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Separated Children Seeking Asylum In Ireland

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Abbreviations

CDVEC	City of Dublin Vocational Educational Committee
ECAHB	East Coast Area Health Board
ECRE	European Council on Refugees and Exiles
GNIB	Garda National Immigration Bureau
IRC	Irish Refugee Council
IO	International Organisation
ICRC	International Committee of the Red Cross
MWHB	Mid West Health Board
NGO	Non-Governmental Organisation
ORAC	Office of the Refugee Applications Commissioner
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency
RLS	Refugee Legal Service
SCEP	Separated Children in Europe Programme
SGP	Statement of Good Practice
UNHCR	United Nations High Commissioner for Refugees

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Executive Summary

This report updates the first report of the Irish Refugee Council published in 1999, entitled *Separated children seeking asylum in Ireland: A report on legal and social conditions*. In 1999, there were 32 documented cases of separated children in the country. By March 2003, a total of 2,717 separated children, referred to the East Coast Area Health Board, had entered the State. Of these, 1,316 submitted applications for asylum. The vast majority are resident in Dublin. Approximately 40% or 1,113 children were reunited with family members already in Ireland. Approximately 70% are adolescents, aged 14 years or older.

The top five countries of origin of separated children to Ireland are Nigeria, Romania, Sierra Leone, Moldova and Democratic Republic of Congo[1]. These are countries that are experiencing war, are post-conflict societies, or are contexts where political or economic problems have resulted in civil society fragmentation or breakdown. Countries of origin are also areas where child-specific forms of persecution, discrimination or denial of rights are common, such as child labour, street children, and child soldiers.

One consistent trend is that less than 5% of children are identified at a port of entry, and the remainder present themselves to statutory services once they are within the State's borders. It is possible, indeed likely, that some children are arriving in the country and do not come to the notice of the Statutory agencies, as children only come to official attention if they present themselves voluntarily as asylum applicants. It is unknown the extent to which child trafficking may be practiced but anecdotal stories indicate it is a problem, which would be consistent with experiences in the rest of Europe.

To date, 12.8% of child applicants have been recognised as refugees at first instance by the Office of the Refugee Applications Commissioner (ORAC), and 87.2% have had their applications refused. Another 11% did not attend the substantive interview and were deemed to have withdrawn from the process. A decision on a large number of appeals by unaccompanied minors to the Refugee Appeals Tribunal or on applications to the Minister for Justice, Equality and Law Reform for leave to remain are presently pending. It is not clear what policy will be implemented for those refused refugee status.

A central conclusion of this study is that, although significant progress has been made, in particular in developing procedures for separated children within the asylum determination process, developing structures within the Health Board and psychological services, and in training and inter-agency networking, there are significant gaps in terms of meeting good practice guidelines for separated

children. Key gaps identified were in guardianship, accommodation and interim care, access to and support in participating in education, and the identification and implementation of durable solutions including family tracing and reunification, and settlement and integration. Core barriers to meeting good practice standards are a general asylum policy which treats minors over 14 years as *de facto* adults, significant under-provision of social work resources resulting in discriminatory standards of care for separated children compared to Irish children in care, and delays in filling core approved posts.

The findings in this report are a reflection of the views of policy makers, service providers and non-governmental support organisations. The perceptions of minors of their experiences as separated children may be quite different to those of policy and service providers.

Key emergent issues were as follows.

Guardianship and interim care

In spite of significant developments on the provision of care for separated children since 1999, the large increase in the numbers of separated children in Ireland has far out-stretched the capacity of the Health Boards to absorb children within existing childcare residential services, in particular in the Dublin region. Good practice exists with respect to younger children in residential settings. Concerns were expressed about the well-being of adolescents in hostel accommodation, which is a largely unsupervised and unsupported environment, and where minors have the same welfare allowances and self-care responsibilities as adults. Many interviewed questioned the appropriateness of this system for minors. One respondent said "*Kids talk about their home situation, not having study facilities, no one to help them with their homework, no one to motivate them to go to school, the whole way they live*". Other concerns were that some minors were not providing themselves with a nutritionally adequate diet, that some were not accessing education, that those with mental health needs as a result of experiences of loss, violence or trauma were very isolated and lonely, and that adolescents were vulnerable to abuse or sexual exploitation. The area of targeting foster care placements for separated children was identified as a priority by the Health Boards.

Combating child trafficking

It was clear, in the course of this research that insufficient monitoring and protection mechanisms are in place to deter or identify child trafficking. Evidence which points to the need for concern in these areas is that approximately 95% of separated children seeking asylum were not identified by immigration officials at a port of entry but present themselves once within the country. Approximately 160 unaccompanied minors in the asylum process have not appeared for first interview, are officially deemed to have withdrawn from the asylum process, and for many their whereabouts are unknown.

[1] Source: East Coast Area Health Board

There is no mechanism to identify separated children entering the country who are not referred to the Health Boards, and therefore would not be known to any statutory body and would be unregistered. In addition, there is little or no follow-up of separated children reunified with family members once in the country.

Addressing the needs of especially vulnerable separated children and youth

Most of the separated children coming to Ireland have a limited knowledge of English or their education has been interrupted. Some other separated children might have had very little education or might have particular learning problems due to circumstances of trauma or illness. There is serious concern that separated children with particular learning or literacy problems are not being identified and, in consequence, their particular educational needs are not being met. Young women who are pregnant and young mothers were identified as being particularly vulnerable. The lack of childcare and support at the accommodation centres where young mothers are living hinders their participation in education and pregnant girls and young mothers tend to drop out of school. Adolescent mothers and their babies are isolated and unsupported, and are living in unsuitable hostel style accommodation.

Asylum, durable solutions, complementary protection and temporary leave to remain.

An extremely positive aspect to the asylum procedure in Ireland is that it is accessible to all children. The countries of origin of separated children mirror those for adult claimants; they are not simply poor or economically depressed States, but rather areas of conflict where ethnic cleansing, persecution, dislocation and human rights violations are widespread. International scholarly and practitioner attention to child asylum claims and to a child-specific approach to persecution is in its infancy. As decisions are not published in Ireland, there is a need for substantive guidelines, in accord with international law, with regard to a child refugee and the legal definition of a refugee.

There is also a need for an alternative form of protection, known as 'complementary protection', to be available for those children with protection concerns but who do not fall within the definition of a refugee. To date in Ireland, due to a lack of alternative procedures, almost all separated children, are entered in the asylum process, and all available Health Board and legal resources are directed towards this process, without focus being placed on durable solutions and what is in the child's best interests. Statistics and research show that some children may be entered in an extended and psychologically demanding process with little likelihood of a positive outcome.

Time needs to be invested in conducting a detailed assessment of the child's history and needs with a strong input given by an assigned social worker, at the initial stages, to identify durable solutions that are in the child's best interests. There could be several outcomes of this assessment, including

making an application for asylum, family reunification in country of origin, family reunification in Ireland, voluntary return, complementary protection or leave to remain.

Addressing outcome issues as large numbers of separated minors complete the asylum application process

Many minors are due to receive notification of acceptance or rejection of their applications to the Minister for temporary leave to remain under Section 3 of the Immigration Act 1999. It is unclear what policies will be implemented with respect to integration of those who receive a positive response, or if deportations are planned for those who receive a negative outcome. Involuntary return should never be carried out with minors. In the case of return to country of origin, appropriate safeguards, as outlined in the Statement of Good Practice, which are in place to ensure a child's protection and survival must be followed. This includes ensuring it is safe for a child to return, that a child's guardian agrees it is in the child's best interests to return and the carer or State agrees to care for the child, that a careful assessment is made of the family situation, and that this investigation be carried out in conjunction with professional, independent and non-political organisations.

Key Recommendations

A full list of recommendations will be found at the end of each sub-section of Section 4: Key findings.

The definition of a "separated child"

Recommendation 1: An inclusive definition of "separated children" as defined by the SCEP should be incorporated into existing refugee and child legislation and practice. This should include children who appear to be 'accompanied' on arrival with adults who are not necessarily able to assume responsibility for them e.g. older siblings, or those with a relative who is not a parent or legal guardian. The present restricted definition may result in a failure to identify the protection rights of some separated children.

Age assessment

Recommendation 2: A method for systematising age assessment is presently being explored on the basis of an examination of international best practice. Intrusive medical assessments should not be part of the assessment procedures. Any method needs to be sensitive to children's ethnic and cultural background.

Child trafficking

Recommendation 3: Policy and practical initiatives to combat child trafficking should be developed as a matter of urgency. This should include determining the whereabouts of children who do not appear for their substantive interview, developing follow-up and monitoring procedures for 'at risk' separated children reunified with family members in Ireland, and the implementation of measures set out in the EU Council of Ministers' Joint Action to Combat trafficking in Human Beings and Sexual exploitation of Children, 1997.

Appointment of a guardian and interim care

Recommendation 4: Enhance good practice in care provision for 15-17 year olds through provision of accommodation units for smaller numbers of minors, with adequate cooking arrangements or meal provision, on a 'group home' model or with some supervisory structures provided by trained child-care support staff. There should be appropriate provision for study and homework. Develop separate accommodation provision for adolescent girls. Suitable accommodation and support for pregnant girls and young mothers and babies is a serious priority. Prioritise the appointment of an already approved position for a foster placement worker for the Social Work Team on Separated Children in the ECAHB.

Enhance guardianship by identify a designated social worker for each child, strengthen the initial assessment of minors' needs to identify and develop a durable solution plan, responsive to the minor's

age, developmental needs, cognitive and emotional capacity, family circumstances, interests and wishes.

Health and psychological support

Recommendation 5: Implement family planning and reproductive health education for adolescents in hostel accommodation. Enhance the on-going networking of psychological services with non-statutory asylum seeker support organisations, youth and community-based organisations, to support social competence and integration, and develop befriending and mentoring programmes to address social support needs. Prioritise the appointment of an already approved position for a second child psychologist for the Psychological Services for Asylum Seekers and Refugees.

Education, language and training

Recommendation 6: Strengthen mechanisms to facilitate separated children to *access* education and to *participate fully* once enrolled in education. Develop a systematic assessment procedure to identify the individualised educational needs of separated children where necessary. Tackle illiteracy and educational disadvantage through an inter-agency and within school mechanisms. Ensure the entitlement of all minors to access third level education.

Asylum or refugee determination process

Recommendation 7: Separated children should continue to be able to access the asylum procedure. Introduce procedures for implementing a complementary protection system. Inter-agency training with regard to interviewing techniques in general, and interviewing young children in particular, should be ongoing.

Criteria for making a decision on a child's application

Recommendation 8*:* Publication of decisions of the ORAC and the RAT. Develop guidelines, in accordance with international law, to deal with the substantive aspects of the legal definition in relation to child refugees.

Young people who become adults during the asylum process

Recommendation 9: Serious concerns exist regarding plans to move 'aged-out' adolescents to adult direct provision accommodation centres, where it is believed they will be very isolated and vulnerable. Some interim form of accommodation, possibly based on a group model and responsive to their ongoing protection and support needs, should be developed to accommodate such adolescents.

Durable or long-term solutions

Recommendation 10: The process of identification of durable solutions should take place once a

separated child is placed in the care of the Health Board. Assessing the possibility of all forms of durable solutions in a child's best interests should be done *prior* to entering separated children in the asylum process.

Family reunification in Ireland

Recommendation 11: Monitoring and follow-up mechanisms for separated children reunified with family members in Ireland need to be developed urgently to respond to concerns about child protection rights, in particular concerns that some separated children may be trafficked for domestic labour or sexual exploitation purposes.

Family tracing, contact and reunification to country of origin or a third country

Recommendation 12: Resources should be put in place for family tracing and reunification in children's country of origin or a third country. Clarification is needed with regards to the responsibilities of and resource needs of different statutory and non-statutory organisations in this process. An independent assessment of safety issues, and putting in place safety mechanisms outlined in the Article 12.2 of the Statement of Good Practice must be adhered to in any voluntary return. All returns, voluntary or involuntary, to country of origin should comply with these mechanisms. If it is not possible to comply with any of these mechanisms, a minor should not be returned.

Settlement and social integration

Recommendation 13: The Department of Health and Children and the Department of Education need to jointly address the settlement and social integration needs of asylum seeker and refugee children in general, and of separated children in particular. Separated minors who are granted leave to remain should have the same rights and entitlements to access third level education and training courses as Irish youth. The policies of youth and community-based organisations should be 'diversity-proofed' to identify strategies inclusive of separated and refugee children and youths.

Inter-organisational co-operation

Recommendation 14: Significant development has been made in the development of co-operative networking between all agencies involved in service provision for separated children, through the formation of joint policy groups, co-ordinated training, and practice-based contact. These networks provide an essential mechanism to address the best interests of separated children and should continue to be enhanced as agencies work jointly towards the goal of developing best practice at local and European levels.

1. Introduction

1.1 Introduction and background to the report`

This report updates the first report of the Irish Refugee Council published in 1999, entitled *Separated children seeking asylum in Ireland: A report on legal and social conditions*. At the time of the publication of that report, there were 32 separated children seeking asylum in Ireland. The number of separated children seeking asylum in Ireland has increased markedly. By March 2003, the number of separated children, entering Ireland and referred to the North Eastern Area Health Board was 2,717[2]. Nearly half, or 1,113 children, were reunited with family members already in Ireland. 1,316 separated children, under the care of the Health Boards, have made applications for asylum under the 1951 Geneva Convention on the Status of Refugees. Neither the Government nor non-statutory agencies anticipated this increase in the numbers of separated minors arriving in Ireland. Therefore administrative procedures and care services have had to be responsive to emergent needs rather than having developed through advance planning. This report aims to examine policy and practice with respect to the legal and social conditions of separated children in Ireland, in light of the Separated Children in Europe Programme's (SCEP)[3] 'Statement of Good Practice' (SGP). The Irish Refugee Council, a member of the Separated Children in Europe Programme, commissioned the report.

1.2 Definition of 'Separated Children': International and Irish Context

Across Europe, there is no commonly agreed definition of "separated children" between States. Definitions and practice differs with respect to whether children accompanied by non-parental or legal guardians are classified as "separated". In Italy, the term "separated child" is not used to refer to children who have adult relatives in Italy. In Denmark, any child who arrives without parent(s) or a legal guardian is considered as separated. If a child is accompanied by an adult who is not a parent or legal guardian, then an independent agency, the Red Cross, may make an assessment of the child's status with respect to the relationship between the child and individual, and make a recommendation with regard to the status of the child as separated or otherwise. In Austria, children accompanied by siblings over 18 are considered to be separated, and the courts then assess the suitability of the sibling as a legal guardian for the minor[4]. The definition used by a State has highly significant practical consequences for the protection and well-being of minors who arrive at State borders with respect to identification, investigation into a child's history, guardianship and interim care, family reunification,

[2] Source: East Coast Area Health Board.

[3] This is a Europe-wide initiative initiated in 1997 to improve the situation facing separated children who come to European countries. It is an alliance between the European International Save the Children Alliance and UNHCR, and the programme has established a network of NGO partner organisations in 28 countries in Western, Central and Eastern Europe. The Statement of Good Practice is available on the SCEP website: www.separated-children-europe-programme.org

[4] Ruxton, S. *Separated Children Seeking Asylum in Europe: A Programme for Action*. at 22.

and prevention of child trafficking.

The SCEP Statement of Good Practice argues for an inclusive definition and defines "separated children" as follows:

> *"Separated children and young people' are children under 18 years of age who are outside their country of origin and separated from both parents, or their legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCEP project, may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation".*[5]

This definition refers to both unaccompanied minors and children who may arrive accompanied by a sibling, family member, a relative, friend or acquaintance. It also includes separated minors who may enter the county but who may not have grounds to claim asylum, for example, child migrants escaping poverty. Separated children enter official statistics at the point of placing an application for asylum and it is unknown how many unregistered separated children are within Europe's borders. Some reports estimate the numbers may be significant[6].

Various EU Directives, which will shape asylum policy within the EU, define 'unaccompanied minors' as:

> *"third-country nationals and Stateless persons below the age of eighteen who arrive on the territory of the Member State unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States"*

This broad definition is similar to that of that used by the Separated Children in Europe programme, and perhaps goes further as it makes an explicit reference to children who may become unaccompanied *after* their arrival in the State. Within the Irish context, the relevant legal reference is Section 8 (5) of the 1996 Refugee Act (as amended)[7] which sets out the initial procedure for dealing

[5] Ruxton *note 3* at 22.
[6] Ruxton *note 3* at 22
[7] Amended by Section 11(1) of the Immigration Act 1999 and Section 9 of the Illegal Immigrants (Trafficking) Act 2000, came into force on 20th November 2000, hereafter the 1996 Refugee Act (as amended)

with a *" child under the age of 18, who has arrived either at the frontiers of the State or has entered the State and who is not in anyone's custody"*. The Irish legislative definition therefore does not make reference to "separated children" nor to the term "unaccompanied minor".

In practice, three categories of "unaccompanied minor" emerge in Ireland:

- Children or young people who arrive alone and have no parent, guardian or relative already living in Ireland
- Children or young people who arrive alone, who have a parent, guardian or relative already resident in Ireland.
- Children or young people who arrive accompanied by an adult, and where, through an examination of travel documents, doubt is raised about the relationship of the adult to the minor.

In all these cases the children are referred to the Health Board, which has responsibility for making an assessment with respect to the status of the child as an unaccompanied minor. A child may be placed in the care of the accompanying adult if it is proved he or she is the child's parent or legal guardian. A child may be reunited with parents or relatives within Ireland if proof of the relationship can be determined. Alternatively, a child can be classified as "unaccompanied" and placed under the care of the regional Health Board. Children arriving with siblings aged 18 or over may also be assessed by the Health Board to ascertain if the sibling is capable of providing care. Where the child is placed with a relative other than the parent or legal guardian, these persons are not considered legal guardians under Irish law.

If identified as an unaccompanied minor, the provisions of the Child Care Act 1991 with respect to the welfare of children not receiving adequate care/protection, apply[8]. If, post-assessment, children are reunited with family, then they fall under the functional area Health Board in which the family resides. However, follow-up service is inadequate or lacking. Therefore these children, even though they are separated children under the SCEP guidelines are not benefiting from the steps outlined in the SCEP guidelines.[9]

8 The Child Care Act 1991 contains several provisions that are applicable to unaccompanied minors in Ireland, including: Article 3(2)(a), which states that the Health Boards are responsible for identifying children who are not receiving adequate care and protection; Article 4(1), which states that if a child who resides or is found in the area of the Health Board requires care or protection that s/he is unlikely to receive unless s/he is taken into care it is the duty of the Health Board to take him or her into its care, Article 4(4), which provides that the Health Board shall endeavour to reunite the child with parents where this appears to be in the child's best interests, and Article 26, under which a guardian *ad litem* service was established that provides for the appointment of a legal guardian to represent the interests of such children in court and to act as an independent voice in the care proceedings.

9 For the purposes of this report, in keeping with the recommendations of the Statement of Good Practice, the term 'separated children' will be generally used. The term 'unaccompanied minor' is a legal term under the

2. Updated situation of separated children in Ireland

2.1 Who are the "separated children" in Ireland?

2.1.1 Reasons why separated children come to Ireland

Approximately half the world's refugee population comprises children and adolescents[10]. At present, there is little research in Ireland indicating the reasons why separated children have left their country of origin. Vekić (2003)[11], in a sample of 18 separated minors, reported that children cited factors such as escaping war and discrimination, being orphaned, parental death and poverty, the detention of parents as political prisoners, being sent to join family already in Ireland, and coming to Ireland after spending time in a detention or refugee camp. Some were told that Ireland is a good place and that they would get help, or that they would get an education. The historical missionary links between Ireland and Nigeria means that frequently within Nigeria, Ireland is viewed as a place of safety and opportunity. Some youth in Vekić's (2003) study did not know that their destination was to be Ireland. Their collective stories conveyed that many received the help of relatives, friends, priests or NGO workers, or well-wishers to leave, were sent away, or were assisted by 'agents' to enter Ireland. Many separated children have been sent abroad by their families, who have made significant sacrifices to try and give their children a better life, and some may feel under a huge obligation to help support families back home in the future.[12]

These stories are consistent with those recorded throughout Europe. An analysis of 218 cases studies of separated children who had come to Western Europe found that reasons for leaving home included the violent death of parent(s), child detention or torture, armed conflict and the forced recruitment of children into armed forces, as well as trafficking, abuse and/or abandonment by parents and poverty[13]. In Finland, the most common reasons for flight were armed conflict, civil war or the overall breakdown of normal civilian life[14]. In the UK, the top five main countries of origin of separated children in 1999 were Kosovo, Afghanistan, Somalia, China, Albania and Turkey, from approximately 70 countries[15].

A consistent profile emerges in which it can be seen that separated children predominantly emerge from countries experiencing armed conflict, political repression or the breakdown of civil society as a

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1996 Refugee Act (as amended), and 'unaccompanied minor' will be used when referring to children in a legal context in Ireland, such as within the asylum determination process.

[10] Cole, E. (1998) Immigrant and refugee children: Challenges and opportunities for education. Canadian Journal of School Psychology, 14, , 36-50.

[11] Vekić, K. (2003) Unaccompanied Minors in Ireland, From Understanding to Response; Dublin, Marino Institute

[12] Ruxton *note 3* at 95.

[13] (Ayotte, 2000, in Ayotte & Williamson, 2001, p 16.)

[14] Helander, 2001

result of the relationship between conflict and poverty. Not all children arriving in Ireland have grounds for asylum, however the disruption to State services such as health, education, and opportunities for future independence means that the developmental rights of children are impinged on, and either family or relatives find it difficult to envisage a future for their children. It is their developmental status as children that differentiate them from adults, under the Convention on the Rights of the Child. Within Ireland, the asylum system is the procedure by which children and adults, fleeing from persecution, can seek legal protection. If an individual is recognised as a refugee[16], that person is entitled to the same rights and entitlements as an Irish citizen. If an asylum application is rejected on appeal, an individual is given the option to make representations to Minister for Justice, Equality and Law Reform as to why a deportation order should not be issued.[17] If a decision on this application is negative, an individual faces deportation. Appendix III illustrates the different stages in the Irish asylum procedure.

