



FRA
Thematic Study on Child Trafficking

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Executive Summary

- [1]. Trafficking is a relatively recent problem for the Irish system. The first reported case of trafficking in this State was recorded in 2000.¹ It is very difficult to realise the extent of the problem of child trafficking here due to its underground nature.
- [2]. Owing to its island status however, Ireland is particularly susceptible to trafficking. Indeed it was recently listed as a destination country for victims of trafficking for sexual exploitation and forced labour in the US Department of State Trafficking in Persons Report 2008.
- [3]. Caught almost by surprise with this new experience, the Irish Government have attempted to grapple with the essential policy and operational procedures presented by this new phenomenon.² In recent years the government has attempted to rectify this problem somewhat, including legislation such as the Criminal Law (Human Trafficking) Act, 2008 and the proposed Immigration, Residence and Protection Bill, 2008.
- [4]. Another difficulty with trafficking in Ireland is the blurring of the distinction between smuggling and trafficking. The essential factor of exploitation associated with trafficking is not always recognised.

General anti-child trafficking framework

- [5]. The Child Trafficking and Pornography Act 1998 penalises a variety of crimes in relation to trafficking in children for sexual exploitation and the manufacture and distribution of child pornography. The Refugee Act 1996 outlines the asylum application. The Criminal Law (Human Trafficking) Act 2008 creates offences of trafficking in children and adults for the purpose of sexual or labour exploitation or the removal of their organs. The Immigration Residence and Protection Bill 2008 will introduce new immigration governance and protection for asylum seekers.

¹ <http://www.irishrefugeecouncil.ie/press06/trafficking.html>

² For more on the problem of immigration in general, see Catherine Cosgrave, "Labour Migration to Ireland: Policies and Proposals" at the *Law Society of Ireland Migrant Workers and Human Rights Law Conference* 15th October, 2005. Available at http://www.lawsociety.ie/documents/committees/hr/conference_papers/ccosgrave.pdf (visited 30th June 2008)

- [6]. The Health Service Executive (HSE) is the main national referral mechanism agency responsible for separated children identified in Ireland.

Prevention of child trafficking

- [7]. Many non-governmental organisations (NGOs) organise awareness-raising campaigns to highlight the problem of trafficking with little funding from the State. The only existing State-run campaign is the Garda National Immigration Bureau's (GNIB) involvement in "Pentameter 2", under which the GNIB launched a poster-campaign. A new campaign targeting the public awareness in Trafficking in Human Beings is due to launch in late summer 2008.

Appointment of legal guardian

- [8]. Once the HSE is informed of the existence of a separated child, a social worker or project worker is appointed to the child. However, due to lack of resources, that one HSE representative is responsible for a high ratio of children and indeed the project worker is not required to have any professional background (although according to the HSE, most of the project workers are trained child care workers). The Refugee Legal Service (RLS) is also informed by the HSE, and provides legal assistance for the separated child. There is currently no statutory mechanism for the appointment of a guardian ad litem (GAL).

Coordination and cooperation

- [9]. There are no formalised task forces on child trafficking in particular. GNIB is responsible for tackling the problem of human trafficking. In addition, the Anti-Human Trafficking Unit was established recently in Ireland in order to prevent trafficking, prosecute traffickers and protect victims.
- [10]. Governmental actors have joined forces with NGOs in a new programme entitled Ireland en Route to share information and pool ideas and learning on all aspects of trafficking in women and children for the purpose of sexual exploitation with a view to raising awareness and influencing best practice in each member organisation.

Care and protection

- [11]. The HSE is charged with the care and protection of separated children when identified. However, there has been much criticism of this care as of late, due to

the sub-standard level of accommodation for such children and the proposition that a two-tiered system is in place, which treats separated children differently than other children in the care of the HSE. There is also no follow-up procedure in place for children who have been reunified with their families.

Best interests determination and durable solutions, including social inclusion/return

- [12]. There is no statutory provision in Ireland ensuring the best interests of the child as the paramount consideration. However, in practice, the HSE, the RLS and the Office of the Refugee Applications Commissioner (ORAC) ensure that the child participates in all relevant legal procedures – or does not participate, if this is preferable having regard to the special needs of the child in question.
- [13]. In addition, the Transition Supports Programme was established to examine separated children seeking asylum and “aged out” minors between the ages of seventeen and twenty-one, to enable them to participate in education, both formal and informal, with a view to preparing them for adult life, in Ireland or in their country of origin. However, the project finished in December 2007.

