationals	3

It is evident from this data that almost all of those who were incarcerated were Chinese and Vietnamese nationals. This is in stark contrast to the treatment of Irish and other non-nationals.

Treatment of potential victims

CCC Nuacht report illustrates that in 75% of cases involving Chinese and Vietnamese nationals, claims of exploitation or maltreatment were made. In such cases it was reported that the victims were not paid; they were not allowed to leave the cannabis grow houses; their passports and other documents were taken; the victims were forced to sleep on the mattresses on the floor and their working conditions were horrendous. 24 potential victims of human trafficking went to prison with an average sentence of three years.

In cases where indicators of human trafficking are identified such cases should be investigated by the state for human trafficking. It is imperative that victims of human trafficking are not criminalised due to the criminal activities that they are forced to commit. In the light of the CCC Nuacht findings, it is important that the sentencing practices in such cases are examined to ensure that discriminatory practices are addressed.

The exploitative working conditions experienced by those working on cannabis farms have been reported in the media. In a case where “54 non-nationals were arrested, it was reported that although a number of the Chinese ‘Wo Shing Wo’ Triad gang were among the suspects, many arrested were unfortunate wretches who are being exploited by criminal gangs. Some of them were forced to live in terrible conditions with little food and under constant threat.”²¹ In another recent article, reference was made to the living conditions of two Chinese nationals who were charged with cannabis cultivation. The men shared a mattress on the floor and had only a hand basin to wash themselves. Their living conditions were described as “horrendous.”²² Another Chinese man was reported to be living in virtual slavery in a cannabis growing warehouse with the doors locked from the outside.²³

Although the articles noted above did not explicitly include the term ‘trafficking’, the experiences and conditions described strongly indicate these individuals may have been trafficked for forced labour. However, in an article in 2011²⁴ the term “trafficking” was used. The article stated that a Vietnamese woman, charged following a seizure of almost €1 million worth of cannabis “may have been trafficked to Ireland”. The woman’s defence solicitor stated that “she found herself in this jurisdiction and this may not have been of her own volition”.

²¹ Irish Herald, supra note 7

²² Independent, 11th December 2012, “Chinese farmers tricked into growing cannabis”. Available at: <http://www.independent.ie/irish-news/courts/chinese-farmers-tricked-into-growing-cannabis-28945889.html> [Last accessed 12th August 2013]

²³ Evening Echo, 19th June 2013. “Drug grower brought here from abroad”. Available at: <http://issuu.com/tcmeditorial/docs/01ee2013-06-19e0/1> [Last accessed 17th August 2013]

²⁴ Irish Times, “Vietnamese Woman Charged over €1 m Seizure of Cannabis”. Available at: <http://www.irishtimes.com/news/vietnamese-woman-charged-over-1m-seizure-of-cannabis-1.555666> [Last accessed 17th August 2013]

¹⁹ Interview with the court reporter for CCC Nuacht (news wire) Conor Gallagher 25 October 2013

²⁰ <http://www.irishtimes.com/news/crime-and-law/asian-migrants-75-of-those-jailed-for-cannabis-cultivation-1.1582467>

CASE STUDY²⁵

Mr W, a middle-aged man, was brought to Ireland through the UK. In the UK, he worked in a few exploitative employments and was paid below minimum wage for a number of years. Through an acquaintance, he was offered the opportunity to move to Ireland to work in a Chinese restaurant as a porter. But on arrival in Ireland, he was taken to a small house in a rural location. He was told to water the plants in the house. He was also told by the recruiter that if he tried to escape, his boss, who was Irish, would kill him. W escaped from the house and contacted An Garda Síochána. W was hospitalised for a number of days suffering from exposure. He was then arrested and detained by the Gardaí on drug charges and later imprisoned. The MRCI was approached by the law firm representing the victim and the Courts requested An Garda Síochána to conduct an assessment of human trafficking. The arresting officer was in charge of making this assessment and human trafficking was not identified in the case.

CASE STUDY

In 2013 the MRCI was contacted by a criminal law solicitor regarding a case of a Vietnamese national (Mr B) arrested for cannabis cultivation. B, a middle aged man, was offered a job in Europe as a gardener by a wealthy friend. He accepted the job as he believed it would allow him to pay off his debts. He was introduced to a group of men who arranged for him to be smuggled out of Asia. After a long and difficult journey B arrived at a bleak industrial estate in rural Ireland and was taken to a barn. Inside the barn the heat was stifling. He saw hundreds of plants being fed and watered by hoses under artificial lights. He was shown how to control the hoses, the heaters and lights and was told that it would be his job to look after the plants. The men locked him in and threatened him that he would be very sorry if anything happened to them. He only had an old mattress to sleep on and was brought food once a week. B had no idea what country he was in, but he knew that he was trapped in a cannabis factory. When the police eventually discovered the barn, they found B still locked inside. With the assistance of an interpreter, he told them he had been kept as a slave, forced to tend to the plants, and had been threatened with violence. He told them that he had never received any money. B was charged with possession of the cannabis plants. He faces a mandatory minimum sentence of ten years in prison. Although there were strong indicators present within this case, An Garda Síochána did not identify the individual as a victim of trafficking. In this case the victim was charged and awaits trial for the unlawful production of cannabis.