[15] Ayotte & Williamson, 2001.
[16] Under Article 1(2) of the 1951 Geneva Convention Relating to the Status of Refugees, a refugee is defined as *"a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country"*. This was incorporated into Irish law under Section 2 of the 1996 Refugee Act (as amended).
[17] Under Section 3 of the Immigration Act 1996 (as amended)

2.1.2 Update of statistics

Table 1: Separated children referred to the care of the East Coast Area Health Board

Year	1998	1999	2000	2001	2002	2003	*Cum total*
No. of referrals	--	98	520	1085	861	153**	2717
No. reunited with family	N/A	N/A	107	416	506*	84**	1113
No. placed in care of Health Board	--	98***	413***	558	355***	69***	1493
No. of tracing cases initiated	--	--	1	0	14	18	33****
No. not found to be a minor	Not available	Not available	Not available	15	Not available	Not available	Not available

*Source: ECAHB and *Sanctuary March 2003 ** Sanctuary January 2003*

*** *Fig. Approximate and complied Total no. of referrals - No. reunited with family*

**** *Irish Red Cross Tracing/Messaging Service.*

Table 1 summarises the numbers of referrals to the East Coast Area Health Board for the period January1998-March 2003. Of a cumulative total of 2,717 children, 1,113 or 41% were reunited with a parent or relative in Ireland. In total, 33 family tracing cases have been initiated by the Irish Red Cross. Figures on the number of referrals found to be over 18 years were only available the year, 2001 when15 individuals were deemed to be adults.

Table 2: Age breakdown of referrals to East Coast Area Health Board, Jan-Dec 2001

Age	17	16	15	14	10-13	6-9	U5
Total	314 *29%*	299 *28%*	122 *11%*	44 *4%*	106 *10%*	103 *9%*	97 *9%*

Source: ECHAB

Table 2 shows that, for the year 2001, over half, or 57% of referrals were aged 16 years or over, a quarter or 25% were aged 10-15 years, 9% were between 6 and 9 years, and 9% were five years old or younger.

The ORAC, responsible for processing the asylum applications, has gathered statistics related to unaccompanied minors within the asylum determination process.

Table 3: Applications for asylum received by the Office of the Refugee Applications Commissioner

YEAR	1998	1999	2000	2001	2002	2003 (Jan-31 Mar)
U 18	(>10)*	(>10)*	31	80	195	85
Over 18	(>10)*	35	261	406	75	9
Family Located	--	--	10	114	17	--
TOTAL	(>10)*	35	302	600	287	94
Cum total	*(>10*)*	*35*	*337*	*937*	*1224*	*1318*

Source: ORAC. The above statistics are calculated by date of application and as a result the numbers in the different categories may change as the applicant turns eighteen or is reunited with his/her family. 'Over 18' refers to applicants who were under 18 when they applied for asylum and have since turned 18. 'Family located' refers to applicants who were unaccompanied by a parent/guardian when they applied for asylum but have since been reunited with parent/guardian. The overall total per year may also change pending medical results.

** It is ORAC policy that statistics are not released where the figures for the number of applicants concerned is under 10, to protect the confidentiality of clients.*

As can be seen from Table 3, as of March 31 2003, a total of 1318 unaccompanied minors had submitted applications for asylum in Ireland.[18] In total, 60% of asylum applicants (786 children) reached 18 years of age during the first stage of the asylum determination process. The procedure is that these applications are then processed as adults. 141 children (11%) had family located in Ireland, and their asylum application was then either considered as part of their parent's application, or, if deemed in the best interests of child, it could have been considered independently.

Applications of unaccompanied minors as a percentage of adult application were 0.5% in1999, 2.7% in 2000, 5.8% in 2001 and 2.4% in 2002.[19] As a comparison, in Finland, the proportional share of unaccompanied minors to adult asylum seekers has averaged around 10%[20]. This trend of a steady increase in the numbers, up to 2001, of unaccompanied minors arriving to the country is consistent with trends in the UK[21] and in Europe in general.[22] There was a marked decrease in 2002.

[18] The figure of 2,717 separated children referred to the care of the Health Board in Table 1 refers to children who were identified as unaccompanied at arrival; 1,113 were reunited with family and were therefore no longer classified as unaccompanied. This accounts for the difference in the figures in Tables 1 and 2.

[19] These figures are calculated on the basis of ORAC figures for the no. of applications for a declaration as a refugee as: pre-2000=7,724 applications; 2000=10,938 applications; 2001=10,325 applications; 2002=11,634 applications.

[20] Helander, R. *The living situation and experiences of unaccompanied minor migrants in Finland and the need for protection, Helsink* Family Federation of Finland/Population Research Institute. [December 2001] at 3.

[21] Ayotte W. & Williamson, L. *Separated Children in the UK: An overview of the current situation*. at 17 London: Save the Children, [2000]

Table 4: Unaccompanied minors: Office of the Refugee Applications Commissioner- Recommendations to grant/refuse asylum applications, or applications withdrawn.

Year	**1998**	**1999**	**2000**	**2001**	**2002**	**2003** (to Mar 31)
Recommendations to grant	--	(>10)*	(>10)*	22	92	11
Cumulative total	*--*	*(>10)**	*(>10)**	*22*	*114*	*125*
Recommendations to refuse	(>10)*	(>10)*	15	93	685	56
Cumulative total	*(>10)**	*(>10)**	*15*	*108*	*793*	*849*
Withdrawals	(>10)*	(>10)*	(>10)*	53	89	(>10)*
Cumulative total	*(>10)**	*(>10)**	*(>10)**	*60*	*142*	*142*

** It is ORAC policy that statistics are not released where the figures for the number of applicants concerned is under 10 to protect the confidentiality of clients.*

Of the total number of recorded decisions to date (974 applications granted or refused), 12.8% have been granted refugee status and 87.2% refused. Refusal means the applicants were not deemed to fall within the definition of a refugee. If an applicant is refused refugee status at the first instance, he or she has the right to appeal the decision to the Refugee Applications Tribunal (RAT).

In addition, 154 applications or 11% of the total number of applicants were deemed to withdraw from the asylum process through not attending the substantive interview.

Of the total number of 1318 applications therefore, 9% of applicants have been granted refugee status, 65% refused, 11% have withdrawn, and 15% are other (e.g. still in the process).

Table 5: Summary of status of First Instance and Appeals applications

STAGE	Applications	Pending	No show	Granted	Refused	Manifestly unfounded
First instance*	1213	156	160	110	609	9
Appeals**	639	274	N/A	38 (ORAC decision set aside)	297 (ORAC decision affirmed)	

*Source: * ORAC. The slight difference in the figures presented here and in Tables 3 and 4 relates to a slightly different no. of months represented. The 'No show' figure here corresponds to the 'withdrawn' category in Table 4, and is a total figure and includes the figures for those years where less than 10 applicants withdrew from the process by not attending a first interview.*

*** RAT Appeals received from unaccompanied minors by year of appeal from 1 January 2001 to 30th April 2003*

Table 5 examines unaccompanied minors applications in relation to stages in the asylum process. It demonstrates that 274 minors had appeals pending as of April 2003. For those who are not recognised as refugees at appeal stage, individuals then have the option to make representations

[22] Ruxton,*note 3* at 22.

directly to the Minister for Justice, Equality and Law Reform, under Section 3 of the Immigration Act 1999, as to why a deportation order should not be made, and request that leave to remain be granted.

Table 6: Breakdown of appeals received and completed from unaccompanied minors by year of appeal from 1 January 2001 to 30th April 2003

All Appeals by Year of Appeal Up to 30th April 2003						
Year of Appeal	Appeals Received	Set Aside (Refugee Status recognised)	Recommendation of ORAC affirmed	Withdrawn	Number of Appeals Decided	Outstanding Appeals
2001	58	8	37	9	54	4
2002	500	29	255	20	305	195
2003	81	1	5	0	6	75
Total	**636**	**38**	**297**	**29**	**365**	**274**

According to an answer to a Dáil Question on 17th December 2002, there have been a total of 15 deportations of individuals who applied for asylum as unaccompanied minors.[23] Minister for Justice, Equality and Law Reform, Michael McDowell stated:

"To date, a total of 15 persons who were unaccompanied minors in the State have been deported under the Immigration Act, 1999. These include three Libyan minors transferred under the Dublin Convention to the United Kingdom where their parents were awaiting the decision of the UK authorities on their applications for refugee status, two Romanian minors transferred under the Dublin Convention to the United Kingdom and one Nigerian minor transferred under the Dublin Convention to Germany. The remaining nine minors were returned to their countries of origin after their cases were considered under section 3 of the Immigration Act, 1999, and section 5 of the Refugee Act, 1996"

Essentially nine of these were deportations. Involuntary returns of minors must have the same safeguards in place as those for voluntary returns. These safeguards are discussed in Chapter 6 of the report.

Table 7: Statistically significant countries of origin of unaccompanied minors making asylum applications

1998	1999	2000	2001	2002	2003 (-March 31)
Romania	Romania	Nigeria	Nigeria	Nigeria	Nigeria

[23] Dáil Question, 17th December 2002

	Nigeria	Romania	Romania	Angola	DR Congo
	Kosovo	Sierra Leone	Sierra Leone	Sierra Leone	Kenya
		Kosovo	Moldova	Somalia	Angola
		Ghana	DR Congo	DR Congo	Georgia

Source: ECAHB

Table 8: Referrals from the ECAHB of separated children by country of origin and gender (2001)

Country of origin	Male N	Female N	Total
Nigeria	304	236	540
Romania	63	31	94
Sierra Leone	51	17	68
Moldova	39	12	51
DR Congo	16	21	37

Source: ECAHB

The five countries of origin of unaccompanied minor asylum applicants, of statistical significance, are all countries that are experiencing either war (DR Congo), are recent post-conflict States (Sierra Leone) or have experienced the disruption of civil society due to political or economic change or poverty. It should be noted these countries of origin are also areas where child-specific forms of persecution or denial of rights (e.g. as child soldiers, child labour, street children) are quite common, or poverty as a result of political or social breakdown can impact on children's developmental or survival rights.

2.2 What are the main developments in the situation of separated children since 1999?

2.2.1 Significant legislative changes

Domestic Legislation

The Refugee Act 1996 (as amended)[24] was implemented in full on November 20th 2000. This placed the Irish asylum determination procedures on a statutory footing for the first time, and incorporated the 1951 Geneva Convention Relating to the Status of Refugees[25] into Irish law. The references to children in the Act are found in Sections 8(5)(a)-(d), 9(12)(a)-(c) and 9A(1). The Immigration Act 1999 allows for the detention of persons against whom a deportation order is in force, and who failed to comply with the provisions of the order. However, Section 4(a) excludes minors, and those whom it is reasonably believed are under 18, from this provision. Under Section 3(6) the factors to be considered for granting of temporary leave to remain are set out. Section 3(6)(a) states that 'age' is such a factor. The Illegal Immigrants (Trafficking) Act 2000 purpose is to create an offence of

[24] By Section 11(1) of the Immigration Act 1999 and Section 9 of the Illegal Immigrants (Trafficking) Act 2000. All references will be to the Refugee Act 1996 (as amended) unless otherwise stated.
[25] Convention Relating to the Status of Refugees, Geneva, July 28 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137

trafficking immigrants and to provide a framework by which those engaging in trafficking of illegal immigrants can be dealt with under the law. The legislation defines a "trafficker" as '*a person who organises or knowingly facilitates the entry into the State of a person he or she knows or has reasonable cause to believe to be an illegal immigrant'*. At the time of writing this report, the Immigration Act 2003 had just been passed. This Act provides for the imposition of fines on transport companies for carrying incorrectly documented passengers. It will therefore, be very difficult for those without adequate documentation to gain access to territory. Transport staff will be forced into the role of immigration officials, and risk huge fines if undocumented passengers are carried. For those fleeing from persecution, it is not always possible to obtain passports or visas. With legitimate means of transport being denied, many asylum seekers will be forced to use the illegitimate means of transport provided by traffickers and smugglers. The Act also provides for a number of substantial and procedural changes to refugee law in Ireland, including provision for accelerated procedures, and provision for certain countries being designated as 'safe countries of origin', finger-printing of all asylum seekers including those under the age of fourteen.

The European Convention on Human Rights Act 2003 incorporates the European Convention on Human Rights into Irish law through interpretation. The Irish Refugee Council had called on the Government to reconsider the European Convention on Human Rights Bill 2001 in favour of full direct constitutional or legislative incorporation of the Convention. While there is no specific reference to children in this Convention, the State is obliged to guarantee the rights enshrined in the Convention to "everyone" within its jurisdiction. This obligation applies equally to nationals and non-nationals. Therefore, with the incorporation of the Convention into domestic law, the rights enumerated in the Convention must be taken fully into account before an individual is removed or deported from the State. For asylum seekers, this is essential as an element of complementary protection**,** supplementing the UN Convention relating to the Status of Refugees, by placing refugee protection within the broader human rights context[26].

European Common Asylum System

As the European Union has become an area where people can move freely between Member States, the impetus has grown for a common asylum policy for Member States. Directives have been proposed on minimum standards for Member States. However, these directives are a minimum only, and, in some cases, are the lowest common denominators between the divergent European standards. These directives refer to 'unaccompanied minors', the definition of which is set out in the Introduction to this report. The directives on temporary protection in case of mass influx of displaced

(entry into force April 22, 1954)

[26] See *The Case for Provision of Complementary Protection Status in Irish Law*, Refugee Protection Policy Group, Position Paper No. 1, May 2000.

persons[27] and on the reception conditions of asylum seekers[28] both contain provisions on the situation of children and of unaccompanied children, particularly with regard to access to the education system and appropriate medical assistance. The directive on minimum standards on asylum procedures[29] includes a full set of provisions concerning guarantees that must be enjoyed by all unaccompanied minors, encompassing such areas as the way interviews are conducted. The interest of minors has also been duly taken into account in Commission proposals for the definition of a '*refugee*' and in regulating the legal position of persons not covered by the 1951 Geneva Convention, but who are in need of protection[30]. The Commission deems it to be important that governments take into consideration that child-specific forms of human rights violations do exist and that children may have different ways of communicating their fear of persecution. The 'Dublin Convention' has been updated with 'Dublin II'[31], which contains specific provisions in relation to unaccompanied minors. EURODAC[32] was established as of 15 January 2003. It is a system whereby all applicants for asylum, in each Member State, over the age of 14 must have their fingerprints taken. There is a Central Unit where the data is collected and will establish the first Member State in which an individual claimed asylum.

2.2.2 Developments within the Asylum Determination Process

- Working group on separated children established in December 2001, which developed procedures for unaccompanied minors in the asylum process.
- Specific people have been designated to deal with unaccompanied minors and separated children in the ORAC and the RAT. They have received training from UNHCR on working with unaccompanied minors.

2.2.3 Developments in the reception and care of children

Three key developments that have taken place since the last report in 1999 are as follows:

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[27] Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. 2001/55/EC of 20 July 2001; *Official Journal L 212 , 07/08/2001 P. 0012 - 0023*

[28] Council Directive laying down the minimum standards for the reception of asylum seekers in Member States, 15398/02, Brussels, 13 December 2002; Articles 10 and 19

[29] Commission Proposal for Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, 2000/0238, Articles 10 and 14

[30] Commission Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, 2001/0207, Article 7

[31] Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national. 343/2003, February 18, 2003

- Establishment of a dedicated social work team for separated children as part of the Social Work Service of the East Coast Area Health Board with specific responsibility for separated children within the Dublin area. Overall, the Health Boards are charged with providing for the immediate needs and welfare of unaccompanied minors through appropriate placement and links with health, psychological and social services, to make a decision as to whether it is in the best interests of the child to make an application for asylum, and to support the child through the asylum application process. The team in Dublin consists of a principal social worker, two team leaders, 12 social workers, 9 project workers and 2 clerical staff.
- Development of the Psychological Service for Asylum Seekers, with a post dedicated to psychological support for separated children. A second post has been approved but has not been filled due to a jobs embargo due to financial cutbacks.
- The development of non-statutory sector support for separated children, and the emergence of statutory and non-statutory partnerships in the areas of interim care accommodation, legal representation and psychosocial support.

Principles of Good Practice: Inter-organisational co-operation

Overall, a significant development has been the development of a co-operative networking between all agencies involved in service provision for separated children, through the formation of joint policy groups, co-ordinated training, and practice-based contact. This has resulted in significant and ongoing policy and practice developments in the area of working with and for separated children, and provides an important mechanism to address future issues and gaps in policy and service provision.

2.3 What are the significant emergent issues since 1999?

2.3.1 Appropriateness of the asylum or refugee determination process for all separated children

An extremely positive aspect to the asylum system in Ireland, unlike some other European countries, is that all children have access to the asylum procedure. However, an emergent issue has been that some separated children are not in a position to adequately put forward their case. In some cases, children do not know why they have had to leave their country of origin as they were sent away. Others have been forced to adopt feigned identities and do not trust the authorities to tell their real story. Developmentally, younger children may have difficulty remembering sequences of events, which is important within the asylum process for establishing credibility. Others do not fit into the definition of a refugee, either not having a well-founded fear of persecution, nor such a fear for a Convention grounds. The psychological impact of trauma can further affect memory and ability to

[32] Council Regulation (EC) No 2725/2000

clearly narrate events that have happened. Strong arguments are emerging for the need for complementary protection in addition to access to the asylum process, where appropriate.

2.3.2 Challenges to provision of interim care

In spite of significant developments on the provision of care for separated children since 1999, the large increase in the numbers of separated children in Ireland has far out-stretched the capacity of the Health Boards to absorb children within existing childcare residential services, in particular in the Dublin region. This has created significant challenges for the East Coast Area Health Board responsible for the majority of separated children, to address their need for appropriate interim care placements.

2.3.3 Increase in separated children reunited with family in Ireland

Approximately half of all identified separated children, who arrived in Ireland, have been reunited with family members already in Ireland. This has raised complex issues for the Health Boards of how best to determine the relationship between children and adult, and to support children through reunification. It brings long-term responsibilities to ensure the child's best interests are protected through monitoring the situation of children, and through ensuring mechanisms are in place to prevent child trafficking.

2.3.4 Concerns regarding smuggling[33] and trafficking[34] of separated children

Only a small minority of separated children in Ireland are identified at official ports of entry where they are identified and referred to Health Board care by immigration officials. The vast majority (over 95%) are identified within the country by presenting themselves at the Office of the Refugee Applications Commissioner, from where they are referred to the Health Boards. It is possible that other separated children are arriving in the country and do not come to the notice of statutory agencies, as they do not present themselves as asylum applicants, and do not appear in official statistics.

2.3.5 Developmental shift from emergency response to need to identify durable solutions

At present, although 65% of separated children asylum applicants have been refused refugee status in

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[33] Smuggling of migrants is defined as "*the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."* UN Convention Against Transnational Organised Crime, Protocol Against the Smuggling of migrants by Land, Sea and Air.

[34] Trafficking in persons is defined as *"the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation"*, UN Convention Against Transnational Organised Crime, Protocol to Prevent, Suppress and Punish Trafficking in

the first instance, 274 cases are pending a decision of the Refugee Appeals Tribunal. As an increasing number of minors have their asylum cases processed to the Appeals stage and have made representations to the Minister for temporary leave to remain, there is increasing pressure to identify durable solutions for those children who obtain refugee status. It also raises issues about what will happen those children or young people whose application for refugee status or temporary leave to remain is refused.

2.4 Who are the key agencies working with separated children?

In Ireland, the central statutory and non-statutory bodies, which deal with separated minors, are:

- *The Garda National Immigration Bureau* (GNIB), under the auspices of the Department of Justice, Equality and Law Reform, which is responsible for separated children at the point of entry, or those who are identified within the State.
- *The East Coast Area Health Board and regional Health Boards in the geographical district into which separated children arrive*, administered by the Department of Health and Children, with responsibility for the welfare of separated children and to support them in the asylum determination process.
- *The Office of the Refugee Applications Commissioner (ORAC)* and the *Refugee Appeals Tribunal (RAT)*, under the Department of Justice, Equality and Law Reform with responsibility for procedures and implementation of the asylum determination process.
- *The Refugee Legal Services (RLS*) an independent statutory body, which is responsible for offering legal advice and aid to asylum seekers.
- *The Psychological Services for Asylum Seekers*, which has a designated separated children programme offering psychological assessment and support to vulnerable separated and asylum seeker children, provided by the Northern Area Health Board.
- *The UN High Commissioner for Refugees (UNHCR),* which has taken a lead role in the provision of training on issues affecting separated children. Also plays a key role in advocacy and monitoring in the area of separated children.
- *Non-government organisations* which provide psychosocial support services and in some cases, accommodation.
- *Department of Education and Science, schools* and the *Vocational Education Committee* (VEC) with responsibility for the areas of primary, secondary and vocational education.
- *Asylum Policy Unit of Department of Justice, Equality and Law Reform is* responsible for domestic policy developments, remit includes unaccompanied minors.
- *Reception Integration Agency (RIA)* is responsible for the reception and integration of asylum seekers and refugees in Ireland.

Persons Especially Women and Children.

3. Aims and methodology of the report

The Statement of Good Practice is principally informed by the UN Convention on the Rights of the Child (CRC) and two documents: UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997(HCR Guidelines) and the European Council on Refugees and Exiles Position on Refugee Children, November 1996 (ECRE).

The Statement of Good Practice aims to provide a straightforward account of the policies and practices required to implement and protect the rights of separated children in Europe.