Prosecution

- [14]. To date, there has only been one final conviction based on child trafficking, which occurred in March this year.³

Miscellaneous

- [15]. Although the 2008 Bill has been welcomed as such legislation is long overdue, there has been much criticism of some sections contained therein. In particular, there is not sufficient protection in place for victims of child trafficking who may be seeking asylum and much discretion is afforded to the Minister for Justice, Equality and Law Reform.

³ *Irish Times*, 4th March 2008. Available at <http://www.ireland.com/newspaper/ireland/2008/0304/1204240484326.html> (visited 24th June 2008)

Good practice

- [16]. The newly established Anti-Human Trafficking Unit (AHTU) has been heralded as an example of good practice regarding the fight against trafficking. There is also the proposed drafting of a National Action Plan to Combat Trafficking in Human Beings which could be regarded as another case of good practice. Furthermore, although there may be a deficiency of legislation in certain areas of child trafficking, many of the relevant bodies have adopted internal administrative guidelines.

A. General anti-child trafficking framework

A.1. International Legal Instruments

- [17]. Ireland has signed and ratified the UN Convention on the Rights of the Child (signed 30th September 1990 and ratified 28th September 1992) and has ratified the ILO Convention Nr. 182 concerning the Elimination of the Worst Forms of Child Labour (ratified 21st December 1999). Ireland has signed but has not ratified the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (signed 7th September 2000), Optional Protocol to the United Nations Convention against transnational organised crime to prevent, suppress and punish trafficking in persons, especially women and children (Palermo Protocol), and the Council of Europe Convention on Action against Trafficking in Human Beings (signed on 13th April 2007). Ireland has signed but not yet ratified the CoE Convention on the protection of children against sexual exploitation and sexual abuse (25th October 2007).⁴
- [18]. The Child Trafficking and Pornography Act 1998 penalises a variety of crimes in relation to trafficking in children for sexual exploitation and the manufacture and distribution of child pornography. The Act complies with Article 3 of the Optional Protocol to the Convention on the Rights of the Child (CRC).⁵ In relation to trafficking, Section 3(1)(a) penalises the “entry into, transit through or exit from the State of a child for the purposes of his or her sexual exploitation”. The maximum penalty for this crime is life imprisonment. “Sexual exploitation” is defined as the following:
- (a) Inducing or coercing a child to engage in prostitution or the production of child pornography
 - (b) Using the child for prostitution or the production of child pornography
 - (c) Inducing or coercing the child to participate in any sexual activity which is an offence under any enactment
 - (d) The commission of any such offence against the child.

⁴<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=8&DF=6/24/2008&CL=ENG> (visited 23rd June 2008).

⁵ Ombudsman for Children, *Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006* (Ombudsman for Children's Office, May 2007).

- [19]. Under Section 2(1) of the Illegal Immigrants (Trafficking) Act 2000, it is an offence to organise or knowingly facilitate the entry into Ireland of another person whom that person knows or has reasonable cause to believe is an illegal immigrant. The penalty on conviction on indictment for this offence is a maximum of 10 years imprisonment or an unlimited fine or both.⁶ This is pursuant to the definitions provided by the Palermo Protocol and the Protocol on smuggling migrants by land air and sea, a smuggling rather than a trafficking offence.⁷ It permits the forfeiture of ships, aircraft or other vehicles, which were used to bring illegal immigrants into the State.
- [20]. While a child is a ‘person’, it is not immediately clear that children are encompassed by the Act, since young children do not ‘intend’ to seek asylum or may not believe they are ‘illegal immigrants.’⁸
- [21]. The Refugee Act 1996 (as amended by the Immigration Act 1999 and the Illegal Immigrants (Trafficking) Act 1999) came fully into force on 20th November 2000. It incorporates the 1951 Convention Relating to the Status of Refugees into Irish law. Section 8(5) (as amended) defines an unaccompanied minor as a child under 18 who is not in anyone’s custody who has arrived at the frontiers of the State or entered the State.⁹ The Act outlines the procedure for the asylum application.
- [22]. The Criminal Law (Human Trafficking) Act 2008 came into effect on the 7th June. Enactment of this legislation brings Ireland into compliance with the criminal law and law enforcement elements of the EU Framework Decision on Combating Trafficking in Human Beings; Council of Europe Convention on Action against Trafficking in Human Beings; and UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children.
- [23]. The Act creates offences of trafficking in children and adults for the purpose of sexual or labour exploitation or the removal of their organs. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person for any purpose. Penalties of up to life imprisonment apply in respect of these offences. The Act gives effect to Article 3(1) (a) of the Optional Protocol.
- [24]. In line with the CRC, the Optional Protocol on the Rights of the Child and on the Sale of Children, Child Prostitution and Child Pornography, and also Ireland’s obligation under the EU Council Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography, a child is defined as a person under the age of 18 years. The Act amends the definition of ‘child’