It is clear from the case studies and media reports that potential victims of forced labour in cannabis production are not being identified as such and are being prosecuted and imprisoned for crimes they may have been forced to commit.

VICTIMS TREATED AS CRIMINALS

Although trafficking indicators present in the case studies and media articles noted above, out of all the Vietnamese nationals who have been arrested and charged with cannabis cultivation under the Misuse of Drugs Acts since 2010, no cases of trafficking for forced labour have been identified by An Garda Síochána.²⁶

It is of significant concern that where indicators of human trafficking are identified in cases before the courts that no consideration is being given to the possibility that the person is a victim of human trafficking. Due to this, potential victims are being prosecuted for drug offences. An Garda Síochána is the first contact for potential victims in these circumstances. It is critical that An Garda Síochána take an active role in ensuring that potential victims of human trafficking in such circumstances are identified.

CONCLUSIONS

It is evident from this exploratory research that there is a dearth of information and expertise in this area. Despite indicators of trafficking for forced labour presenting in cannabis production, few cases have been investigated and none have been identified as human trafficking. As a consequence of this, potential victims are being prosecuted, convicted and imprisoned for crimes they may have been forced to commit – while their traffickers enjoy impunity. It is evident that An Garda Síochána are unable to identify victims in such circumstances. In this context there is an urgent need for the victims to be formally identified by an agency like the Health Service Executive (HSE) with the co-operation of MRCI so that victims can receive the care and attention they require. This would enable An Garda Síochána to carry out their investigation unfettered by concerns for victims' rights.

There is need for an independent rapporteur who could identify trends and lead out in addressing these issues in a coordinated and strategic way. The authorities have been aware of this issue for over a year yet no one has acted to address this problem in a comprehensive way. New forms of trafficking are constantly emerging and it is necessary to have a key role in place to monitor, design responses and address the gaps in identification and prosecution.

²⁵ The identities in the case studies have been concealed to protect the victims

²⁶ Parliamentary Question No: 670, 11th June 2013. Available at <http://www.nascireland.org/parliamentary-questions/pq-crime-statistics-forced-labour/>

Trafficking for forced labour in cannabis production is a complex area and requires new expertise and guidelines. It is imperative that Department of Justice and Equality with its Anti-Human Trafficking Unit and the Office of the Director of Public Prosecutions in cooperation with stakeholders take a lead role in devising guidance for prosecutors, frontline Gardaí and legal professionals so that potential victims are identified and not criminalised by the State.

There is a real opportunity for Ireland to address this complex issue given that the legislation is now in place. The development of a new National Action Plan to combat human trafficking also provides an opportunity to set out actions and targets that can sufficiently address the needs of victims subjected to forced labour in cannabis production. Within this context, the State should take a victim-centred approach in line with its EU obligations. This would involve ensuring that suspected victims have access to healthcare, appropriate safe accommodation, protection from prosecution, legal aid and legal status to respond to their needs.

RECOMMENDATIONS

- All cases of potential trafficking for forced labour in cannabis production should be assessed and identified by a multi-agency team involving NGOs and state agencies such as the HSE.
- All cases of potential trafficking for forced labour in cannabis production should be investigated for human trafficking by An Garda Síochána.
- An independent National Rapporteur should be appointed by the government to identify trends in human trafficking and address problems of lack of identification and prosecution.
- Victims should be provided with a reflection and recovery period, safe accommodation, health care, counselling and financial supports where they have been identified as a suspected victim of human trafficking.
- The Anti-Human Trafficking Unit of the Department of Justice and Equality should ensure that the National Action Plan for Combatting Trafficking in Human Beings sets specific targets, actions and resources to combat and address this form of human trafficking.
- The Anti-Human Trafficking Unit should develop guidelines for early identification of potential victims in conjunction with NGO's and state agencies for all relevant agencies such as An Garda Síochána, National Employment Rights Authority and the Director of Public Prosecutions.
- Training needs to be provided developed and provided by ASI and MRCI for investigators, prosecutors, judiciary, and the legal profession to equip them with skills to identify such potential victims.
- An awareness-raising strategy to strengthen the identification of trafficking for forced labour needs to be developed and implemented as part of the National Action Plan.
- A non-punishment clause should be included in the Criminal Law (Human Trafficking) Act 2008 to ensure that victims of trafficking are exempt from prosecution for offences that they were forced to commit.

The Migrant Rights Centre Ireland is a national organisation working to promote justice, empowerment and equality for migrant workers and their families.

55 Parnell Square West, Dublin 1

T: (01) 889 7570

E: info@mrci.ie

F: (01) 889 7579

W: www.mrci.ie



With the financial support of the Prevention of and Fight against Crime Programme European Commission - Directorate-General Home Affairs