The aim of this report is to identify the extent to which law, policy and practice in Ireland conforms to the standards set out in the "Statement of Good Practice". It aims to identify changes since the last report in 1999, and to explore the extent to which law, policies and practices in Ireland contribute to the physical and psychological integrity of separated children seeking refugee status.

The methodology consisted of a consultative process with the core organisations and service providers listed in section 2.4 (see Appendix 1 for full details). A half-day workshop was held with core members of the consultative group at the beginning of the research process to explore issues facing separated children and service providers, developments since 1999, and issues to prioritise for further exploration. Interview schedules were structured utilising the Statement of Good Practice as a guide. Structured interviews lasting between 1-3 hours were held with staff in key statutory and non-statutory agencies. A final workshop was held with the core consultative group to share findings and finalise recommendations.

For ethical reasons, a decision was made not to interview separated minors at this point. Research with separated children requires a participative and sensitive methodology and has to be ethically stringent. As a number of in-depth research projects are ongoing, which are exploring separated children's perceptions of their situation, it was felt important not to impose any further research demands on this vulnerable group than are necessary. Secondary research that has reported on direct work with separated children in Ireland was accessed and included. This is a limitation of this report, and the decision to consult with service providers rather than children directly was made in the context of these considerations. The findings are a reflection of the views of policy makers, service providers and non-governmental support organisations, and we are aware that the perceptions of minors of their experiences as separated children may be quite different to those of policy and service providers.

4. Key findings on separated children seeking asylum

4.1 Definition, Access to the territory, Identification, Registration and Documentation and Detention of separated children

4.1.1 Access to Territory, Identification and Registration and Documentation

Separated children seeking protection should never be refused entry or returned at the point of entry. They should never be detained for immigration reasons. Neither should they be subjected to detailed interview at point of entry. **(SGP 1.1)**

At port of entry, procedures should be in place; where children are accompanied by an adult, it will be necessary to establish the nature of the relationship between the child and adult. Since many separated children enter a country without being identified as 'separated' at ports of entry, organisations should share information to identify separated children and ensure they are given appropriate protection. **(SGP 2)**

Registration and documentation should be carried out by a "twin-track" interview procedure once a guardian/advisor has been appointed. Immigration and border police officers should limit their interviews to gathering basic information about the child's identity. A complete social history should be taken by an organisation with care duties towards the child. All those interviewing children should have appropriate training or expertise. **(SGP 4)**

What happens in practice?

Separated children arrive in Ireland and are identified either at the point of entry, such as the airport, or within the country, by presenting themselves to the Office of Refugee Applications Commissioner (ORAC). At the airport, immigration officers proceed as follows. If it is a straightforward case that the individual is an unaccompanied minor, according to an immigration official, the practice is to implement the provisions of Section 8(5)(a) of the Refugee Act 1996 (as amended) [35] and Article 4(1) of the 1991 Child Care Act, and refer a child identified as unaccompanied to the care of the Health Boards[36]. In cases where children are accompanied by an adult, and as a result of the examination of travel or other documents, or through prior intelligence received, there is suspicion as to the

[35] Article 8.5 (a) of the Refugee Act 1996 (as amended) states: "*Where it appears to an immigration officer that a child under the age of 18 years who has arrived at the frontiers of the state is not in the custody of any person, the immigration officer shall, as soon as is practicable, so inform the Health Board in whose functional area the place of arrival is situate and thereupon the provisions of the Child Care Act 1991, shall apply in relation to the child*".

[36] Article 4(1) of the 1991 Child Care Act states "*Where it appears to a Health Board that a child who resides or is found in its area requires care or protection that he is unlikely to receive unless he is taken into care, it shall be the duty of the Health Board to take him into its care under this section*".

relationship of the adult to the child or children, immigration officers may invoke Section 12 of the Childcare Act, 1991 and refer the child to the care of the Health Board. Some recent referrals made by the Garda National Immigration Bureau at Dublin Airport have been babies and toddlers who have arrived accompanied by adults but where there is a serious doubt about the identity of the child or adult, and where there is distinct uncertainty about the relationship between the parties[37]. If a minor is identified as unaccompanied at ORAC, he or she is immediately referred to the Health Board.

According to immigration officials, unaccompanied minors are not interviewed in detail at the airport. They may be asked questions regarding their travel and where they have come from. However, unlike the case for adults, applications for asylum for minors are not taken at the airport, therefore the information gathered at this time is not relevant or utilised as part of a later asylum application, although it goes on a child's file. Legal sources have raised concerns that this information, gathered without the presence of a social worker or legal representative, may be used in Dublin Convention cases. In some circumstances, children may be interviewed as part of an investigation into the circumstances surrounding their arrival in the State. According to immigration officials, this would take place at a later date and always be in the presence of a social worker assigned to the case by the relevant Health Board.

A number of unaccompanied minors arrive outside of office hours, at night-time or week-ends. If minors are aged 12 years or over, they are referred to the Health Board's crisis intervention unit, and the following day to the social work team for separated children. However, the crisis intervention service has no remit for children under 12 years, and there is a lack of formal provision for dealing with young children who arrive out of hours. Section 12 of the Child Care Act, which provides that a child should be taken to a place of safety if it would not be sufficient for the protection of the child to await the making of an application by a Health Board, will normally be implemented by Gardaí in these instances. Children will be taken to a children's hospital, until they can be referred to the Health Board the following day. The reception of unaccompanied minors, including facilities for dealing with distressed children at the port of entry, and the issue of reception care for young children out of hours were identified as issues needing further attention.

If a minor arrives accompanied by an individual claiming to be an older sibling, it is the responsibility of the Health Board to evaluate the nature of the relationship with older sibling and the extent to which the sibling would be a suitable caregiver, capable of fulfilling his/her responsibilities to the child.

[37] Taken from a presentation delivered by Marilyn Roantree, Principal Social Worker of the East Coast Area

In practice, only a small minority of separated children are identified formally at a point of entry. Anecdotal evidence suggests that the vast majority of separated children enter through similar routes to that of adult smuggling.

Challenges to identification

"First of all, very, very few children are identified at point of entry. I think that 99% of our referrals come through ORAC. So a very small minority are actually identified at point of entry, and those that are, are generally youngsters that come in at night or over the weekend, through Dublin airport….Very few children come in on their own. They are brought with the adult who's paid to bring them, and they're told how to get to ORAC or left outside ORAC, these are the stories they tell us. It's a consistent pattern that they're left at ORAC or are abandoned in the city centre." **(Health Board official)**

Currently, there is a lack of transparency with regard to immigration practices at national airports. The Irish Refugee Council was involved in proposals for a Refugee Arrivals Project in Dublin Airport in 2001, which would have provided legal, counselling and interpretive services. Unfortunately, the Department of Justice, Equality and Law Reform refused permission for this project to proceed. There is still an identified need for such a project, which could address the support and protection needs of separated children on initial arrival.

4.1.2 Detention

Separated children should never be detained for reasons related to their immigration status. This includes detention at the border, for example, in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people. **(SGP 6)**

What happens in practice?

There is currently no law allowing or prohibiting the detention of separated children seeking asylum in Ireland. The Immigration Act 1999 incorporates the provisions for detention contained in the Refugee Act (as amended). Section 9 (12)(a) states that subsection (8) '*shall not apply to a person who is under the age of 18 years'*. Section (b) follows:

"If and for so long as the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of sub section (8) shall apply as if he or she has attained the age of 18 years."

The Immigration Act outlines the periods of detention permissible under the legislation. The

Health Board to the Seminar on Unaccompanied Minors seeking Asylum, Dublin, October 17th, 2002.

maximum period of detention before an individual may be brought before a judge is ten days. A Judge can commit the person for ensuing periods of 10 days without charge pending the determination of the person's application under Section 8.

Recently a number of non-Irish-national minors have been referred to the Health Board from Mountjoy prison. Some have been awaiting a court hearing. The Health Board go with ORAC to prison, to ascertain whether or not they wish to apply for asylum. If the minor is charged with an offence such as shoplifting, the case has to go to court before s/he is discharged. If it is because s/he is illegal in the State, then s/he is released to the care of the Health Board. The implication of this however is that there are at least some unaccompanied minors living within the State that have not been identified through other routes by State authorities, until coming in conflict with the law.

Conformity with the statement of good practice

Principle	Progress since 1999	Conformity with the statement of good practice
Definition of a "separated child"	Section 8.5 (a) of the Refugee Act 1996 (as amended) is utilised.	Practice is mostly in conformity with spirit of SGP but is not supported by a broader definition of 'separated child' in refugee or child law.
Access to the territory **Freedom from Detention**	The Irish Refugee Council sought to establish a 'Refugee Arrivals' project at Dublin airport but was refused permission.	No agency was aware of minors who were refused entry or deported, at the point of entry. Currently, there is a lack of transparency with regard to immigration procedures on arrival.
Identification	Creation of the Garda National Immigration Bureau; remit extends to include investigations pertaining to separated children but no staff formally assigned to separated children.	Under the provisions of the Refugee Act 1996 (as amended), a separated child may be interviewed by an immigration officer at point of entry. Minors do not appear to be subject to detailed interview at the point of entry. Immigration officials do not have specific guidelines/procedures with respect to the identification of separated children.
Documentation and registration	All separated children are referred to the Health Board where they are registered. Files exist for all children.	Practice appears to be in conformity with the statement of good practice.

Recommendations

- **An inclusive definition of "separated children" as defined by the SCEP should be incorporated into existing refugee and child legislation.**
- **Provisions within formal guidelines for immigration officers at ports of arrival, which**

set out the statutory definition of a refugee specifically related to separated children and unaccompanied minors be developed for GNIB officers at the point of arrival.

- **GNIB potential in the reception of unaccompanied minors could be strengthened. Immigration officials should receive on-the-job training on the reception or dealing with unaccompanied minors. There is a recognition that facilities at ports of arrival are not ideal for the reception of minors, particularly if distressed or traumatised and discussions are ongoing to have proper facilities provided. Emergency care provision for dealing with unaccompanied minors under 12 years who arrive at week-ends or out of hours needs to be put in place as a priority.**

4.2 Age Assessment

There should be a presumption that someone claiming to be under 18 years of age will be treated as such. Separated children must sometimes travel on false documents in order to flee from danger. In making an age determination separated children must be given the benefit of the doubt. If an age assessment is necessary, it ought to be carried out by an independent physician with appropriate expertise and familiarity with the child's ethnic and cultural background. Examination should never be forced or culturally inappropriate. It is important to note that age assessment is not an exact science and a considerable margin of error is called for. (**SGP 4.2)**

What happens in practice?

Across Europe, age assessment to determine if an individual is an adult or a minor is contentious, and recognised as extremely difficult. In Ireland, many separated children arrive with false or no documentation, making it difficult to determine age. In false documentation, children's ages are sometimes misrepresented. The issue of age assessment arises where there are doubts as to whether the person is an adult or a minor. Due to the fact that no definitive test for assessing age across all cultures has been identified, this is an issue that is causing problems for a number of bodies dealing with separated children – and of course, for the children, whose age is being questioned.

Assessing age is important as it has implications for whether individuals enter asylum determination procedures for adults or minors, whether they are under the care of the Health Boards or the Reception and Integration Authority (RIA), and whether they receive social welfare or enter the dispersal and direct provision system. If separated children are incorrectly identified as adults, they will not be entitled to the full protection, which is accorded to children under international law.[38]

Challenges of identifying an appropriate age assessment methodology

A pilot project known as the ***'Greulich-Pyle' method*** was used for a certain period by the ORAC. Where there was a doubt as to the age of the individual, a referral was made to a GP and then to the Beaumont Hospital. This test is based on x-raying the growing hand and the wrist and comparing the x-ray with a reference atlas. This method was used for a few months. The ORAC sent 142 people, who looked significantly older, and claimed that they were 16 or 17, to be tested. The results were that 49 were shown to be over 18, 12 of these admitted to be over 18, 66 refused to take the test, 15 were shown to be 18, plus or minus a year, and those 15 were treated as minors. On evaluation, the pilot project was discontinued, as the method was not appropriate for use with multi-ethnic

[38] UN Convention on the Rights of the Child, ratified by Ireland 28th September 1992

groups.

When a young person presents him/herself to the ORAC, the first reason for doubting the age of an individual, who claims to be a minor, is his/her physical appearance. In this instance, the minor is brought into an interview room and informed that the ORAC have doubts as to his/her age and the importance of telling the truth is emphasised. The types of questions typically asked are 'At what age did you start going to school?' 'How long were you there for?' 'What have you done since you left?' Consideration is also taken of the person's mental maturity, and particularly of signs of vulnerability. Judgment is based on responses to questions, demeanour, maturity levels and physical build. The individual is informed that age does not preclude him/her from having his/her case assessed under Refugee Act (as amended) and that there are no negative inferences with regard to credibility**.** At that stage, the ORAC have stated, that some will admit to being over eighteen. While this should not impact on the person's asylum claim, there are concerns that if the claim for asylum is based on child specific forms of persecution, the credibility of the claim would be in doubt, should the person admit to being over 18**.**

According to the ORAC, the "*interviewer invariably gives the benefit of doubt to the unaccompanied minor when she has any doubt in her mind as to the age of the person. These cases are promptly referred to the Health Board*". If the person is deemed to be over 18, the burden of proof is then placed on the young person to prove his/her age. The person is asked if he/she is in a position to get any documentation to verify age. The ORAC have sent some documents to GNIB for verification. This is not so difficult with passports, but, according to the ORAC, can be more difficult to verify information from Africa.

If a client instructed the RLS that he/she is a minor in cases where the ORAC have decided otherwise, the RLS may request that the ORAC reconsider the age of the applicant. The ORAC may in response invite the person for another interview. A senior staff member will conduct this interview. Legal representatives for separated children are unhappy with the subjective nature of the assessment in its present form and would like to see some 'expert view' incorporated into proceedings. They are concerned that the 'benefit of the doubt' with respect to age is not applied in some cases. Similarly, the Health Boards want screening mechanisms, as they don't want to be in the position of accommodating adults in hostels with minors. Therefore, the Health Board have also asked the ORAC to re-consider an age assessment, where they have doubts as to whether the person referred to them is a minor.

If the young person were still deemed to be over eighteen by the ORAC, until recently, the RLS

would treat the young person as a minor, and provide legal aid and advice. The difficulty in representing an unaccompanied minor in the asylum process, however, is the issue of the capacity of a minor to give instructions. Section 8 of the Refugee Act places a statutory duty on the Health Board to make an asylum application on behalf of a minor. The RLS cannot assist young people, claiming to be minors, but have been assessed by ORAC as being over eighteen, and therefore not placed in the care of the Health Board. Section 5(6) of the Civil Legal Aid Regulations 1996 states that in the case of a minor, '*the application (for a legal aid certificate) shall be made by a person of full age and capacity and where, the application relates to proceedings which are required by rules of court to be brought or defended by a next friend, or guardian ad litem'*.

A minor is therefore not in a position to make an application for a legal aid certificate. ***This situation is of serious concern with regard to legal representation for individuals in this position.***

"The system of accommodation care provision here gives an incentive to adults to say they are children. Because if they are adults they go into direct provision and they're only paid 19 Euro per week. If they are teenagers, they go into hostel accommodation, have more money and a lot more freedom. Since (x-ray system) stopped, we are getting a small but regular trickle of people about whose ages we would have concerns" **(Health Board Official)**

ORAC are presently researching individual age testing systems in other EU jurisdictions with the objective of establishing a medical age testing system on a permanent basis. Medical assessments are regarded as problematic because they can involve intrusive or distressing body examinations, and existing bone directories are deemed to be dated inappropriate.[39] The other commonly used technique in Europe is physical examination and interview with a paediatrician (ideally trained in ethnic/cultural divergences in developmental levels and independent of the ORAC). No test is definitive and must have a +/- 18-month margin of error, making age assessment of little benefit for borderline cases. For this reason, such cases should be given the benefit of the doubt.

Conformity with statement of good practice

Principle	**Progress since 1999**	**Conformity with SGP**
Age Assessment	The ORAC has worked to identify an appropriate age assessment methodology	Benefit of doubt principle mainly applied.
Principle of the 'benefit of the doubt' (20-24 months as a	The ORAC and UNHCR are examining alternatives to bone x-rays in international best practice for age assessment	Presently, not carried out by an independent physician with appropriate expertise and familiarity with the child's ethnic and cultural

[39] Ruxton *note 3* at 10.

suggested guideline)[40]		background.

Recommendations

- **A method for systematising age assessment is presently being explored on the basis of an examination of international best practice. Intrusive medical assessments should not be part of the assessment procedures. Any method needs to be independent and sensitive to children's ethnic and cultural background.**

[40] Ruxton *note 3* at 10.

4.3 Appointment of a Guardian, Reunification with family in Ireland and Interim Care

4.3.1 Appointment of a Guardian and reunification with family in Ireland

As soon as a separated child is identified, a guardian or adviser must be appointed -in a long-term perspective - to advise and protect separated children. Regardless of the legal status of this person (e.g. legal guardian, NGO worker) his /her responsibilities should be as follows:
-to ensure that all decisions taken are in the child's best interests
-to ensure that a separated child has suitable care, accommodation, education, language support and health provision
-to ensure a child has suitable legal representation to deal with his or her immigration status or asylum claim
-to consult with and advise the child
-to contribute to a durable solution in the child's best interests
-to provide a link between the child and various organisations who may provide services to the child
-to advocate on the child's behalf where necessary
-to explore the possibility of family tracing and reunification with the child. **(SGP 3.1)**

What happens in practice?

Referrals of separated children come to the appropriate Health Board through a referral form received from immigration officials, the Department of Justice, or ORAC. A social worker meets with a child to do an initial assessment to assess his or her immediate needs. A social history is taken. This includes a brief background, why they've arrived here, the reasons they've left their country, the whereabouts of family members or if they have family members or others known to them in Ireland, and health and educational details. Sometimes, for many reasons, children feign an identity and it is difficult to access the real social history. Children receive brief information on the asylum process and are offered a medical screening. They are assigned to emergency accommodation. Social workers consult with the child to determine if it is in the child's best interests to submit an application for asylum. If the social worker makes a decision on behalf of the child to proceed with an asylum application, the child is registered with the Refugee Legal Services so they have access to a solicitor and caseworker. A project or social worker provides support for each child throughout the Refugee Determination Process.

If it emerges that the child has a family member already in Ireland, in line with the best interest of the child principle, the first option considered by the social worker is placement with family members already living in the State. In order to determine the relationship of the adult and child, and to assess

the ability of parent(s), siblings or relatives to provide suitable care as guardian to the child, a brief assessment is made. This assessment involves interviews with both the child and adult/s; a review of previous and present documentation (linking in with GNIB, ORAC, etc.); contact with current service providers - Community Welfare Officer, local Social Work Department, Public Health Nurse; matching of photographs and stories; child's wishes and expectations; how appropriate is their interaction. When the information provided matches, reunification is agreed to proceed. The social worker notifies the reunification to the Office of the Refugee Applications Commissioner, the Reception and Integration Agency (if the family are in Direct Provision), the Community Welfare Officer, Public Health Nurse and Social Work office in the area in which the family is living. When there are considerable discrepancies in the information provided or serious concerns as to the suitability of the family members to care of the child, the child might be received into care voluntarily or on a Court Order (very rarely). The person claiming to be a family member will be asked to do DNA testing and further investigation is carried out while the child is in care. In the period January 1998 to March 2003, 1113 separated children have been reunited with and placed in the guardianship of family members already in Ireland.

For children or young people placed in the care of the health boards, those identified as particularly vulnerable are assigned a social worker. A project worker is assigned to individual accommodation centres. However given that an accommodation centre may house 60-70 young people, it is recognised to be seriously inadequate. At present these accommodation centres are not appropriately staffed to cater for all of the welfare needs of these young people.

"*It is a struggle with resources. We don't have enough resources to actually provide all of the young people with the social services that they need*". **(Health Board staff)**

In the interviews, there was broad agreement regarding the issues and problems faced by both separated children and the pressures on service providers to address the complex needs of separated children. Where there are some examples of good practice, particularly in relation to very young or vulnerable children, overall, separated children and young people are not receiving adequate levels of guardianship, and receive a lesser provision of care and support compared to Irish children in the childcare system. The extent of guardianship care is intrinsically linked to the type of emergency accommodation children are placed in. **In particular, the guardianship needs of boys and girls aged 15-18 years, who form the majority as separated children and who survive in unsupported, unsupervised hostels, are not adequately met in accordance with the Statement of Good Practice.** This shortfall in appropriate care provision has been identified by all parties to the consultative process as an urgent issue to be addressed.

There are also many separated children with special needs, such as sibling guardians of younger children, pregnant girls, young mothers and their infants, and depressed or withdrawn youth who may not come to the attention of social workers, who have significant guardianship needs. The social work team dealing with separated minors has insufficient social work and project work staff to address minors' rights and needs. In Dublin, although Health Board workers strive to meet the needs of separated children, there are significant pressures to meet the needs of the large numbers of multi-cultural, multi-lingual children and youth with complex needs living in unsupported accommodation.

Ratio of social workers/separated children and young people 1: 42

Because of current staffing in ECAHB team, it is not possible to assign a social worker to each individual minor and in this way separated children are treated differently from children who are received into care who each have an assigned social worker.

The main area of individual support for separated children is with respect to the asylum determination process. Legal aid is available to all children from the Refugee Legal Services, and all children receive legal advice and assistance before their substantive interview. The role of the social or project worker in this process is:

- A statutory obligation to decide whether or not to make an application for asylum on behalf of the child
- To give instruction to the Refugee Legal Services, on behalf of and in consultation with the child
- To help the child fill out the questionnaire, schedule the initial interview, and attend the substantive interview. In this, their role is to emotionally support the child but not intervene, except to ask for breaks or postponement, if the child is in distress.