⁶ *Report of the Department of Justice, Equality and Law Reform and An Garda Síochána Working Group on Trafficking in Human Beings* (May 2006).

⁷ Bríd Moriarty, “Human Trafficking: An Overview of the Legal Provisions” 2007 2(2) *The Researcher* 2.

⁸ *Ibid.*

⁹ Dervla King, *Unaccompanied Minors: An Information Booklet* (Barnardos and Centre for Research and Educational Research, DIT, 2001)

in the Child Trafficking and Pornography Act 1998 which was a person of less than 17 years of age

- [25]. The Criminal Law (Human Trafficking) Act 2008 came into force in June.¹⁰ The Act creates specific criminal offences that deal with the trafficking of children. Section 2 of the Act states that a person who trafficks a child for the purpose of the exploitation of the child is guilty of an offence. Under this section a person who sells a child, offers or exposes a child for sale or invites the making of an offer to purchase a child is guilty of an offence. Further, a person who purchases or makes an offer to purchase a child is guilty of an offence.
- [26]. Section 3 states that a person who trafficks a child for the purpose of sexual exploitation of the child shall be guilty of an offence. Further, a person who sexually exploits a child or takes, detains, or restricts the personal liberty of a child for the purpose of his or her sexual exploitation is guilty of an offence. It is also an offence for a person to cause another person to commit the offences contained in section 3. It is also an offence to attempt to commit any of the offences listed above. These offences are all punishable by a maximum sentence of life imprisonment.
- [27]. Section 4 makes it a criminal offence to traffick an adult. Section 5 creates offences dealing with the soliciting or importuning for the purposes of the prostitution of the trafficked person.
- [28]. The Sexual Offences Jurisdiction Act 1996 makes it an offence to advertise child sex tourism in Ireland or to transport, or arrange to transport, children out of Ireland for the purposes of sex tourism.
- [29]. The Children Act 2001 updates and modernises some of the provisions of the Children Act 1908. The provisions of the Act have been brought into force electively. The Act provides a statutory framework for the protection of children, the prosecution of those who commit or solicit offences against children and provides for some legal protections of child victims.
- [30]. Section 247 of the Children Act 2001 makes it an offence to cause, or procure or allow a child to beg in the street or public place, or go house-to-house begging, including if accompanied by singing or playing music.
- [31]. Section 248 states that it is an offence to allow a child to reside or be in a brothel, or causes or solicits anyone to assault, seduce or engage in prostitution or commit sexual offences on a child.

¹⁰ Available at <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2007/4307/document1.htm> (visited 5th August 2008).

- [32]. Section 249 states that it is an offence for a person who has the custody, charge or care of a child to cause or encourage, inter alia, the prostitution of the child.
- [33]. Pursuant to the Immigration Act 2003 it is an offence for a Carrier to transport a non-national passenger who does not have appropriate travel documents.
- [34]. The Non-Fatal Offences Against the Person Act 1997 makes it a criminal offence to hold or unlawfully harbour a person, including a child. Traffickers, who have the unlawful custody of a child, could theoretically be prosecuted, in certain instances, under this Act.¹¹
- [35]. Criminal law particularly in relation to crimes such as sexual offences, false imprisonment, possession of false documents etc can be used to prosecute traffickers for trafficking-related crimes.¹²
- [36]. In January 2008, the Irish Government published a draft Immigration, Residence and Protection Bill 2008 (2008 Bill)¹³ to replace the current body of legislation governing immigration and protection for asylum seekers, which will also apply to children.¹⁴
- [37]. The 2008 Bill integrates the European Communities (Eligibility for Protection) Regulations, 2006 which transposed the EU Qualifications Directive, and transposes the Procedures Directive and the Mass Influx Directive (EU Council Directive on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons).¹⁵
- [38]. In the High Court judgment of *Nwole v Minister for Justice, Equality and Law Reform*, Finlay Geoghegan J noted that:

¹¹ Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003), at 17.