This role is a crucial one in supporting children as the asylum determination process can act as a 'trigger' for causing children psychological distress or re-traumatisation as a result of having to narrate their story. It is an important mechanism for linking children to psychological support services, if needed. At present, this support is threatened by staff shortages. It is unclear if the ECAHB social work team will be able to continue this minimum level of support, which is regarded as essential within the asylum division of the Department of Justice, Equality and Law Reform.

Inter-agency structural co-operation

Within the asylum determination process, a shortage of social workers was viewed to be a blockage to the efficient processing of separated children's asylum applications. The issue of the need for the Department of Health and Children to address the resource needs of systems for separated children in the ECAHB was identified as critical.

With respect to guardianship, the significant gaps are:

- Unsupervised and unsupported hostel accommodation
- The lack of an identified individual, such as a social worker, with overall responsibility to advocate for a child, plan for a child's best interests, contribute to identifying and putting in place durable solutions, and systematically explore family tracing and reunification
- Inadequate linking children with, and co-ordination of other service systems e.g. education and training

The only other legal system of guardianship in Ireland is the 'guardian *ad litem'* system. However guardians *ad litem* fulfil a legal role of representing a child's best interests in a court setting and this model was deemed unsuitable for separated children.

With separated children, a holistic system, such as is in place for Irish children and young people in care, with the significant input of a social worker to identify appropriate care plans including durable solutions, and co-ordinate professionals and agencies working with children, was viewed by service providers as an appropriate model to meet the rights and needs of separated children to ensure their best interests are met.

> *"I think if we were looking at resources, it would be to provide more appropriate care provision, more social work and project work staff, to have a better ration of staff per number of children. This along with appropriate care placement would ensure that the welfare of the children would be better looked after*". **(Health Board Official)**

4.3.2 Interim care

Separated children should be found suitable care placements as soon as possible after arrival. Care authorities should conduct a careful assessment of their needs, and changes in care arrangements should be kept to a minimum. Siblings should be kept together. Where children live with or are placed with relatives, these relatives should be assessed for their ability to provide suitable care. Separated children over 16 years of age should not be treated as *de facto* adults and placed on their own, without adult support, in hostel or reception centre settings.

Whether they are placed in foster care or in residential settings, separated children should be cared for by suitable professionals who understand their cultural, linguistic and religious needs. Care workers should help a child develop links with their ethnic community where such exists. Regular reviews of care arrangements should be carried out.

In order to establish safeguards, care workers in reception centres and residential homes need to be made aware of the problem of trafficking of children for the purposes of prostitution or other forms of exploitation. **(SGP 10.1)**

What happens in practice?

After the initial assessment, a social worker determines a care placement for a child. In the East Coast Area Health Board, the criteria used to determine care placements include age, maturity, vulnerability, language and nationality, and any special or medical needs.

- Young people aged 15 years and upwards are generally placed in self-catering, privately managed hostel accommodation
- Children aged 6-14 years are placed in residential care, supportive lodgings, or in foster care. For very young children, social workers would look for a foster placement.
- Vulnerable young people may also be offered supported lodgings or foster placements, or a place in a residential children's home.
- Exceptionally, young people may be allowed access independent lodgings.

Determining care placements

"First of all, we have one hostel that provides meals, so if they're particularly vulnerable, or on the day of arrival, they would go there first. We have some short-term beds there before deciding on a longer term placement. We take into account nationality, in the sense if someone comes in and they don't have English, then we'd be looking to place them with people who would speak their language... so they have someone to communicate with. If a young girl comes in pregnant, we have hostels that would be more suitable, they might have services attached such as a crèche, or workers to help, or have smaller rooms for mothers and babies. Also it depends on how vulnerable they are, their history,...if they have medical needs, those kind of things would determine it as well." **ECHAB Social Worker.**

Interim care placements available are hostels for young people, residential care, foster care, supported lodgings in a foster placement or independent living. The characteristics of the different care placements are summarised in Table 9 as follows:

Table 9: Summary of Interim Care Placements available for minors in Ireland

Type of Accommodation	Managed by	Profile of Children/Capacity	Facilities/food	Welfare Allowances	Guardianship Supervision
Self-catering hostels Total number of hostels (April 2003)= 11 Total number of separated children in hostel accommodation- figure changes but *majority of separated children*.	Private	-Generally 15–18 years. -8 hostels are mixed sex, 2 are boys only, 1 is girls only -Also pregnant girls, young mothers and babies -Individual hostels have a capacity for between 15-100 separated young people.	-Conditions vary; usually one large kitchen, self-catering	-Full supplementary allowance €124.80 -Child benefit up to 16 years, or if at school, €125 School travel expenses, if relevant -Medical card -One parent allowance -Hospital/ special needs allowance if relevant	Management - No supervisory or qualified care staff. -1 project worker assigned to each hostel, average 1 visit per week by Social worker to vulnerable cases -Community welfare officers visit hostels 1/week
Hostel/ meals provided (1) Chester House, Phibsboro	Private	Younger / mildly vulnerable children	Meals provided	Means-tested allowance (as meals provided)	Management No supervisory or qualified care staff.
Hostel / 'direct provision' (1)	R.I.A	Older (17+) youth, vulnerable youth.	Meals provided	Direct provision payment of Euro 19.10/week.	Management No supervisory or qualified care staff.
Residential care homes; Irish and non-national children (Number varies; possible spaces in 2-4 homes)	NGOs e.g. Crosscare Voluntary Organisation, Homeless Girls society - Voluntary Organisations receiving HB funding	Mix of Irish and non-national children, Total capacity 11-12 / home of which 1-3 are separated vulnerable children	Meals, homework support & social supports provided	No direct payment to children	2 managers and 10 child care staff, key worker and social worker assigned to each child
Residential care home, dedicated for separated children (1); Funded by East Coast Area Health Board	NGO. Clann Housing Association Ltd. (Tallaght)	Capacity for 6 separated children aged 6- 15 years.	Full care provision	No direct payment to children	12 childcare trained staff, key worker and social worker, from ECAHB team, assigned to each child
Supported	Health	Children 12+, or	Supported	Supported	Family

lodgings	Boards	vulnerable young people (<18 years) Small numbers	lodgings family provides meals. & limited support.	lodgings allowance given to family	environment, social worker assigned
Foster care	Health Boards	Particularly vulnerable children and young people Small numbers	Trained foster family provide meals & support.	Fostering allowance given to family	Family environment, social worker assigned
Private rented accommodation	Decision of Community welfare officer	17+ with refugee status, Some young mothers with partners. Small numbers	As per private rented accommodation	Full supplementary allowance, medical card.	Contact with community welfare officer

As can be seen from this table, separated children within residential care experience a system of care similar to Irish children in care, with an assigned social worker and qualified care staff. One unit, operated by Clann Housing, is a dedicated unit for 6 separated children, and trained child-care staff have built up experience in addressing the needs of culturally diverse groups. According to respondents, there is satisfaction that these systems provide adequate and supportive interim care to children in their remit. However the number of minors in this form of accommodation is few.

The majority of separated children reside in hostel-style accommodation. This is indirectly related to the lack of inclusion of separated children in Irish child law. The Child Care Act (1991) does not refer to separated children, so separated children are treated as homeless Irish children for welfare purposes. After their needs assessment interview with social workers, they are referred to the No Fixed Abode for their initial social welfare payment. The NFA unit registers separated children in its system, and a community welfare officer is designated to a hostel, and liaises with children about their economic benefits. However, this accommodation and welfare system fails to acknowledge the specific circumstances of separated minors, who have to cope with a new culture, often a new language, unfamiliar education system, without the supports of family, friends, or community of origin, while undergoing the inevitable stresses of the asylum determination process.

Case Study: Hostel Accommodation for Separated Children

"…hostel has children that range from 16 to 18 years old, and one or two of 15 years old. Some of the 18-19 years old are receiving aftercare services from the Health Board. In total, there are around 85-90 separated children. There are male and female dormitories, and children share the cooking facilities and the bathrooms. There are 7 or 8 young mothers and 4 or 5 pregnant girls in the hostel. There are two other hostels in the area. One has around 68 separated children on their own, with no support and the other around 20. So there is almost 160 separated children this area. We (a non-governmental organisation) offer psychosocial support to children. They have cooking facilities, only

one big kitchen, and then there may be some microwaves and fridges behind the reception desk where they can get their food heated up. Some of the people in some of the rooms would have acquired fridges or microwaves of their own. There is not a great dining room in this hostel. Most of them eat in their bedrooms, or sitting out in front of the reception area; there are high tables there that a lot of them would sit and eat, but that is very open as well. There aren't really any playing rooms. There is a TV room with a pool table. There is no green space. But the management of the hostel have been very strong in looking for a centre like ours (NGO support organisation), which provides (support) for children and mothers. The average time varies but at the moment there are people who have been there for over 2 years. A lot of the time when they come, they stay in the centre for a long time." **(Staff member, Voluntary Organisation)**

Many interviewed questioned the appropriateness of unsupported, unsupervised hostel accommodation for minors, where minors have the same welfare allowances and self-care responsibilities as adults. One respondent said "*Kids talk about their home situation, not having study facilities, no one to help them with their homework, no one to motivate them to go to school, the whole way they live*". At the same time, youth in hostels receive a level of income that is untypical for minors which gives a lot of freedom.

"*From my visits to hostels, […] I do remember being struck by the extent to which these are just teenagers having to live in a very adult world, having to do all sorts of adult things from their shopping, to their cooking, to their homework, all on their own without any adult supervision. And it just seemed to me to be totally inappropriate. They need an adult in their life, they need a significant adult in their life on a more than once a week basis, like any child"*. **(Focal Point for Separated Children, UNHCR Dublin)**

"There are lots of different people, and it's difficult to live with so many people together and to share your room with others, to keep your personal belongings in a tiny space beside your bed **(Observation of NGO worker)**

For 15,16, and 17 year olds in unsupported hostel accommodation, concerns were expressed about those who were not providing themselves with a nutritionally adequate diet, that many were not accessing education, that those with mental health needs as a result of experiences of loss, violence or trauma were very isolated and lonely, and that adolescents were likely to be vulnerable to being recruited by criminal gangs or to be sexually exploited. This report cannot substantiate anecdotal stories in this regard, but it highlights that the need for supervisory support structures.

It was the view of many respondents that the interim care system needs re-examination within the broad frame of asylum policy. The system that has emerged, as it stands presently, is that adults are entered into a 'direct provision' system, where all meals are allocated, individuals receive a weekly allowance of €19.10, and their degree of independence is highly restricted. Minors, conversely, are treated as de facto adults, referred to self-management accommodation, given more money, which brings a lot more freedom. Rather contradictorily, adults are infantilised while young people are treated as adults. One respondent noted:

"It is directly an outcome of the change in policy in relation to adults, and the lack of anticipation or care-planning in relation to minors; the adult system incorporated the care of minors, but then the adult system changed, but left the system in place that minors were already in".

However, there is also recognition of the importance of being responsive to cultural developmental norms:
"Trying to get the balance of what is appropriate care provision for somebody aged 15 or 16 years isn't as clear cut as it might seem in relation to an Irish child from an Irish culture. Children are coming from up to 60 different countries. If they culturally have been seen as an adult within their own country, before they come here, we need to take that into account as well"

Vekić (2003), based on interviews with a small sample of 18 separated children, found some preferred to cook their own cultural food, whereas others found preparing their own food difficult, time-consuming, and hostels lacked appropriate facilities. Youth in smaller accommodation centres, with only 2-3 young people per room, and with appropriate cooking facilities reported they were satisfied with their circumstances. The "ideal living environment" identified by respondents in Vekić's (2003) study was placement in family homes rather than hostel accommodation. The Department of Health and Children, and the East Coast Area Health Board are targeting foster care as an appropriate response to interim care needs, and ideally see this as appropriate for long-term care.

"We are accessing an increasing number of placements through the area teams who are recruiting foster families for children.. There is ongoing recruitment happening of alternative care families within the area services, and within that population there are people who are becoming more aware of the needs of asylum seekers in general and the existence of separated children. So we have a number of families now coming forward asking specifically to assessed for these children. And we are hoping to assign one of our posts here to working with an area team to specifically recruit and assess families as a start". ***(ECAHB staff)***

It is generally thought to be good practice to place children with families from their own ethnic

communities. However, the experience of the East Coast Area Health Board is that children say they would prefer to be accommodated with Irish families.

"We've talked about recruiting within the different ethnic communities, and it's been interesting because we've assumed that this is what children would love, but in fact when we had two young boys for placement recently who've been in residential care in the short term but they were moving on, and we said 'what would you like best?' - a family or a residential home or a family from your own community?' And immediately they were saying ' we want to live with people who are English speaking, because it would be too difficult for us – we're still learning English – and if we're speaking our own language at home and we then have to keep on learning English, going to school, it would be more difficult and it would be easier for us……. And these were 12 year old boys who were quite insightful" **(Health Board official)**

A regional Health Board worker, however, mentioned that it is not possible to assess non-nationals in strict accordance with foster care guidelines as it is not possible to access international police checks, and no full access exists to medical assessments that take account of the diseases in countries of origin. The risk she identifies is of placing children with unapproved carers. This possibly needs to be examined within foster care policy. However, overall, significant efforts are being made to develop the area of foster care provision for separated children.

In Dublin, there have been good experiences reported in cases where minors have been placed in accommodation centres with family groups from their country of origin, and adults have functioned as role models, helping to care for their babies, or in terms of homework or just the routine, or maintaining their language skills.

In the Mid-West Health Board, separated young people are placed in independent accommodation. They noted that placing older youth in independent accommodation, with continued support from a project worker over time, facilitated social integration as youth began to rely on older people in the community, and tended to drift away from the service, getting back in touch when they needed to. These youth will be significantly affected by scheduled changes to the new social welfare bill which places a cap on the amount of rent those on rent allowance can pay.

Recognising the serious challenge presented to Health Boards as a result of the unanticipated, large-scale increase in the numbers of separated children referred to their care, and constraints experienced in terms of human and other resources, the following are some other emergent issues identified by service providers with respect to interim care.

- *Mixed-sex accommodation* The fact that adolescent boys and girls are placed in unsupervised mixed-sex accommodation has raised concerns of support organisations regarding child protection needs, and they advocate for separate accommodation for teenage girls.

- *Hostel capacity* Hostels that cater for large numbers of separated children are difficult and stressful environments for separated children, and some hostels with up to 80 or more minors lack appropriate cooking, study, recreational and personal storage facilities. Although there is some good practice in this area, in particular in residential units, present interim care practice needs to be significantly enhanced i.e. accommodation units for smaller numbers of young people, with supervisory structures provided by trained child-care support staff, with appropriate provision for study and homework, and with strengthened links to non-statutory psychosocial support or youth organisations.

- *Monitoring* There is an urgent need for regular monitoring of privately managed hostels. The Social Services Inspectorate is in place to inspect residential care units under the auspices of the Health Boards, and this process is scheduled to begin shortly. However it is the Health Board that is responsible for monitoring privately managed hostels and this needs to be carried out urgently and on an ongoing basis

- *Individualised planning* Individualised care plans should be developed so that minors can be placed in the most supportive environments for their needs and maturity levels, in particular for pregnant girls and young mothers. These care plans should incorporate planning for long-term durable solutions (See section 6).

- *Resourcing and supporting Health Board staff on the separated children team*. Health board staff working with separated minors tend to be highly motivated, and frequently have some background in multi-cultural issues. They also have received significant levels of training from UNHCR and the Health Board, in addition to having built up skills on working with children from different cultures through practice. Health board staff frequently feel over-whelmed with the scale of meeting the needs of separated children, given the staffing ratio of 1 project worker per hostel, and this can result in frustration and eventually burn-out.

A core challenge: avoiding 'burnout' and retaining experienced Health Board staff within the social work team on separated children

"The project worker assigned to the ….Hostel has informed us that she will be leaving ..within the next few weeks. Insofar as we are aware no new project worker has been appointed. In addition it seems as if this hostel will be designated a hostel for separated children. Quite a number of the newly arrived minors in this hostel have babies or are in the later stages or pregnancy. Also some of the young people have received refusal at the second stage of their application and are very distressed. **Extract of letter of concern from a Voluntary Support Group to Department of Health and Children and Irish Refugee Council.**

- *Withdrawal of social welfare allowances* There are reports that some separated children have had their social welfare allowances stopped for various reasons, for a number of weeks, leaving minors highly vulnerable.

Conformity with the Statement of Good Practice

Good practice	Progress since 1999	Conformity with the SGP
Appointment of a Guardian or Advisor	Establishment of a project worker in Midwest Health Board, dedicated social worker in Southern Health Board and dedicated social work team on unaccompanied minors in the Dublin area which can ensure: -Children are accompanied through the asylum process -Capacity to identify and respond to especially vulnerable children. -Experience and learning is disseminated to other Health Board regions -Building of knowledge and expertise on working with multi-cultural, diverse groups of children, and issues related to enhancing asylum procedures for children	Children identified as vulnerable are appointed a social worker. The majority of children have no one person acting in a guardianship role. It is presently ensured that a child has suitable legal representation to deal with his or her asylum claim Some provisions exist to ensure a child has accommodation, education and health care provision. There is broad recognition that care and hostel accommodation are inadequate to meet many adolescents' needs. Gaps exist for most minors as there is a lack of a guardian to ensure best interests, to contribute to durable solutions, to provide link between children and other services, to explore family tracing and reunification and to advocate for the child generally.
Interim care	Much greater awareness and experience of needs of separated children from different cultural backgrounds.	A needs assessment is conducted and children are found care placements after their arrival. Siblings are generally kept together.

	Previous practice was to accommodate minors with adults, and a significant development has been the establishment of separate accommodation provision for minors. An audit has been carried out in relation to accommodation standards; minimum standards for accommodation centres are presently being established, looking at what is best for minors in terms of physical layout, as well as other needs. A dedicated residential unit for younger separated children has been established, and recognised as a model to expand. Increased access to supported lodgings and foster family placements. Development of new fostering standards that will include statements on cultural and diversity needs. Planned new post to recruit and assess families for separated children.	Concerns exist where capacity of older siblings to function as guardians for younger siblings in unsupported hostel accommodation. Separated children over 16 years are treated as *de-facto* adults in unsupported, unsupervised hostel settings. In foster and residential settings, suitable professional care exists. Regular care reviews are sometimes, but not always, carried out. Minors are not helped develop links with their ethnic community. Re. safeguards against trafficking, hostels visited had a signing-in security procedure, and mechanisms for reporting 'missing' children. However it is not clear what happens minors who have 'dropped out' of the asylum process and the issue of children who go 'missing' from the system needs a holistic review.

Recommendations

The issues of guardianship and interim care need to be examined within the overall framework of legal and social responsibilities for separated children.

Guardianship

- **The initial assessment of minors' needs should be strengthened to include a process to identify and develop a durable solution plan, responsive to the minor's age, developmental needs, cognitive and emotional capacity, family circumstances, interests and wishes. This means 'front-loading' the input of social workers acting in a guardianship role, in addition to supporting children for whom the asylum process is determined to be in their best interests, through that process.**
- **If it is felt that family tracing and contact would be in the child's best interests, place more emphasis on family tracing and contact at the initial stages of a child's arrival in Ireland. This would require building networks with International Organisations such as the International Committee for the Red Cross, Save the Children Fund etc.**

Interim care

- **Enhance good practice in care provision for 15-17 year olds through provision of accommodation units for smaller numbers of minors, possibly based on a 'group home' model, with adequate cooking arrangements or meal provision, with supervisory structures, with appropriate provision for study and homework, with strengthened links to non-statutory psychosocial support or youth organisations to facilitate cultural learning and social integration.**
- **Develop separate accommodation provision for adolescent girls.**
- **Undertake in-depth examination of the interim care and accommodation needs of pregnant minors and young mothers and their infants.**
- **Monitor existing hostel provision, ensure that facilities such as cooking, food storage, hygiene, space for study, eating, and recreation meet minimum standards.**
- **Develop the area of foster care. Prioritise filling already approved positions in this area, e.g. Foster care support worker.**
- **Provide relevant training for community welfare officers working with separated children, who play an important and regular support role to adolescents in hostels.**
- **The Department of Health and Children should foster the development of the Social Work Team for Separated Children by putting in staff supports to build up a dedicated resource for continued policy and practice development.**

4.4 Health, Psychological Services and Psychosocial Support

Separated children should have access to health care on an equal basis with Irish children. Particular attention should be paid to their health needs arising from previous physical deprivation and ill-health, disabilities, and from the psychological impact of violence, trauma and loss. For many separated children access to counselling is vital to assist their recovery.
SGP (10.2)

What happens in practice?

Health

The Health Board offers all separated children a medical screening. They have to request the equivalent of parental consent at the District Court for children under 16, for dispensing of parental consent, so that decision making is transferred to the Health Board. Minors over 16 years are deemed mature enough to give their own consent to medical assessment and treatment. Guidelines for medical screening are in line with those adopted nationally for all asylum seekers.
Medical screening includes:

- A full developmental medical, including vision testing and audiometry.
- Public Health Screening which involves taking blood samples for Hepatitis B, Hepatitis C, H.I.V., Rubella (females only), Varicella Zoster (females only), Tuberculosis (referred for chest x-ray), Mantoux test (referral to TB clinic if indicated, and faecal samples sent for polio testing (under 15 years only).

Testing for TB and Hepatitis B is offered to all asylum applicants, but is not compulsory. At present, unaccompanied minors are referred to the existing Area Medical Officer Service if necessary, but it has been proposed that a separate service be established to deal solely with minors. Medical screening takes place within a few weeks of arrival, but emergency cases or pregnant girls are given due priority.

> "*Some youngsters have been shown to have quite serious health problems, either from injuries, or congenital histories, illnesses that have not been diagnosed earlier, or infections that haven't been treated*".

It is policy that all separated children are accompanied to appointments with doctors by a social or project worker, but it does not always happen in practice. Respondents noted that within the health

services, there is a lack of information about the status of separated children that could be addressed if, as desirable, a project worker could attend any medical appointments. All separated children are entitled to free health services and are entitled to a medical card. It is not clear what it the policy regarding welfare provision for minors who are *not* in the asylum process. One school principal noted "*I've one guy here who is not in the asylum process and the Health Board refused to give him a medical card which I think is absolutely disgraceful"*. This is likely an atypical case but raises an issue of whether it all separated children are automatically entered in the asylum process, and if not, then what legal status is accorded to minors for whom an asylum application may be inappropriate for whatever reason.

Psychological services and psychosocial support

Psychological needs of separated children are complex and include safety needs, belonging needs (family contact, experience of friendship, absence of discrimination), esteem needs and confidence in the future[41]. Psychological and psychosocial support to separated children is provided by staff in many services, including the Health Board, psychological services and refugee and asylum seeker support groups. This latter group has emerged as particularly important in addressing the broad social support needs of children.

A psychology service for refugees and asylum seekers was established in 1991 and it is now located in the Northern Area Health Board providing a service to the three Health Boards in the E.R.H.A. area. In response to an increasing number of referrals of minors, a designated senior psychologist post was created in November 2001. There were 65 referrals of unaccompanied minors in 2002 and from January-March 2003, referral rates have been almost double that of the previous year. According to a psychologist working with unaccompanied minors, presenting symptoms "range from persistent sleeping problems, intrusive memories, anxiety, depression, to suicidal or self-harming behaviours. The types of experiences, which may give rise to psychological problems described, include forced separation from family, traumatic bereavement, sexual abuse, experience of/witnessing violence. Anxiety and uncertainty within the asylum process, feelings of loneliness, lack of daily structure can compound the psychological distress of an unaccompanied minor".

The asylum determination process, through its nature of asking children to recall and narrate events in their past, frequently triggers distress. Receiving the outcome of a negative decision can spark extreme distress. Receiving a positive decision can also be very distressing psychologically as minors face the fact of not being able to return home, and of having to accept the losses of living in exile.

[41] Ager, A. (2000) *Psychosocial programs: Principles and practice for research and evaluation*. In Ahearn, F. Psychosocial wellness of refugees. Studies in Forced Migration , Vol. 7., p 24-40. New York: Berghahn Books.

There is a concern that Health Board resource and personnel constraints may result in support to separated children through the asylum process being reduced or discontinued. This would have a significant negative impact on minors, and would impact on systems that can presently identify and monitor children experiencing extreme psychological distress.

The service provides psychological forms of intervention including psychotherapy and counselling. Psychologists and psychology services are not generally familiar to children from non-Western cultures and the Psychology Service for Refugees and Asylum Seekers maintains a strong awareness of this and aims to access the central place of culture within the delivery of the service.

There are a number of referrals for which the psychological services are not the appropriate service, including for support around a HIV diagnosis, girls in need of pregnancy counselling or support, and children and youth with specific learning and literacy difficulties. In the former two instances, referrals are made to specialist services. In the case of children with learning or literacy difficulties, there is little or no specialist support available. There are also bureaucratic difficulties around the referral to psychiatric services of youth assessed to be of suicide risk.

Many of separated children's primary psychological needs are most appropriately addressed by systems outside of specialist psychological services. For example, it has been noted that minors display more distress during summer holidays due to lack of structure which may impact on coping mechanisms, what Rea (2000) refers to as 'thinking problem difficulties', i.e. thinking about families, loved ones and losses experienced. In this respect, it is teachers, youth clubs, community-based support groups and others who have the potential to play the most important role in addressing children's psychological needs.

Within the asylum system, it has been noted that a lack of procedures for the dissemination of information regarding policy changes within asylum procedures has resulted in the creation of undue psychological stress. For example, information that minors, on reaching 18 years would be relocated to direct provision adult accommodation centres created high levels of confusion and distress.

Psychological distress, psychological services and community-based psychosocial support

Providing psychological supports in relation to primary psychological needs as well as the more immediate pragmatic needs is central to the work of social workers, project workers and community support groups. However for a number of minors, referral to the psychology service may be necessary because of the severity or nature of psychological distress.

While a certain level of distress may be considered a normal response particularly in the early stages after arrival, there are many factors that will compound that distress, including participation in the asylum process, which is uncertain by its nature and also requires a re-telling of sometimes traumatic experiences. Significant distress can become apparent some time after arrival or following being granted refugee status. Generally community support groups, where they exist, are supportive in informing social workers about those children who might need psychological support but that might not be identified in the first place when they were assessed by the Health Board. The difficulty that arises is that, as they were not identified as vulnerable initially, they frequently are not assigned a social worker to support and monitor their psychological well-being.

Community support groups working closely with minors play an important role in providing psychosocial support and frequently keep in touch with minors on a regular basis where possible. The working relationships between the project/social workers and the community groups are complementary enough to fill in some of the gaps caused by the lack of resources that impinge on the Social Work Team of the ECAHB. **However, these ad hoc arrangements highlight the need for more care staff at hostels and more social workers and project workers to closely monitor all the separated children along their process of asylum. Furthermore, many hostels are in areas where community-based support groups do not yet exist.**

Conformity with the Statement of Good Practice

Statement of Good Practice	Progress since 1999	Conformity with the SGP
Health	A part-time area medical officer and a health nurse have developed a medical screening service for minors	Separated children have the right to access health care on an equal basis with Irish children. As with children in care, all have access to a medical card. A developmental medical assesses for health needs arising from previous physical deprivation and illness, disabilities and trauma.[42] It was not possible in this report to assess service responses post-assessment.
Psychological support	The psychological service for refugees and asylum seekers created a designated post at senior level for	Health Board workers can refer distressed or traumatised children to a designated psychological service for unaccompanied minors. The

[42] It was not within the scope of this report to assess the health needs and responses to the health needs of unaccompanied minors, so this is an area in need of further investigation.

	unaccompanied minors in November 2001.	capacity of this service is now being significantly stretched and there is a danger of unacceptable waiting lists emerging.

Recommendations

Health

- **There is an urgent need for family planning and reproductive health education for adolescents in hostel accommodation.**
- **Training for medical staff in GP services and hospitals on cultural issues and unaccompanied minors needs to be enhanced.**

Psychology service

- **Appoint a second psychologist to the Psychological Service for Refugee and Asylum Seekers as approved, to facilitate capacity of the service to accommodate the higher referral rate, provide training and consultation as necessary, to develop the role within family reunification and further development of multi-disciplinary and multi-agency approach to the needs of separated children.**

Psychosocial support

- **Promote and facilitate social integration of separated children as a priority to address children's primary psychological needs. Develop multi-agency, multi-disciplinary approaches to promoting social integration; e.g. stimulate existing youth and community-based organisations to develop and implement inclusionary policies involving separated children in existing youth-oriented services. E.g. Establish of befriending/mentoring programmes between separated and Irish children and families; inclusionary sports policies. Enhance ongoing networking and integration of psychological support services with non-statutory asylum seeker support organisations and national youth groups; through the National Youth Council or National Youth Federation.**
- **Address the need for training for staff working in both statutory and non-statutory agencies on the primary psychological and psychosocial needs of separated children, such as social integration, the need to belong, the need for social competence and achievement, as well as education about psychological responses to loss, grief and trauma.**

4.5 Education, language & training[43]

Separated children should have access to the same statutory education as national children. Schools need to take a flexible, welcoming approach with separated children and provide a second language support. In order to preserve their cultural identity separated children should have access to mother tongue teaching. Vocational and professional training should be available to separated young people. It is likely to enhance their life chances if they return to their home country. **(SGP 10.3)**

What happens in practice?

Project workers are responsible for enrolling separated children into schools or alternative courses. The Reception and Integration Agency, in conjunction with school principals and the social work team for separated children, have prepared procedures concerning the enrolment of unaccompanied minors in education. However there are only 9 project workers for approximately 500 separated children in the Dublin region. In practice, while the ECAHB reports that project workers have developed very good working relations with schools and principals, human resource constraints means that non-statutory organisations such as the Dún Laoghaire Refugee Project, and children themselves, have frequently had to take responsibility for finding a school that will accept children. This is particularly difficult mid-way through the school year. The ECAHB social work team reports that it has developed a good working relationship with school principals to facilitate mid-year enrolment of separated children. However, it is not clear how many separated children fail to access education as they are not linked in to educational systems.

Gaps in co-ordination of services

"Rarely, (social/project workers) come in with the child, most children come in on their own to the school…Of the hundred and something, say 80% have come in, in advance, even before they get the letter from the Eastern Health Board, the kids have arrived first… They (social/project workers) don't link with the school that often, I know they are run off their feet, but even when you phone them up, its really hard to get them…I'd say they don't have the time" (**Dublin School)**

Children with poor or no English may not be at the standard where they can go straight into the Irish school system. In these cases, Health Board workers link children to various organisations offering a basic English programme before entering children in mainstream schools. However, concerns were raised that this is inadequate, and once mainstreamed, children need ongoing language support and

[43] It was not within the scope of this report to assess the educational needs of separated children, and a detailed

special instruction. Children with literacy or specific education needs are particularly vulnerable to getting left further behind educationally.

The Department of Education issued a leaflet on the education of foreign students in primary and secondary schools. The leaflet recommends, amongst other measures, that 'all schools with non-national students treat all students and non-national students fairly; consider establishing an informal support team that involves the Principal, teaching staff, representatives of the students and parents; create a buddy system of help for non-national students to acclimatise to the new school; and 'pay attention to the particular needs of non-national students especially if they're unaccompanied minors.' However education sources stated that currently schools do not have sufficient resources to implement all of the recommendations.

Individual schools have responded to the circumstances of separated and non-national children in responsive and creative ways. However, in many other cases, separated children grapple with the education system with little extra support.[44] At present, there is a view that separated children are viewed within a deficit education model, rather than assessing the skills they already have and building in supports to empower them to learn.

O'Connell School Dublin- Case Study

"I'm amazed at their values and at how strong they are as young people. If you sent half our own kids across the world to a different culture, would they survive and keep their strengths together?"

There are 200 foreign students enrolled in O'Connell School. Foreign students' ages range from 13 to 18 years old; they come from about 36 different nations. Two third of all foreign students are separated children. The rate of students finishing the year is about 80%.

One teacher provides part-time support to foreign students and their parents or carers two hours a week, though he does much more as the circumstances require. The School is entitled to have one English teacher for every 14 foreign students enrolled.

"In a lot of the schools, because their English is so poor, (separated children) end up being put into the weakest class in the school according to their age-group and that can't be good for them. They're left there for months."

Three years ago, the school got an English teacher to cope with the increasing numbers of foreign students, and established three levels of classes to support non-national children to 'fast-track' into

analysis of issues facing separated children with respect to education is shortly to be released by the VEC.

integrated classroom settings. All the children start off at the same level and if some of them are at a certain level of English, they are moved up into another class where they will also be taught a bit more maths and a bit more art and science.

The School also offers evening classes for two hours, four evenings a week. All of the students can avail of that free of charge. As soon as their English is adequate, they are mainstreamed with Irish children.

Mother tongue tuition

Efforts are made to secure teachers who can engage in mother tongue tuition with non-national children. The school has had a teacher who taught Spanish, English and Portuguese, and hope to employ some parents of non-national pupils who are themselves qualified teachers. There are a few organisations that offer mother tongue tuition once or twice a week, and the school informs children about them.

Dealing with absenteeism

There is a certain amount of absenteeism. The school would normally phone the social worker or send them a fax to inform when a child is missing at school.

"As regards dropping out of school, something dramatic happens in their lives or they get despondent, or they suffer from depression or whatever. The other thing is that some of them are in hostels, they don't have to come to school and they're getting bad example from the older ones or they can be used for a variety of reasons – people want to use them for shifting drugs or whatever else. I think they're very, very vulnerable in society".

Monitoring their education

The school has parent/teacher meeting to which project workers would be invited. The school is also trying to get a career guidance counsellor next year to make the children more aware of the points they need to go onto third level and their opportunities to access third level education.

Support and social integration

Networking and getting to know children's needs and how to respond to them is the most important thing that the school tries to offer to support separated children. Staff show them how to open a bank account or get a student card. Staff also listen to their difficulties in their asylum process. The staff is informed about the asylum procedure and to understand the procedure in order to advise them or link them with the appropriate person.

Giving non-national children a chance to display their talents

"(*An African) pupil in fifth year acted as choir master and he was absolutely fabulous. There's also a Nigerian group and they play the drums; they went down to Cork on an international drama thing and all the Irish just loved it. The school's name is connected and they're doing it all themselves. I've a guy here who's a fantastic artist, and he's only 16 years of age. So schools need to create situations where they can display their talents, because then they will be accepted more for the talents and the gifts they have"*.

As asylum seekers, separated minors or those that 'age-out' of the system do not have the right to attend third level education. It is only if they get refugee status and they live in Ireland for three years they can access full-time third level education. But they lose their social welfare payments and they are not entitled to unemployment assistance if they are enrolled in full-time third level education while in the asylum process. There are reports that minors have had their social welfare allowances stopped for enrolling in post-leaving certificate courses, which has resulted in youth experiencing significant hardship.

"(Many) think that they can get into third level and they don't realise the problems, that they're not going to get into third level very easily. And if they do it's into PLC courses and unfortunately for a lot of them, they find themselves not able to (do PLC's), because their social welfare would be taken away from them". **(School principal)**

"That's a really big area, that do we let them go to secondary school and then let them just sit in their rooms and do nothing. It is a very frustrating situation for them at that stage" (**NGO worker)**

An increasingly pressing issue is what will happen with children who are refused refugee status but are still enrolled at school? One school principal noted *we keep them in the school until they are deported, but that hasn't happened yet. Normally when it comes to that stage we go out to campaign to try and keep them here, at least until their education is finished"*.

There is a lack of co-ordinated information to inform minors of their entitlements with respect to education. Difficulties have arisen in cases where the minors cannot speak English and they have been obliged to enrol in a school without any assistance whatsoever. Many have the ambition to attend third level, but frequently receive no information regarding what subjects or courses are appropriate to take; for example, if they enrol in a Youthreach programme, they then rule out the possibility of accessing third level education.

Conformity with Statement of Good Practice

Statement of Good Practice	Progress since 1999	Conformity with the SGP
Education, language and training	The City of Dublin Vocational Education Committee (VEC) has established a post to address the educational needs of separated children through setting up a working group and developing pilot education projects. Non-statutory bodies have initiated summer schools, literacy classes and homework clubs to support children's education. Research on the educational needs of separated children is being finalised by City of Dublin VEC. Development of agreed procedures between RIA, ECAHB and second level schools in the ECAHB area on the enrolment of unaccompanied minors in schools.	Separated children have the same statutory rights as Irish children with regard to primary and secondary education. Resources to link children with education institutions are very limited. It is unknown how many separated children access or fail to access education. The extent to which schools provide a flexible, welcoming approach is reported to be good, and principals accept children into schools mid-year. Basic English language support is resourced by the Department of Education. In general, children do not have access to mother tongue teaching. Vocational and professional training is highly restricted and not available to separated young people at third level. Asylum seeker adolescents are not entitled to access third level programmes.

Recommendations

- **An identified gap in service provision was with respect to education and career guidance for youth, to support them to choose appropriate courses in their future best interests.**
- **There is a need for a systematic assessment procedure to identify particular educational needs of separated children, and for an inter-agency and within-school approach to tackle issues of illiteracy.**
- **Policy should focus to prepare non-national students to acquire skills that can support them in their future working life either in Ireland or in their countries. For example, having access to mother tongue teaching is important for children who wish to make a voluntary return or may be reunited.**

4.6 Asylum or Refugee Determination Process

Separated Children, regardless of age, should never be denied access to the asylum process. Once admitted they should go through the normal procedures and be exempt from alternative procedures including those relating to 'safe third country' (admissibility), 'manifestly unfounded' (accelerated) and 'safe country of origin' and should be exempt from any suspension of consideration of their asylum claim due to coming from a "country in upheaval." **(SGP 11.1)**

What happens in practice?

In Ireland, unlike some other EU countries such as The Netherlands, Germany and the UK, separated children have access to the normal asylum procedure, and the same definition of a refugee applies, regardless of age. This is an extremely positive aspect of the asylum procedure in Ireland, as the countries of origin of separated children mirror those for adult claimants; they are not simply poor or economically depressed States, but rather areas of conflict where ethnic cleansing, persecution, dislocation and human rights violations are widespread. There is a need for further identification and recognition of 'child-specific' persecution, recognition of the fact that persecution at the hands of non-State actors may be more likely for children, and recognition of the fact that children coming from a State where there are disruptions to State services means that the developmental rights of children, protected under the UN Convention on the Rights of the Child may be impinged upon. There is also a need for an alternative form of protection for those children who do not fall within the narrow definition of a refugee. At the moment, the Health Board has little option but to make an application for asylum for a separated child who cannot be reunited with his/her family, even if does not appear, subjectively and objectively, as though the child has grounds for asylum.

4.6.1 Accelerated Procedures

The accelerated procedures that currently operate in Ireland are the 'Dublin Convention' (safe third country) and the finding of a case to be 'manifestly unfounded'. "Safe country of origin" policies, which contravene the spirit of the 1951 Convention, have been included in the Immigration Act 2003. This Act was passed at the time of writing this report. Included are the provisions for accelerated procedures. These may apply to individuals who made false or misleading representations, to individuals who did not make an application at the earliest opportunity and to individuals whose application does not show on its face any grounds for contention of refugee status. These particular procedures, and safe country of origin policies, should never be applied to separated children. Under the Immigration Act 2003, priority is to be accorded to minors. As discussed in Chapter 6 of the report, this may not be appropriate in all cases.

Dublin Convention

In September 1997, the Dublin Convention 1990 became part of statutory procedures with the introduction of the Dublin Convention (Implementation) Order[45]. As applications of unaccompanied minors are processed in the same manner as those of adults, their applications may be examined under the Dublin Convention. Dublin Convention procedures may be applied up to six months after an application for asylum has been made. Proceeding under the Dublin Convention, can, in certain cases, potentially serve the best interests of the separated child by reuniting him/her with a family member seeking asylum in another country. According to an answer to a Dáil question[46], to date there have been three Libyan minors transferred under the Dublin Convention to the United Kingdom where their parents were awaiting the decision of the UK authorities on their applications for refugee status, two Romanian minors transferred under the Dublin Convention to the United Kingdom and one Nigerian minor transferred under the Dublin Convention to Germany.

'Dublin II'[47], was adopted in January 20003, and means that there are now specific guidelines relating to unaccompanied minors[48] who may have travelled through other States before arriving in Ireland. Under Article 6 of this Regulation, where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.[49]

If an unaccompanied minor wishes to make an appeal against a decision made under the Convention, s/he or his/her representative must do so within 5 working days of the issue of the notice.

Manifestly Unfounded Cases

The Immigration Act 2003 repeals Section 12 of the Refugee Act 1996, which set out the criteria for finding an asylum application to be 'manifestly unfounded'. Section 12 of the Refugee Act 1996 provided that at any time during the investigation of an application for asylum, the ORAC may form the opinion that a case is "manifestly unfounded". With regard to adult applicants, this included

[45] Dublin Convention (Implementation) Order. [S.I. No. 360 of 1997]
[46] Dáil Question to Minster for Justice, Equality and Law Reform, 17th December 2002
[47] Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Brussels, 21 January 2003
[48] "Unaccompanied minor", according to the Dublin Convention, means an unmarried person below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered the territory of the Member States.
[49] Article 6

making such a decision before the substantive interview. If a case was determined manifestly unfounded this is the equivalent of an initial negative decision.[50] The twelve grounds for determining a case to be manifestly unfounded in Ireland are set out in Section 12(4)(a-I) of the Refugee Act 1996 (as amended). An appeal, on paper only, could be made against a decision that an application for asylum is manifestly unfounded. The appeal had to be lodged within 10 days to the RAT.

To date, this concept of 'manifestly unfounded' has rarely been used with separated children. In 2002, four cases were deemed to be manifestly unfounded – two were aged out, and two were reunited with family. However, there have been recent cases, where an opinion was formed by ORAC, prior to the interview, that the cases were manifestly unfounded under Section 12(4)(b) of the Refugee Act (as amended) – where insufficient detail has been provided to substantiate an asylum claim. The ORAC notified the applicants before their interview of this opinion, and the applicants were afforded the opportunity to have an interview to explain whether or not they had a *well-founded fear of persecution*.

Applying this particular ground, and similar provisions that are set out in the Immigration Act 2003, to children's cases is undoubtedly applying adult standards to children, who might not be able to express why they are applying for asylum, or do not know why they are in that situation. It gives cause for concern, should the trend continue, particularly because there is no form of complementary protection available.

4.6.2 Legal representation

At all stages of the asylum process, including any appeals or reviews, separated children should have a legal representative who will assist the child to make his or her claim for asylum. Legal representatives should be available free of charge to the child and, in addition to possessing expertise on the asylum process, they should be skilled in representing children and be aware of child-specific forms of persecution. **(SGP 11.2)**

What happens in practice?

In order that separated children are able to express their views in relation to their asylum applications, it is vital that they are legally represented at all stages.

The Refugee Legal Service (RLS) was established by the government in 1999 as a law centre of the

[50] For more information on the manifestly unfounded procedures see *Manifestly Unjust: A Report on the Fairness and Sustainability of Accelerated Procedures for Asylum Determination*, Siobhán Mullally & Sheila McGovern, Irish Refugee Council, September 2001.

Legal Aid Board; therefore it falls under the Civil Legal Aid Act 1995, for the purpose of providing legal advice and legal aid to asylum seekers for a nominal fee. The RLS has a specialised children's unit dealing exclusively with unaccompanied and accompanied minors. The Unit is made up of three solicitors and six caseworkers who have received specialised training from the UNHCR.

Registration with the RLS is usually done as soon as the unaccompanied minor makes an application for asylum. It is done by the social worker, either in person, by fax or post. Most children register with the RLS before they submit their questionnaire. As soon as a child is registered with the RLS, they are immediately allocated to a solicitor and a caseworker. The first consultation with the child and the social worker takes place with the solicitor/caseworker prior to filling in the asylum questionnaire, during which interpreters are available if necessary, and the minor is introduced to the RLS, to the definition of a refugee and to the asylum process. The minor must fill out the questionnaire himself or herself; the RLS will deal with any queries arising. The second consultation takes place prior to the substantial interview with the ORAC. The minor is accompanied by solicitor/caseworker at the interview with the ORAC. A third consultation might take place over the next seven working days for the purpose of making post-interview submissions.

Difficulties have arisen with regard to legal representation for young persons whom the ORAC have assessed to be over 18, and the young person claims to be a minor. The difficulty in representing an unaccompanied minor in the asylum process stems from the capacity of a minor to give instructions. Section 8 of the Refugee Act places a statutory duty on the Health Board to make an asylum application on behalf of an unaccompanied minor.

Inter-Agency Training

The ORAC, RAT, RLS and the Health Board have received training, arranged by UNHCR, on interviewing techniques and legal issues including child-specific persecution, assessing the "seriousness" of the harm with regard to the greater effect it is likely to have on a child, and a more generous application of the benefit of the doubt principle. All training was conducted on an inter-agency basis and thus promoted dialogue and communication between the agencies, and promoted a common understanding of the best interests of the child.

46.3 Minimal procedural guarantees

Decisions on a child's asylum application should be taken by a competent authority versed in asylum and refugee matters. Children who receive a negative first decision should have a right of appeal/review by an independent judicial authority. Deadlines for appealing should be reasonable.

Children's applications should be identified and prioritised so they are not kept waiting for long periods of time. **(SGP 11.3)**

What happens in practice?

4.6.3.1 First Instance Hearing: Office of the Refugee Applications Commissioner (ORAC)

Under the Refugee Act (as amended), an independent statutory office, the Office of the Refugee Applications Commissioner (ORAC) was established to consider applications for refugee status. The ORAC have ensured that staff dealing with unaccompanied minors have received special training and have drawn up policies in relation to separated children. Children's applications are accorded priority, and once the questionnaire has been submitted, it now generally takes between six weeks and two months for an interview. The ORAC are satisfied that this timeframe will remain constant, unless there are larger numbers of separated children applying, or there is a sudden shortage of trained caseworkers.

4.6.3.2 Appeals: Refugee Appeals Tribunal (RAT)

If the recommendation of the ORAC is that the applicant should not be declared a refugee, a Notice of Appeal must be submitted to the Refugee Appeals Tribunal (RAT) within 15 working days. The case will generally be dealt with in-house by a solicitor of the Children's Unit. In certain circumstances, depending on factors such as the solicitors' caseload the solicitor retains discretion to instruct a barrister who has expertise in this area.

The Refugee Appeals Tribunal was established under Sections 14 and 15. The Tribunal is a statutorily independent body, and exercises a quasi-judicial function. The processing of appeals from Unaccompanied Minors has been an issue for the Tribunal effectively since July 2002, at which time the ORAC started to process applications at first instance. Initially there were three members of the Tribunal selected to hear appeals from minors. These members have undertaken special training provided by the UNHCR. The Tribunal has since selected have four additional members available to hear unaccompanied minors cases and these selected Members have also received specialist training.

The RAT, in recognition of the sensitivities surrounding the processing of appeals by unaccompanied minors has prepared special procedures. All policies are drawn up with respect to Statement of Good Practice. The Tribunal also has internal procedures for processing appeals by unaccompanied minors in terms of flagging such appeals and dealing with them in a timely and sensitive manner. Once an appeal has been lodged, an appeal hearing will be set for approximately six to eight weeks later.

4.6.3.3 Independent Assessments

It is desirable, particularly with younger children or children with a disability, that an independent expert person carry out an assessment of the child's ability to articulate a well-founded fear of persecution. **(SGP 11.4)**

What happens in practice?

Neither the ORAC, nor the RAT currently uses an independent expert in individual cases. Such an assessment would be useful as there is a wide range of reasons why separated children may find it difficult to articulate their fears. In addition to the cognitive ability of the child, these may include:

- Who the adults involved are (including their age, race, gender)
- The physical environment within which testimony is given
- The style of questioning
- The quality and nature of the traumatic event(s) to be recalled
- The form in which the child is expected to give information

4.6.4 Interviews

Where interviews are required they should be carried out in a child-friendly manner (breaks, non-threatening atmosphere etc.) by officers trained in interviewing children. Children should always be accompanied at each interview by their legal representative and, where the child so desires, by a significant adult (social worker, relative etc).**(SGP 11.5)**

What happens in practice?

The ORAC and RAT have received training, arranged by UNHCR, on interviewing techniques for separated children. Both also have policies in relation to these interviews. One of these policies is that every effort will be made at the interview to ensure that the minor/child has an opportunity to fully explain his or her circumstances and any fears that s/he may have of returning to the country of origin.

While all may have received training, it is reported by solicitors, caseworkers and Health Board staff, that there is a varying degree of technique with regard to communicating successfully with children. A 'child-friendly manner' includes ensuring that the seating arrangements in the interview room, the body language of the interviewer, the way in which questions are presented, are all as 'child- friendly' as possible. Both the ORAC and the RAT give children a break during the interview, if the child or the Health Board worker requests it, or if the child becomes distressed during the interview.

The Health Board worker decides whether a legal representative will attend the interview, and minors are always accompanied to the interview by their solicitor or caseworker. In the case of a legal representative attending the interview, the normal procedures apply as they would in an adult interview. The legal representative may not intervene during the interview but may make comments at the end of the interview, or in writing within seven days of completion of the interview.

The minor or child, the RLS representative and the Health Board Representative will be given a record of the interview. The caseworker of the ORAC will also fully explain to the child, the steps that will, or may follow in the asylum process.

With regard to the appeal, if the Health Board representative or guardian is aware before the hearing of any special needs of the minor these should be brought to the attention of the legal representative who can inform the Member at the hearing, or they may be brought to the attention of the Tribunal prior to the date of the hearing. The appeal hearing is an inquisitorial process. The minors are not interviewed but are taken through their evidence by their legal representative. The Health Board is there to represent the social needs of the Minors.

Some emergent issues with respect to interviews were:

- *Interviewing pre-adolescents* Questions have arisen in the course of the research as to how to interview very young children – or whether very young children should be interviewed at all. An interview per definition requires questions and a format. If there is a departure from this format, in the case of very young children, and if instead of oral questioning, the use of toys and drawings is made, an expert is required to interpret. Due to a lack of experience of interviewing pre-adolescent separated children in Ireland, the ORAC requested training from UNHCR in this area. UNHCR sourced experts from Sweden to conduct the training. A Swedish psychologist and immigration official, who have been working in the area for fifteen years, provided combined training, for the ORAC, the RAT the RLS and the Health Board team.

- *Continued health board representation* An immediate issue of concern is that, due to the demands, time-wise, that attending the interviews places on the Health Board workers, they are not sure if they will be able to continue attending all interviews.

- *Interpreters* There is an ongoing concern about the scarcity of professionally trained interpreters. While many of those providing interpreter services are excellent linguists,

ethical issues arise in relation to confidentiality and specific communications skills with children, in the absence of professional training.

4.6.5 Criteria for making a decision on a child's application

When making a decision about a separated child's asylum claim authorities should have regard to UNHCR guidelines as contained in the Handbook and the 1997 Guidelines, specifically:

- The age and maturity of the child and their stage of development
- The possibility that children may manifest their fears differently from adults
- The likelihood that children will have limited knowledge of conditions in their country of origin
- Child-specific forms of persecution, such as recruitment of children into armies, trafficking for prostitution, female genital mutilation and forced labour.
- The situation of the child's family in their county of origin and, where known, the wishes of parents who have sent a child out of the country in order to protect her or him
- The need for a liberal application of the benefit of the doubt. **(SGP 11.6)**

What happens in practice?

Asylum decisions are not published in Ireland, so, without the opportunity to analyse cases, it is impossible to make an in-depth commentary on the 'substantive' rather than the 'procedural' law in this area. The ORAC and RAT policies, as outlined below, are in conformity with the statement of good practice, however, others bodies refer to the fact that there are varying degrees of conformity with the policies.

Overview of ORAC policies

In investigating an application of an unaccompanied minor/separated child, the ORAC will endeavour to ensure that the maturity of the minor or child, or any other particular circumstances (trauma, abuse etc.) is/are taken into account. In investigating the application of an unaccompanied minor/separated child, it is accepted that some minors or children may not be able to elucidate the reasons why they left their country of origin, and why they are applying for asylum. In the investigation of an application of an unaccompanied minor/separated child, the ORAC will address whether the child's race, religion, etc. would make him/her liable to persecution in their country of origin. Where necessary and possible, the circumstances of the case will be discussed by the caseworker of the ORAC and the Health Board Representative before the interview. The Health Board representative may bring to the attention of the caseworker any particular circumstances relevant to the minor child.

In the examination and investigation of the factual elements of the claim of an unaccompanied minor or separated child, regard will be given to circumstances such as:

- The child's stage of development
- His/her possibly limited knowledge of conditions in the country of origin
- Their significance to the legal concept of refugee status, and his/her special vulnerability

It is acknowledged that some minors or children may manifest their fears in ways different from adults or that they may not be able to fully elucidate the reasons why they left their county of origin. In the examination of the claim of an unaccompanied minor or separated child, it may therefore be necessary to have greater regard to certain objective factors such as country of origin information, and to determine, based upon these factors, whether a minor/child may be presumed to have a well-founded fear of persecution.

It may also be necessary to take into account that particular policies and practices amounting to violations of specific rights of the child may, under certain circumstances, lead to situations that fall within the scope of the 1951 Geneva Convention relating to the Status of Refugees. It may also be necessary to take into account that the circumstances of the family members may be central to a minor's or child's refugee claim, and that she/he may fear or have been affected by other discriminatory or persecutory measures affecting the entire family.

As stated above, it is difficult to comment on the 'substantive' elements of the determination of status of child refugees in Ireland, without in-depth analysis of caselaw. The same definition of a refugee applies in Ireland regardless of age, i.e. a person who *'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residency as a result of such events, is unable or, owing to such fear, is unwilling to return to it(…)*[51]*'*. **However, a child-specific approach is essential to this definition, if the 1951 Refugee Convention is to adequately protect children.**

[51] Article 1A(2) of the 1951 Geneva Convention Relating to the Status of Refugees, implemented into Irish law by Section 2 of the 1996 Refugee Act (as amended)

Determination of Status of Child Refugees – An International Perspective[52]

Scholarly and practitioner attention to child asylum claims and to a child-specific approach to persecution is in its infancy. The refugee definition, though age-neutral, has yet to be consistently applied to the circumstances of child applicants. A 1994 UK case illustrates this point. A 15-year-old child from Iran applied for asylum on the basis of physical abuse from her father. The record suggests that there was evidence of alcohol-related "extreme violence". Though she was accepted as a credible witness by a special adjudicator, the Immigration Appeals Tribunal rejected her application, inter alia, because it was held that she could have relied on the Iranian authorities for protection and "neither gender nor violence within a family is sufficient to create a social group". Nowhere in the record is there any mention of the fact that the applicant was a child[53], nor is there any discussion of whether extreme child abuse could constitute persecution…

…. Children may be viewed as passive victims of harms inflicted by others (traditional child welfare approach), who need and deserve refugee protection, or they may base their claims on their political beliefs, their activist behaviour, and their conscious choices about their future prospects and therefore reflect the exclusionary concerns of immigration control as they are viewed as knowing, even willing participants in illegal migration processes…

…The welfare protection approach motivates finding of refugee status for children who are defenceless and vulnerable if they can prove they are victims of persecution. This includes cases of children who flee their homelands to escape being targeted for the same political, religious or ethnic persecution that leads adults to flee. In some cases, though the persecution alleged is not child-specific, the fact that the asylum applicant is a child is central to the court's reasoning[54]. A child welfare approach also supports findings of refugee status for children who flee child-specific persecution, where their minority is a relevant part of the persecution claim, indeed an asset rather than a disqualification. Sometimes the child's persecution is related to both familial and societal circumstances. Several US cases exemplify this. In one US Board of Immigration Appeals awarded asylum to a Honduran child who had been persistently tortured by his stepfather from the age of 3, and faced with becoming a street child if returned to Honduras; the decision cited the U.S. State Department reports that "*the police are responsible for torturing street children and a number of extra-judicial killings*".[55] Other successful asylum claims of child-specific persecution include cases based on recruitment as a minor into the international sex trade[56], conscription as a child soldier[57],

[52] Taken from: Bhabha, Jacqueline; *Asylum for the Separated Child: A New Lense*, Separated Children in Europe Programme; Copenhagen Conference 3-5 October 2002

[53] *State for Home Department v Faremah Firouz Fanjibar* HX/70912/94 (11105); UNHCR case ref; CAS/GBR/56

[54] See *Kahssai v INS* 16 F.3d 323,323 (9th Cir.)

[55] BIA, *Martinez Mejia, Juan Carlos A76-312-250, January 20 1999*

[56] Y.C.K.[1997]C.R.D.D.No.261 No. V95-02904

physical violence as a street child in Nicaragua[58] and child abuse by a parent in Mexico[59].

Sometimes a human rights standard is introduced to challenge cultural arguments about child rearing practice or family customs in the country of origin. Thus, a U.S. court granted refugee status to a 12-year-old Indian girl whom was physically abused by her parents and then sold to traffickers for domestic services in the US. The court argued that, though "*standards for child treatment vary among cultures and families, and. …indeed, gradations of child treatment exist which reasonably include disciplining a child….the treatment suffered is beyond the limits of acceptable rearing practices to such an extent that it rises to the level of persecution.*" The Court found that the child's persecution was on account of membership in the particular social group of "Indian children sold or abandoned by their parents"[60]

Children who present asylum claims based on their vulnerability and victim status thus have had some success in securing refugee status. These cases stand in contrast to cases where children's asylum claims are based on their political beliefs, their activist behaviour, their role as decision makers, their conscious choices about their future prospects. One can identify two different strands to the rejection arguments. On the one hand, the claims of separated child asylum seekers are assimilated to those of adults – "they are not really children", or are not of tender years. The case of a 15 –year-old Salvadorin who was wounded while fighting with guerrilla forces, exemplifies this approach. The child testified that family members had been murdered by both the guerrilla and the government army, that he had eventually fled the guerrillas and was forced into hiding from both guerrillas and the government soldiers whom he believed were seeking to arrest or kill him. The US Fourth Circuit rejected his asylum application, despite accepting his credibility and his subjective fear of persecution, because it insisted on holding him to the same objective standard as an adult; it held that the child had failed to show "*that <u>a reasonable person</u>, in similar circumstances would fear persecution."*[61] The second rejection argument does not assimilate child claimants to adults. Rather it uses their minority as a disqualification. Because they are children, the argument goes, they are not capable of political activism, or of being viewed as a political threat. In the case of a 16 year old Salvadorian, the US Board of Immigration Appeals accepted "*the immigration judge's finding that it was unlikely that the National Guard would seek out such a young person*"[62]. Political acts by children – such as stone throwing, tire burning, street protests, school strikes – are discounted as not being really political, because prevailing judicial conceptions of political activism revolve around an adult norm. The concept of "political act" in refugee law is insufficiently gender- and age- inclusive.

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[57] *Moreno v Canada (MEI*) 21 Imm.L.R. (2d) 221, (1993)
[58] *Santos Ramon Zepeda Campos,* Arizona IJ December 28, 2000
[59] *Aguirre-Cervantes v INS,* No. 99-70861 (9th Cir. Mar.21, 2001)
[60] *Executive Office for Immigration Review, Chicago, Decision by Immigration Judge Zerbe, March 13, 1998*
[61] *Cruz-Diaz v INS* No. 94-1865 86 Federal Reporter 3d Series, 1996, (4th Cir.)
[62] *Canjura-Flores v INS* 784 F.2d 885 (9th Cir.1985) 887

In general, it is clear that the prevailing notion of a "real asylum claim" needs to change…trend setting guidelines on children's asylum claims have resulted in a steady stream of innovative asylum decisions such as those described above; this situation contrasts with the picture in many European states where formal decisions granted refugee status to children on the basis of child-specific persecution are scarce.

Conformity with the statement of good practice

Principle	Progress since 1999	Conformity with the statement of good practice
Access to the asylum procedure	All children have access to the asylum procedure and procedures have been developed for unaccompanied minors in consultation with a wide array of partner agencies.	Applying 'manifestly unfounded', or other 'accelerated procedure' provisions to separated children is not in line with the SGP.
Legal Representation	RLS has developed a specialised unit for unaccompanied minors. Since 1999, all separated children, who are not reunited with family in Ireland, have legal advice attending interviews.	All separated children, who are not reunited with family in Ireland, now have legal representation, in line with the SGP.
Minimum Procedural Guarantees	ORAC and RAT have made huge improvements with regard to dealing with separated children. Both have trained staff who are dedicated to separated children. The timescale for decisions on a child's application is now generally within six months.	Policies are in line with the SGP. Children are given the right to appeal a negative first instance decision. Applications from separated children are prioritised
Independent Assessment	ORAC has never used the services of an independent expert in relation to an assessment of the ability to articulate a well-founded fear of persecution.	
Interviews	Since 1999, all separated children, who are not reunited with family in Ireland, have legal representatives and their social/case Health Board worker attending. ORAC, RAT and RLS have had inter-agency training with regard to interviewing separated children.	All staff interviewing children, have been trained in this area but there are reports of inconsistent quality of interview skills with minors. No child-centred methodology exists for interviewing young children.
Criteria for making a decision on a child's asylum application	ORAC and RAT have put in place procedural and evidentiary policies in relation to determining a child's application for asylum	These policies are in line with the Statement of Good Practice. Exactly how the policies are applied in Ireland cannot be determined without a more in-depth analysis of cases

Recommendations

- **All decisions of the Office of the Refugee Commissioner and the Refugee Appeals Tribunal should be published, while ensuring the anonymity of applicants. This will allow a body of jurisprudence to develop, which will be of assistance to all participants in the asylum process. Publication of decisions will also ensure a more open and transparent procedure.**
- **There must be consistency between the decisions of the ORAC and the RAT. An actual or perceived lack of consistency will lead to a lack of confidence in the procedures by legal representatives and asylum seekers.**
- **Along with the procedural and evidentiary Guidelines already adopted by the ORAC and the RAT, both should adopt Guidelines to deal with the substantive legal aspects of the refugee definition in relation to child refugees. These guidelines must be in accord with international law. A child-specific concept of persecution is key to this, to ensure that these particularly vulnerable asylum seekers are accorded the protections, which they are entitled to.**
- **ORAC, RAT, Presenting Officers, interpreters and legal representatives should receive ongoing training on children, cultural issues and child specific persecution.**
- **Professionally trained and impartial interpreters should be fully qualified and should be provided where necessary for interview and appeal hearings. It is essential that interpreters should fully understand their role. To that end, guidelines for interpreters similar to those adopted in other jurisdictions should be drawn up.**
- **Procedures and methods for interviewing young children should continue to be developed.**
- **Separated Children should be exempt from the 'accelerated procedures' set out in the Immigration Act 2003. Such an exemption should be placed on a statutory footing.**

4.7 Durable Solutions: Remaining in a Host Country; Integration; Family Reunification and Returns to a Country of Origin; Settlement in a Third Country

In this context the term 'durable solutions' refers to planning and implementing procedures for separated children's long-term welfare. The Statement of Good Practice identifies a number of possibilities as durable solutions including: remaining in the host country, return to the country of origin, or settlement in a third State.

4.7.1 Remaining in host country

A separated child may be allowed to remain in a host country for a number of reasons:
she or he is recognised as a refugee or granted asylum; she or he receives a *de facto* or humanitarian status because it is not safe to return to their country of origin…; she or he is allowed to remain under some other immigration category e.g. compassionate grounds; it is clearly in the child's best interests to do so. **(SGP 12.1)**

What happens in practice?

In Ireland, separated children may remain legally by being recognised as refugees, being granted leave to remain or being reunited with family, already recognised as refugee in Ireland under Section 18 of the Refugee Act 1996.

To date, 110 unaccompanied minors have been granted refugee status at the first instance. This excludes those that aged-out during the application process. Many more unaccompanied minors are awaiting a decision on their appeal to the Refugee Appeal Tribunal. Others, whose application for refugee status has been refused, are awaiting the outcome of a decision by the Minister for Justice, Equality and Law Reform on their application for leave to remain, under Section 3 of the Immigration Act 1999. There are approximately 297 young people awaiting such a decision and an issue will be: what is going to happen for those children with respect to durable solutions in their best interests?

Table 10 summarises some of the differences and similarities between having refugee status and leave to remain, in terms of their implications for children's best interests. As can be seen, temporary leave to remain offers weak legal protection compared to refugee status, and there is a need for an alternative such as some form of complementary protection.

Table 10 Comparison Between Refugee status and Temporary Leave to Remain

Refugee status	Temporary Leave to Remain
Form of legal protection based on principle of *non refoulement* (persons shall not be returned to a country where their life or liberty is threatened)	Does not distinguish between children with protection needs v compassion needs or other grounds.
Permanent	Temporary - renewable every year
Similar rights to Irish children.	Legal entitlements are not set out in legislation. e.g. at present, no right to access third level education or many training courses.
Right to family reunification for parent(s) to join child in Ireland	No right to family reunification for family to join child in Ireland.
If already under Health Board care, children remain under the care of the Health Board until they are 18 years.	If already under Health Board care, children remain under the care of the Health Board until they are 18 years.

In general, attention and resources to date have been directed to the reception and interim care of separated children. Practice in relation to durable solutions, outside of entering and supporting children through the asylum process, is undeveloped as yet.

4.7.1.1 Family Reunification for Minors in Ireland in host country

Applications by a separated child, residing in a "host country", for family reunification in that country, should be dealt with in a "positive, humane and expeditious manner" **(SGP 12.1.2)**

Where a minor is recognised as a refugee, he or she is entitled to family reunification under Section 18(3)(b) of the Refugee Act (as amended), for his/her parents to join him/her in Ireland. The minor must apply to the Minister for Justice, Equality and Law Reform for family reunification. The application is then transferred to the ORAC, whose function it is to investigate the application and to submit a report to the Department. Both parents must have right of access to child. As stated above, 110 children have received refugee status, and statistics are not available on how many minors have been granted leave to remain. According to the ORAC, family reunification cases of minors are prioritised in their Family Reunification Unit. It can take a number of months for a decision on a family reunification application to be decided.

4.7.1.2 Integration

Once a separated child is allowed to remain, care/welfare authorities should conduct a careful assessment of the child's situation… In consultation with the child, a long-term placement in the community should then be arranged. This may of course be a continuation of the interim care placement. …**(SGP 12.1.3)**

The rights of separated children to education and training, health care, language support…should continue on the same basis as available to national children.

Children who are recognised as refugees, or granted leave to remain in Ireland, remain under the care of the Health Board until they turn 18. The rights of these children with regard to education, and health care are the same as that for Irish children. However, minors that are granted leave to remain are in a much more vulnerable situation with respect to rights to facilitate their social and economic integration, such as access to Third Level education and training courses.

4.7.2 Family tracing, contact, reunification and voluntary return to country of origin

This is a complex area and detailed guidance is required on the implementation of good practice. The best way for family reunification and returns to be carried out is on a voluntary basis. Children and young people should be fully consulted at all stages of the process.

(SGP 12.2.1)

Before a separated child can be returned to a country of origin the following must be ensured:

It is safe to return the child to his/her home country; the child's carer and guardian/advisor in the host country agree it is in the child's best interests to return; a careful assessment is made of the family situation in the home country. It will be necessary to investigate the ability of the child's family to provide appropriate care. In the absence of parents or other family members, the suitability of child-care agencies in the country of origin should be investigated; the assessment is made by organisations or persons independent of the governments of the country; the child's family or care-givers agree to provide immediate and long-term care upon the child's arrival in the country; the child is fully informed at all stages and receives necessary counselling and support; contact between child and family is facilitated; during return, the child is properly accompanied; after the return the situation of the child is effectively monitored by a designated NGO/IO.

(SGP 12.2.2(a))

What happens in practice?

Family tracing and reunification for separated children in Ireland are not well developed, especially prior to an asylum application being made. This is due to a number of factors, which are discussed in Chapter 6 of the report. In total, 33 children have applied for family reunification to their country of origin, of which there has been 1 case closed with a successful outcome to date. Tracing and reunification is presently been handled by the Irish Red Cross. Tracing is initiated on behalf of the child through the social worker. The two services the Irish Red Cross offers are a 'family messaging' service and family tracing. Family messaging is the first stage of the tracing process, and involves sending a message form containing information with brief details about a child, details of who he or she is writing to, and a contact address and brief message, to the International Committee of the Red Cross office. At best the process of sending a message and receiving a reply can take 8-12 weeks. In many cases, it can take from months to years, as messages are returned after 8 weeks, and re-sent if desired. In the case of unaccompanied minors, if the messaging service is unsuccessful, tracing can then be initiated.

The Irish Red Cross is not resourced for this task. There is no detailed child-centred tracing methodology in place, no interpreter facilities, and it is a part-time service and on request. If tracing is successful, and a child and family have details to contact each other, the Irish Red Cross has no further involvement, and the case is closed. The Department of Health and Children do not have responsibilities in the area of family reunification to a country of origin or follow-up, so this area is a major gap at present in service provision.

With respect to voluntary return, IOM has worked to return a number of separated children to their country of origin under their Voluntary Assisted Return Programme. This programme was mainly offered to Romanian and Nigerian nationals, though the organisation accepted applications from children of other nationalities on an exceptional basis. Unaccompanied minors, although a small number of voluntarily returned individuals, represented approximately 10% of the overall number of individuals returned through the programme. According to IOM staff, about twice as many children applied but half decided not to go through with the process. This is a programme that has been offered to a limited group and, based on this experience, is being explored for further development in conjunction with the Ministry of Justice, Equality and Law Reform.

4.7.4 Settlement in a Third Country

> When a child has a family member in another European State who is willing and able to care for the child then family reunification should be expedited…..Where she or he has a family member in a Non-European third country the opportunity for family reunification should be explored but to the

same standards as indicated in 12.2. Care must be taken in order to ensure that the third country is a safe place for the child. **(SGP 12.3)**

'Dublin II', as discussed earlier in the report, provides for the asylum application of an unaccompanied minor to be processed in the country where there may be family of the child. Where family members have been located, children have been reunited under Dublin Convention procedures, with their family. It is not clear how many children have been re-unified in this way.

4.7.5 Deportation: Involuntary return

With respect to involuntary return, to date 9 unaccompanied minors have been deported.[63] All returns, voluntary or involuntary, to country of origin must comply with these mechanisms set out in detail in Article 12.2 of the Statement of Good Practice. This includes ensuring it is safe for a child to return, that a child's guardian agrees it is in the child's best interests to return and the carer or State agrees to care for the child, that a careful assessment is made of the family situation, and this investigation be carried out in conjunction with professional, independent and non-political organisations, such as the IOM, ICRC or Save the Children Fund. If it is not possible to comply with any of these mechanisms, a minor should not be returned. It is not clear whether those returns carried out to date complied with all or any of these protection safeguards.

Conformity with the statement of good practice

Statement of Good Practice	Progress since 1999	Conformity with the SGP
Remaining in a host country	Asylum procedures have been adapted to facilitate children to access this process.	Two grounds exist for permission to remain: refugee status and leave to remain.
Family reunion in a host country (family to join child)	The ORAC is processing applications for family reunification for some minors granted refugee status.	Procedures for dealing with applications by separated children, recognised as a refugee, for family reunification i.e. family members joining the child in Ireland are in place. It remains to be seen how these will work in practice.

[63] Dáil question, 17th December 2002.

Integration	Limited language support in schools for asylum and non-national children. Significant numbers of children are presently reaching the end of the asylum process or requests for humanitarian leave to remain. The issues of long-term placements, 'after-care' programmes and transitions to independent living will become more important in the near future.	Children granted refugee status are entitled to the same rights as Irish children. They receive some language support through schools. No extra statutory support exists with respect to social integration. The integration of children granted leave to remain is adversely affected by their lack of right to access third level education or training.
Return to country of origin	IOM and the Irish Red Cross, in conjunction with the Health Boards, have undertaken voluntary return. 33 children have been registered for family tracing and reunification.	Voluntary Return Programmes for Nigerians and Romanians have included unaccompanied minors, and the return process appears to have been in conformity with the SGP. Family tracing and reunification is undeveloped and lacks resources. It is responsive to requests and practice in this area is not systematically in place. In situations of involuntary return i.e. deportations, it is not known if the protection mechanisms listed in 12.1.1(a) of the SGP were carried out.

Recommendations

The overall issue of identifying and implementing durable solutions is an area for urgent consideration. This is re-examined in Chapter 6. Specific recommendations are:

- **The process of identification of durable solutions should take place once a separated child is placed in the care of the Health Board. Assessing the possibility of all forms of durable solutions in a child's best interests should be done *prior* to entering separated children in the asylum process.**
- **At present, there is no legal provision for children who wish to return to their country of origin other than to pay their own way or deportation. Resources should be put in place for family tracing and reunification in children's country of origin. Clarification is needed with regards to the responsibilities of different statutory and non-statutory organisations in this process, e.g. The Department of Health and Children, Health Boards, Irish Red Cross, ICRC, and the psychological services.**
- **Where minors' are returned, an independent assessment of the likely safety of the minor**

and the safety mechanisms outlined in the Statement of Good Practice adhered to. If return is not possible without endangering the child's well-being, a solution in the host country should be found.[64]

[64] Ruxton, p 96.

5. Analysis of Special issues

5.1 Separated children with special needs

5.1.1 Children with literacy and educational difficulties

Most of the separated children coming to Ireland have a limited knowledge of English or their education has been interrupted. Some other separated children might have had very little education or might have particular learning problems due to circumstances of trauma or illness. There is no systematic assessment of the educational needs for separated children. There is serious concern that separated children with particular learning or literacy problems are not being identified and, in consequence, their particular educational needs are not being met. However it recognises these initiatives are not sufficient to tackle the seriousness of the problem. The consequences of the lack of equal educational opportunities for children with literacy or learning problems is that they are not supported to acquire skills for their future. The long-term effects of neglecting this problem would be that those children would not be prepared to cope with the future working life either in Ireland or in their countries of origin.

5.1.2 Separated children reunited with family already in Ireland

In the period January 1998 to March 2003, a total of 1,113 separated children have been reunited with family members already in Ireland. According to ECAHB sources, family reunification within Ireland is "*quite a complex inter-agency and networking piece*". Some of the difficulties encountered in doing reunification assessment are the age/verbal skills of the child in telling the story. Also, children who have arrived with an adult, where there is doubt about the relationship between the adult and the child, may be separated on child protection grounds, then interviewed and assessed for family reunification. Health board staff have some concerns that it is possible children are given a certain story to tell.

A major issue of concern for all of the parties interviewed is the lack of follow-up care for children reunited within Ireland. The Health Boards do not have the resources to follow up on all children. A proposal has been made to develop a follow-up service to safeguard the welfare of children who have been reunited, and also to provide appropriate support to their caregivers. The implementation of this proposal will depend on resource allocations. However some kind of risk assessment mechanism needs to be developed to ensure children's best interests are being met. In some cases, there are concerns that children reunited to relatives may not receive adequate care, or entitlements they are due (e.g. child benefit). There are sometimes concerns regarding the use of children for domestic labour. It also is a weak area in respect of prevention of trafficking.

A case, which has been brought to the attention of the Irish Refugee Council, concerns a young person who arrived in Ireland in 1999, then aged 15. The young person was reunited, through the Health Board, with a family member, a recognised refugee in Ireland. The family member speaks no English. Having turned 18, and completed the Leaving Certificate, the young person has fallen out with the family member. On contacting social workers, the young person was given welfare in order to rent accommodation. On making applications to third level colleges, a letter from the Department of Justice, Equality and Law Reform was requested indicating the young person's status in Ireland. The Department issued a letter stating that an application for family reunification, under Section 18(4) – or permission to remain, had been refused, as the young person was no longer a minor, nor a dependent member of the family.

5.1.3 Pregnant girls and young mothers

According to VEC sources, around 50 unaccompanied minors are pregnant girls or young mothers. The girls are living in hostels with other separated children, adults and families or in private rented accommodation. Generally, the housing conditions where young mothers and pregnant girls are living in do not offer appropriate facilities to care for their babies, with little privacy and emotional support. In addition, the hostels usually do not have childcare workers or social worker staff to help them. There are two accommodation centres that offer some support to young mothers and pregnant girls, but this is because management have invited the support of non-governmental agencies and facilitated their work.

Case Study: Barnardos Support for Separated Children

Attached to the Old School House hostel in Dun Laoghaire, the Barnardos project avails of a room where they provide specific services to young mothers and pregnant girls. On Thursday mornings they offer a Parent and Baby group at the room. They encourage young mothers to come. Usually they talk about a topic and help them to develop childcare skills. They offer them support, advice, and they keep in touch with those who live in private rented accommodation. The pregnant girls are also encouraged to come to the Mother and Baby group. It is found that it works very well for the girls to be surrounded by other mothers and their babies. The girls can get some advice as regards to childbirth, labour or parenting. They also link with other women who can support them at the hostel and link with the staff. The staff follow up all the process and support them in their pregnancy and when the child is born.

The project also provides a crèche for children of 15 months to 3 years. Usually there are three staff in charge of about 5 or 6 children, so they have a lot of individual attention. Children come three

mornings a week; childcare workers do a lot of developmental work with them and various stuff, like maths and play games, water play, there is a lot of things.
The centre does not provide a crèche for very young babies because it is required to comply with certain regulations that the centre cannot meet at the moment. An issue arises re. childcare for young mothers who cannot leave their babies in care of childcare staff when they need it.

Though the Social Work Team for Separated Children and public health nurses have contact with the young mothers for a period of time, overall there is a need for an ongoing support for these particularly vulnerable group of girls. A Barnardos worker noted *"The more they move out, the more isolated and that's when they need to be linked. a lot of the minors who have babies have been allowed, but once they are over 18. And at that stage they can be very isolated, seeing nobody the whole day."*

The lack of childcare and support at the accommodation where young mothers are living hinders their participation in education. Pregnant girls tend to drop out of education when their baby is born. At the moment there are no statutory initiatives to address the needs of pregnant girls and young mothers. Community support groups e.g. The Dún Laoghaire Refugee Project together with Barnardos, are trying to set up some educational courses near a hostel where some pregnant girls and young mothers are living. After consulting with the girls as to their educational preferences, they are setting up a computer and English classes one or two mornings a week for them. It is envisaged that the VEC will provide some courses for young mothers and young pregnant girls by September 2003 including issues around reproductive health and culturally sensitive parenting. A detailed needs assessment of young mothers is being planned by Psychological Services for Asylum Seekers (unaccompanied minors unit) in conjunction with the ECAHB.

An issue of concern is the situation and well-being of separated girls who experience a crisis pregnant. Within Ireland, abortion is legally prohibited, and within their living circumstances, there is little available in terms of social or psychological support. There is preventative work such as family planning and sexual health education, as well as socially supportive interventions. The January 2003 Supreme Count ruling in relation to the non-Irish-national parents of Irish children[65] has added significantly to many young mothers' distress. Furthermore, there needs to be awareness that options such as family reunification might not be an option for girls who become mothers, as in many cultures, girls who have babies may not be accepted back into their family and community, a form of gender-based discrimination.

[65] *Lobe* and *Osayande* Supreme Court Decisions, 23rd January 2003 held that non-Irish national parents of Irish children do not have a right to residency on the basis of parentage of their Irish citizen child.

5.2 Young people who become adults during the asylum process

Statistics indicate that, in the period January 1998-March 2003, 60% of minors who submitted an application for asylum became adults while their application remained at first instance within the asylum process (i.e. before the appeal stage). According to ORAC and Refugee Appeals Tribunal sources, separated children who reach 18 years of age or 'age out' during the asylum process are then treated as adults and processed as adults. Again, the same definition of a refugee applies regardless of age. In practice, it means that the children are no longer entitled to receive the support from a guardian or social worker while their case is being processed. The Social Work Team is still notified when their interviews or appeals are coming up. They will write to the young people asking if they wish the social or project worker to attend it with them, and this is organised if there is enough staff available. It is also the practice of the RLS to retain aged out minors in their children's unit. According to the RAT, *"A minor who has aged out during the asylum process is thereafter legally regarded as an adult. However, the Tribunal generally assigns such cases to Members who have been trained to handle Unaccompanied Minor appeals."* **For youth who receive a negative decision, deportation orders would equally apply to aged out separated children as for adults, without consideration of the protective mechanisms outlined in the Statement of Good Practice. As they will have left their country of origin as children, this needs to be retained in all considerations.**

Once minors 'age-out' of the asylum process, they also age-out of the care of the Health Board. **Plans have been developed to transfer aged-out youth from separated children hostels to adult 'direct provision' accommodation centres. There are serious concerns amongst some service providers with respect to this proposal.**

5.3 'Missing children': Separated children deemed to have withdrawn from the asylum process

According to ORAC figures, a significant number of separated children -, approximately 160 children -, did not appear for their first instance interview and are deemed to have withdrawn from the asylum process. The numbers are consistent with those of the adult population who have not turned up for their substantive interview. However, interviewees from the different agencies were unable to give a definitive answer regarding the whereabouts of children who are deemed to have withdrawn or who go missing from either the care of the Health Board or the asylum process. Procedures are in place to inform the immigration authorities and local Gardaí of such cases, and they are charged with investigating these cases. Information was not available as to the outcome of these investigations.

Among the possibilities suggested by interviewees were that some children were informally reunited with family members already in the country. Another suggestion was that separated children have to bear a lot of pressure coming from their living conditions, their lack of ongoing support and the stresses of the asylum procedure. Therefore, for some of them it might be easier just dropping from the whole process instead of continuing. Other possibilities were that children were being put into domestic labour, into forced criminal activity or forced into the sex industry. There is a need for a full police investigation of such cases, and procedures to respond to child protection risks.

5.4 Child smuggling and trafficking

There is anecdotal evidence available regarding the existence or incidence of child smuggling or trafficking in Ireland. It was clear, in the course of this research that insufficient monitoring and protection mechanisms are in place to deter or identify smuggling or trafficking. Some of the evidence which points to the need for concern in these areas is:

- Approximately 95% of separated children seeking asylum were not identified by immigration officials at a port of entry but present themselves to officials within the country.
- Approximately 160 unaccompanied minors in the asylum process have not appeared for first interview and are officially deemed to have withdrawn from the asylum process
- It is unknown how many separated children entering the country do *not* make an application for asylum and therefore would not be known to any statutory body and would be unregistered.
- Approximately half of separated children are reunited with family members and therefore come under their care and are the responsibility of the functional Health Board where the family is residing. However, there are no resources for any follow-up mechanisms for ensuring children's safety and well-being post-reunification. If children later separate from these guardians, they do not appear in any official statistics of unaccompanied or separated children.

With respect to smuggling, self-reports of children indicate many children have received the support of adults to enter the country, and then register with the asylum process. These children may be escaping war, coming to join family members, or be sent by family in the search of a better life. Many of these children enter the country through routes also used by adult smugglers, but they are not being moved for financial gain. Once identified by the authorities, the protection mechanisms of the State are mobilised for their safety.

Evidence of trafficking is less clear-cut, although there is anecdotal evidence and a number of suspected trafficking cases are under investigation by immigration authorities. One of the difficulties

in this area is that legislative weakness makes it difficult for immigration officials to prove trafficking, as there has to be evidence of financial gain. This could be from utilising children for welfare purposes, to trafficking for commercial gain or sexual exploitation.

Woman Suspected of Child-Trafficking, Irish Times 26th April 2003

By Nuala Haughey

A girl who Gardaí suspect was trafficked into the country this week under the identity of a male child of a similar age had her head shaved and was dressed in boy's clothes. The three-year-old was presented as a boy at Dublin Airport by a 34-year-old Nigerian woman claiming to be her mother, along with a 16-year-old girl, according to immigration Gardaí. The woman's passport had her two children named on it, a boy aged four and a 16-year-old girl. Members of the Garda National Immigration Bureau discovered that the children travelling with the woman on the flight from Heathrow Airport last Wednesday were not those identified in the passport. The children were brought to the Children's Hospital in Temple Street, where the correct gender of the younger child was discovered after she was examined by a doctor. Both children have been placed in Health Board care. Members of the Immigration Bureau visited the woman's house in Leixlip, Co. Kildare, yesterday morning and discovered the two actual children named on her passport, a 16-year-old girl and a four-year-old boy. The woman has residence status in Ireland and has three other children.

A Garda spokesman said the woman was arrested yesterday and questioned by Gardaí in Lucan.

A number of procedures are presently in place to prevent the trafficking of separated children once they arrive in Ireland. These include:

- Separated children in hostel accommodation have to sign in and out, so children's physical whereabouts is monitored on a daily basis.
- There are reporting mechanisms in place between the hostels, the Health Board, the Immigration Bureau and the local police, to inform authorities of concerns about children, or if children that go missing.
- Through the co-operative efforts of the GNIB and Social Work Team in the ECAHB to identify children about whom there is concerns, sometimes they have had to take a child back out of the custody of its extended family and place it under a care order with a foster family or in a hostel.
- The introduction of GNIB information systems which can be used to facilitate checking on adults accompanying children at ports of entry, in cases where an immigration officer has suspicions regarding the relationship between a child and accompanying adult.

The EU Council of Ministers' Joint Action to Combat Trafficking in Human Beings and the Sexual Exploitation of Children, 24 Feb. 1997 outlines practical initiatives that should be developed, including "priority procedures for children who have been trafficked, swifter appointment of guardians, better information to children on the risks, increased monitoring of 'children at risk', and training for relevant staff".[66]

In some other European countries the problem of child trafficking is significant. In Ireland, there are significant gaps in identification and protection mechanisms which need to be examined. Research is presently being undertaken by IOM and the Human Rights Institute, NUI, Galway into trafficking in Ireland, and this may provide a basis for the development of policy and procedures in this area.

[66] Ruxton, p 9

6. Recommendations Regarding the Legal Status of Separated Children in Ireland and Durable Solutions

The following section brings together different aspects of this report to re-examine the relationship between the current asylum process with regard to separated children, temporary leave to remain, complementary protection and durable solutions.

6.1 Asylum, complementary protection, leave to remain and durable solutions

At present, a summary of the asylum process could be mapped as follows:

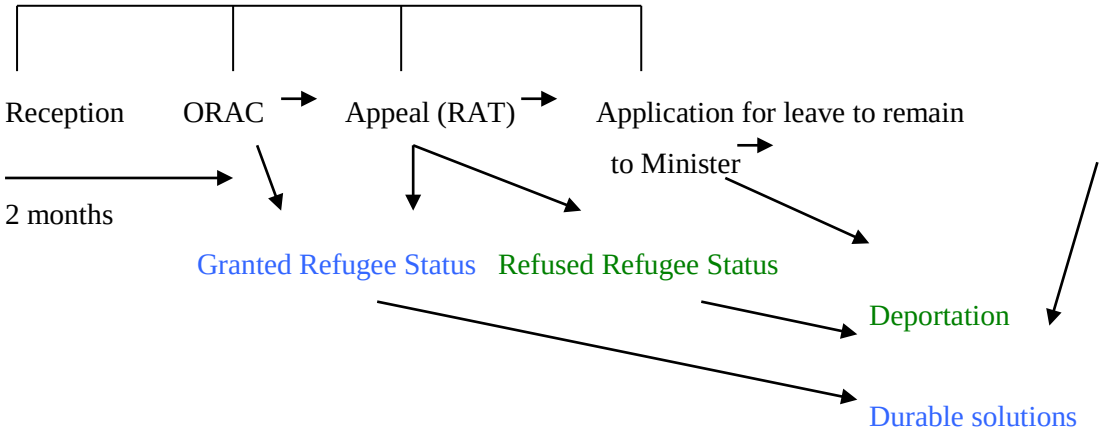


Figure 1: Summary of the asylum process

It is extremely important that separated children have access to the asylum procedure;, however, the interviews highlighted that some children may be entered in an extended and psychologically demanding process, with little likelihood of a positive outcome as their case may or may not meet the criteria for refugee status.

There is a clear need for a more complex procedure than the present policy of automatically entering children in the asylum process, given that many children do not meet the criteria of the refugee definition. For example, there are many examples where there may not be a failure of State protection in children's country of origin, but for other reasons, a child cannot be returned. Examples here include:

- Infants and very young children
- Young children who may not know the reasons why they left their country of origin
- Children who, for reasons of cognitive maturity or psychological trauma, are not able to narrate their case appropriate to the 'burden of proof' needs of the asylum process. e.g. In

some cases, children who have been trafficked may have lived in other countries before arrival in Ireland and cannot clearly reconstruct their history.

- Children who were sent to get a better education or to send remittances back to their family

As the system presently stands, the Health Board have little option but to make an asylum application for a separated child in need of some form of protection. **The implications of this assumption is that, all available Health Board and legal resources are being directed into the asylum process, and attention is not focused from the initial assessment onwards to identifying durable solutions that are in the child's best interests. For a number of children, who are not in a position to meet the criteria of the refugee definition, this can result in significant psychological distress and a diversion of Health Board and legal resources into a process that may be inappropriate.** Furthermore, where a child is accorded refugee status, this may be revoked if the child returns to his/her country of origin, something that is not always considered when children are automatically entered in the asylum process.

General recommendation (1) Enhancement of assessment with respect to durable solutions at an initial stage

What is needed is a procedure, which regularises the stay of the separated child, while a designated Health Board worker assesses what is in the child's best interests. At the stage of conducting a detailed assessment of the child's history and needs, a *strong input needs to be given by an assigned social worker to identifying durable solutions* that are in the child or young person's best interests. There could be several outcomes to this assessment, in line with existing durable solution measures:

(1) *Application for asylum* The designated Health Board worker, in consultation with the RLS legal representative, decides to make an asylum application on behalf of the child. If a decision that proceeding with an application for asylum is in the child's best interests, then procedures with respect to that would then be followed as per present practice.

(2) *Family reunification to country of origin* Following family tracing instigated by the Health Board, the child is assisted in going home.

(3) *Family reunification to a third country* Following family tracing instigated by the Health Board the child is assisted in going to a third safe country where family members are located.

(4) *Voluntary return* Failing successful family tracing, the Health Board makes contact with child-care officials in the country of origin who agree to assume responsibility for the child, in accordance with procedures laid down in the SGP, and the child is assisted in going back to the country of origin. The Department of Justice, in conjunction with the International Organisation for Migration is presently developing a programme of voluntary return for unaccompanied minors.

(5) *Complementary protection/Leave to remain* Failing successful family tracing and satisfactory contact with child-care officials in the country of origin, or where a child has protection needs and it is not in the child's best interests to return to the country of origin, the child is granted permission to remain, or if appropriate, complementary protection, in Ireland.

In this way, if a decision that an application for permission to remain meets a child's best interests, social work time and resources can immediately be directed into developing and implementing durable solutions. If family reunification to country of origin or voluntary return is an identified desirable durable solution, resources can immediately be mobilised towards that end. The identification of family reunification as a durable solution in a child's best interests would have important implications for interim care such as the prioritising of a child's bi-lingual skills and ethnic and cultural links so that children would be accepted and able to integrated should they return home. In all circumstances, children's right to participate in decisions concerning their future must be taken into consideration.

Whatever the procedure, the points that are important in any alternative system are:

- To continue to ensure that *children have access to the asylum system* especially if complementary protection or an alternative leave to remain status is introduced.
- That *responsibility for decision on what form of legal protection is most appropriate is taken by someone with legal background, training and experience* to make that decision. For example, Health Board staff trained to access a child's best interests are not trained to make decisions about appropriate forms of legal protection. However, it is obvious the social work, in consultation with the child, can contribute an important role in recommending a child's 'best interest'.
- That children for whom a recommendation of another form of durable solution is made e.g. family reunification or leave to remain, *still have the right to access asylum procedures at a later date* if appropriate (e.g. for very young children not in a position to make an asylum case)
- That the identification and development of a durable solution becomes part of planning from the initial assessment stage, with strong input of a social work team, and children's legal status is protected during this assessment period, as they may not be yet registered within the asylum process.

General recommendation (2) Complementary Protection and Leave to Remain

At present Section 3 of the Immigration Act 1999 provides that where persons receive notice of a

deportation order, they may make representations to the Minister setting out why they should not be deported. The factors taken into consideration are set out in Article 3 (6) of the Immigration Act, and include 'age' and 'humanitarian' grounds. This is essentially a defence as to why a person should not be deported, as opposed to a 'leave to remain', or complementary protection mechanism, which may be applied for immediately on arrival in a country. Legal practitioners are reluctant to use this mechanism before making an application for asylum primarily because reasons do not have to be given as to why an application for leave to remain is accepted or refused. It is therefore a completely non-transparent procedure, which cannot be accepted as a satisfactory means by which to apply for permission to remain for children in such circumstances as outlined above.

Complementary protection status is granted in European States generally in circumstances where a person does not qualify for refugee status, but still claims that s/he is in need of *protection from possible harm* in the country of origin. For example, where he or she flees from a situation of generalised violence or natural disaster in his or her country of origin. There is no complementary protection available in Ireland at the moment for people who do not fit within the narrow definition of a refugee. There is recognition amongst service providers that some separated children *do* have special protection needs but that they do not fulfil the criteria necessary for perusing refugee status. While the 'humanitarian' ground, which is a factor considered when making applications for leave to remain, may be argued to provide *de facto* complementary protection, it is discretionary and not justiciable. They argue that there is a need for some system of complementary protection. It is expected that complementary protection will be available in Ireland in the near future, through the implementation of EU Directives. The interest of minors has been taken into account in Commission proposals for the definition of a '*refugee*' and in regulating the legal position of persons not covered by the 1951 Geneva Convention, but who are in need of protection[67]

[67] Commission Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, 2001/0207, Article 7

7. Conclusions

This reports points to the significant progress that has been made in the area of developing policy and procedures in relation to legal and social systems for separated children, while identifying areas that are presently not adequately resourced, in particular around guardianship, interim care placements, social integration and durable solutions. Unlike some other European countries, in conformity with the Statement of Good Practice, Ireland has put in place structures to ensure that all separated children have the right and receive support needed to access the asylum process. While further exploration is needed with respect to examining criteria for making a decision around children's applications as an increased number of separated children complete the asylum process, significant co-operative efforts between the social work team for separated children, the Refugee Legal Services and ORAC/RAT, UNHCR and other agencies have enhanced support for children through the asylum process.

There was broad consensus amongst statutory and non-statutory service providers that care provision for youth aged 14-17 years in unsupported hostel accommodation needs urgent re-examination. Smaller accommodation units, based on a 'group home' model with appropriate support staff, and a designated social worker and care plan for each child or young person would meet the guardianship and implementation of durable solution needs of separated children. Current practice is arguably discriminatory against separated children, and social and project worker staff of the separated children's team are unable to meet all of their role responsibilities in the currently under-resourced system. A recognition of the skills and experience in this team needs to be acknowledged to ensure that trained and experienced staff are retained in this specialised area would be important for the long-term strengthening of services for separated children in particular and non-national children in general.

The practice of identifying and implementing durable solutions needs to be re-examined in the light of asylum policy. Durable solutions include refugee status, complementary protection, family reunification, and voluntary return. Involuntary return (i.e. deportation) should never be carried out with minors. In the case of return to the country of origin, appropriate safeguards, as outlined in the Statement of Good Practice, which are in place to ensure a child's protection and survival, must be followed. All decisions about durable solutions much be made within the guiding principle of the child's best interest.

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Appendices

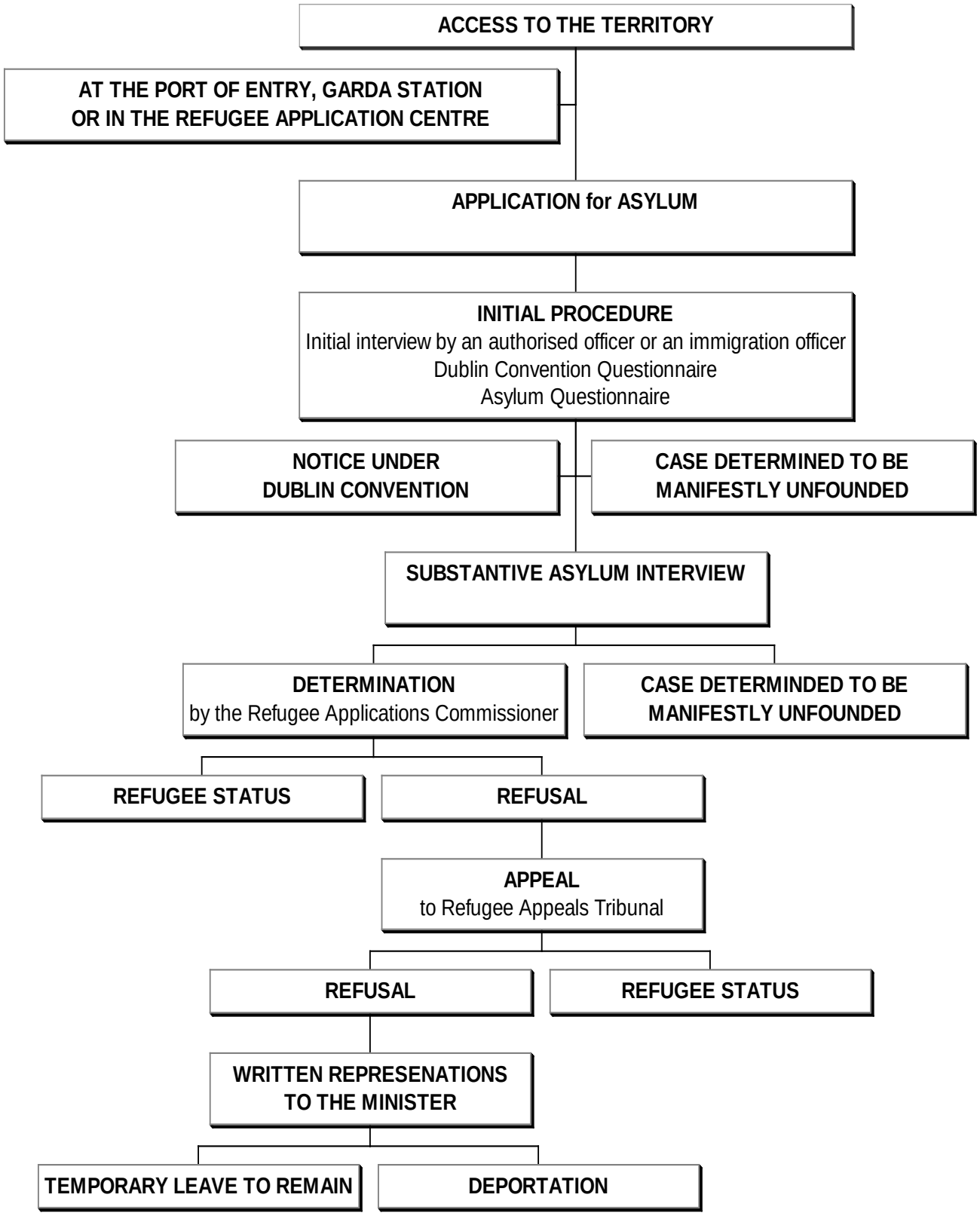
Appendix 1: Core Organisations and Service Providers who participated in consultative process.

Boehm, Anke	Refugee Legal Service
Brophy, Gráinne	Refugee Legal Service
Keenan, Breege	Vincentian Refugee Centre
Keaney, Joe	Office of the Refugee Applications Commissioner
Albert Llussa	Refugee Legal Service
Maguire, May	Refugee Appeals Tribunal
Roantree, Marilyn	Principal Social Worker, Unaccompanied Minors Team, East Coast Area Health Board
Rowley, Gerry	Refugee Appeals Tribunal
Ryan, Sheila	Office of the Refugee Applications Commissioner
Rylands, Jennifer	Senior Clinical Psychologist, Psychology Service for Refugees and Asylum Seekers, St. Brendan's Hospital
Smyth, Ciara	UNHCR, Dublin

Appendix II: Individuals Interviewed and/or Consulted

Brooks, Brenda	Barnardos
Costello, David	Asylum Policy Division, Department of Justice, Equality and Law Reform
Dunne, Kieran	Community Welfare Officer, Department of Health and Children
Fanning, Deirdre	Asylum Policy Division, Department of Justice, Equality and Law Reform
Fonseca, Ana	International Organisation for Migration (IOM)
Kearney, Theresa	Mid-Western Health Board
Kenny, Catherine	
Kilbride, Michael	O'Connells School, Dublin
King, Mary	Dún Laoghaire Refugee Project
McRedmond, Penny	
Mullally, Siobhan	Lecturer in Law, University College Cork
O'Brien, Deirdre	Department of Health and Children
Walsh, Lily	Clann Housing
Willis, Angela	Garda National Immigration Bureau
Wanzenbock, Jessica	Separated Children's Co-ordinator, CDVEC
Wilson, Jennifer	Tracing and Welfare Administrator, Irish Red Cross Society

Appendix III: Guide to the asylum determination procedure under the Refugee Act 1996 (as amended)



Appendix IV: First Principles of the Statement of Good Practice

These are the principles that underpin the Statement of Good Practice and should be born in mind at all stages of care and provision for separated children and young people. (Abbreviations used explained below)

1.Best Interests: "In all actions concerning children... the best interests of children shall be a primary consideration". (CRC, Art.3(1))	* CRC, Art. 3 *ICCPR, Art. 24: Every child is entitled to measures of protection on the part of the family, society and the state, without discrimination. * ICESCR, Art. 10(3): Special measures of protection are to be taken on behalf of children without discrimination. * UNHCR Guidelines, para.1.5 * ECRE, para. 4
2.Non-discrimination: Separated children are entitled to the same treatment and rights as national or resident children. They must be treated as children first and foremost. All considerations of their immigration status must be secondary.	* CRC, Art. 2: The rights of the CRC apply to all children without discrimination of any kind and irrespective of their parents or their own race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. * CRC. Art. 22(1): Separated refugee children are entitled to protection and assistance in order to enjoy the rights of the CRC. * ICCPR, Art. 24: See point B1 * ICESCR, Art. 10(3): See point B1 * CERD. The entire Convention contains measures to eliminate discrimination on the basis of race, colour, descent or national or ethnic origin. * ECRE, paras. 5-7
3.Right to Participate: The views and wishes of separated children must be sought and taken into account whenever decisions affecting them are being made. Measures must be put in place to facilitate their participation in line with their age and maturity.	* CRC, Article 12: The views of children are to be given due weight in relation to their age and maturity and children shall have opportunity to be heard in all proceedings affecting them. * UNHCR Guidelines, paras. 5.14 - 5.15 * ECRE, paras. 25 & 26
4.Bi-culturalism: It is vital that separated children be able to maintain their mother tongue and links with their culture and religion. Provision of childcare, healthcare and education must reflect their cultural needs. Preservation of culture and language is also important should a child return to their home country.	* CRC, Art. 8: Children have the right to preserve or reestablish key elements of their identity. * CRC, Art. 30: Children belonging to ethnic, religious or linguistic minorities have the right to enjoy their culture, practice their religion and use their language. * ICCPR, Art. 27 * ECRE, para. 39

5.Interpretation: Separated children must be provided with suitable interpreters who speak their preferred language whenever they are interviewed or require access to services	* CRC, Art. 12: See point B3. * CRC, Art. 13: Children have the right to freedom of expression and to seek, receive and impart information. * ICCPR, Art. 19 * UNHCR Guidelines, para. 5.13
6.Confidentiality: Care must be taken not to disclose information about a separated child that could endanger the child's family members in her or his home country. The permission of separated children must be sought in an age appropriate manner before sensitive information is disclosed to other organisations or individuals. Information must not be used inappropriately for purposes other than for that for which it was sought	* CRC, Art. 16: Children have the right to protection from arbitrary or unlawful interference with their privacy, family, home and correspondence. * ICCPR, Art.17 * ECHR, Art. 8: "Everyone has the right to respect for his private and family life, his home and his correspondence." * UNHCR Guidelines, para. 5.16 & 5.17 * EU Res., Art. 3(1)
7.Information : Separated children must be provided with accessible information about, for example, their entitlements, services available, the asylum process, family tracing and the situation in their country of origin.	* CRC, Art. 13. See point B5. * CRC, Art. 17: States shall ensure that children have access to information from a diversity of international and national sources. * CRC, Art. 22(2): States shall co-operate, as they consider appropriate, with efforts by the UN or other IGOs or NGOs in family tracing measures. * ECRE, para. 31
8.Inter-organisational Co-operation: Organisations, government departments and professionals involved in providing services to separated children must cooperate to ensure that the welfare and rights of separated children are enhanced and protected	* CRC, Art. 22(2). See point B7 * UNHCR Guidelines, para. 12 * EU Res., Art. 5(3c&d)
9.Staff Training: Those working with separated children must receive appropriate training on the needs of separated children. Immigration or border police staff must receive training in conducting child-friendly interviews.	* CRC, Art. 3(3): States shall ensure that institutions and services providing protection or care for children meet established standards, inter alia, in the suitability of their staff and competent supervision. * EU Res., Art. 4(5) * UNHCR Guidelines, para. 11
10.Durability: Decisions that are taken regarding separated children should take account of, where ever possible, the long-term interests and welfare of the child.	* CRC, Art. 3. See point C1. * CRC, Art. 22 (1): States will assist separated refugee children to enjoy the rights contained in the CRC and other international human rights or humanitarian instruments. * CRC, Art. 22(2): Where no parents or family members can be found a separated refugee child will be accorded the same protection as any other child deprived of his or her family. * UNHCR *Handbook*, para. 214. In the asylum process a legal guardian should be appointed to promote a decision that is in the best interests of a separated child. * UNHCR Guidelines, para.9 * EU Res., Art.5
11.Timeliness: All decisions regarding separated children must be taken in a timely fashion.	* UNHCR Guidelines, para. 8.1 & 8.5

Abbreviations

CRC	UN Convention on the Rights of the Child
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
ECRE	European Council on Refugees and Exiles: Position on Refugee Children
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU Res.	EU Resolution on Unaccompanied Minors Who are Nationals of Third Countries
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
UNHCR Handbook	UNHCR Handbook on Procedures and Criteria for Determining Refugee Status

Appendix V: INTERNATIONAL INSTRUMENTS

1. Refugee Instruments and UNHCR Executive Committee Conclusions

- 1951 UN Convention relating to the Status of Refugees.
- 1967 Protocol relating to the Status of Refugees
- 1954 Convention relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness

2. General International Human Rights and Humanitarian Law Instruments

- Universal Declaration of Human Rights, 1948.
- International Covenant on Civil and Political Rights, 1966 (and Optional Protocol).
- International Covenant on Economic, Social and Cultural Rights, 1966.
- International Convention against Torture, 1984.
- International Convention on the Elimination of all Forms of Racial Discrimination (1965).
- Convention Relating to the Status of Stateless Persons, 1954.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of
International Armed Conflicts (Protocol 1), 8 June 1977, Arts. 77 and 78.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-
International Armed Conflicts (Protocol 11), 8 June 1977, Art. 4.

3. Children - International and Regional Instruments

- UN Convention on the Rights of the Child, 1989 and its
- Optional Protocol on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000
- UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1990
- UN Standard Minimum Rules for the Administration of Juvenile Justice ***(the Beijing Rules)*** 1985
- Hague Conference on Private International Law:
- Convention for the Protection of Minors, 1961
- Convention on the Civil Aspects of International Child Abduction, 1980
- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993

and the associated ***"Recommendation on the Application of the Convention to Refugee Children***"

- Convention on Juridiction, Applicable Law, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996 (not in force yet)

4. UNHCR Guidelines

- The Handbook on Procedures and Criteria for Determining Refugee Status (Handbook).
- Refugee Children: Guidelines on Protection and Care, 1994.
- Working with Unaccompanied Children: A Community-based Approach, 1996.
- Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997.
- UNHCR Executive Committee Conclusion No. 47 (1987) on **"Refugee Children"**
- UNHCR Executive Committee Conclusion No. 59, (1989) on **"Refugee Children"**
- UNHCR Executive Committee Conclusion No. 84, (1997) on **"Refugee Children and adolescents"**
- UNHCR Executive Committee Conclusion No. 88, (1999) on "**Protection of the Refugee's Family"**