¹² *Ibid*, at 17.

¹³ Bill Number 2 of 2008. Available at <http://www.oireachtas.ie/viewdoc.asp?DocID=8701&&CatID=59> (visited 4th July). Hereafter 2008 Bill.

¹⁴ Thomas Hammarberg, *Report by the Commissioner for Human Rights on his Visit to Ireland* (Council of Europe, 30th April, 2008). Available at http://www.coe.int/t/commissioner/WCD/visitreports_en.asp# (visited 25th June 2008).

¹⁵ Irish Human Rights Commission, *Observations on the Immigration, Residence and Protection Bill 2008* (IHRC, March 2008), at 6.

“The provisions of the Refugee Act, 1996 must be construed, and its operation applied by the authorities in accordance with the Convention on the Rights of the Child which has been ratified by Ireland.”¹⁶

[39]. Peart J stated in the judicial review of that case that:

“It seems to me that *Article 12.1* [of the 1951 Convention] undoubtedly imposes on the State an obligation to enact legislation such as has been done by s. 8(5) of the 1996 Act, in relation to an unaccompanied minor...”¹⁷

[40]. In the recent Mr G case, McKechnie J stated that when looking at international agreements, such as the Brussels Convention as it was in the case, Irish Courts are required to have regard to the European Convention on Human Rights.¹⁸

[41]. At present, there are no legal provisions establishing the principle of best interests of the child as the paramount consideration.

[42]. In *Bode v The Minister for Justice, Equality and Law Reform*, Finlay Geoghegan J held that when regarding the citizen child’s right to be educated and reared with due regard to his or her welfare in the State, the latter is obliged in a decision affecting this to have considered what is in his or her best interests. However, she stated that all relevant factual circumstances will be taken account of, and a decision may be made in the interests of the common good, “even if this is a decision which is not in the best interests of the child.”¹⁹

[43]. The 2008 Bill does not clearly state that the best interests of the child is to be a primary consideration in all matters affecting the child. There are very few references to the best interests of the child.²⁰

¹⁶ *Unreported*, High Court, 31st October 2003.

¹⁷ *Unreported*, High Court, 26th May 2004

¹⁸ See Geoffrey Shannon, Special Rapporteur for Child Protection, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

¹⁹ *Deborah Olarantimi Bode (A minor suing by her father and next friend, Folajimi Bode), Folajimi Bode, Caroline Ola-Bode v The Minister for Justice, Equality and Law Reform; Human Rights Commission, Attorney General, unreported*, High Court, 14th November 2006 No. 102 JR. See also the Supplementary Judgment of *Chuka Paul Oguekwe, Blessing Oguekwe, Prince Roniel Oguekwe (a minor suing by his father and next friend, Chuka Paul Oguekwe) v The Minister for Justice, Equality and Law Reform; Human Rights Commission, Attorney General, unreported*, High Court, 14th November 2006, No. 1271 JR.

²⁰ See Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council’s Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 7.

[44]. No National Plans of Action against Trafficking exist at present in Ireland. However, on 11th October 2007, the then Minister for Justice, Equality and Law Reform, Mr. Brian Lenihan TD, announced the drafting of a National Action Plan to Prevent and Tackle Trafficking in Human Beings. A High Level Group has also been established to work on the development of the National Action Plan for submission to the Minister for Justice, Equality and Law Reform, with a view to publication by the end of the year.²¹ In addition five interdisciplinary working groups have been established to report to the High Level Group, including one specifically focusing on child trafficking.²²

It is envisaged that the National Action Plan will be drafted under four main headings:

- Prevention of Trafficking and Awareness Raising
- Prosecution of the Trafficker
- Protection of the Victim
- Response to Child Trafficking

[45]. A key goal of the National Action Plan will be that Ireland has the appropriate legislative and administrative structures in place to allow for ratification of all relevant international instruments.

[46]. Advertisements will be placed in the national media shortly seeking the views of the public on what should be included in the Action Plan. Additional resources have been assigned within the Department to coordinate this work.²³

²¹ The Group, co-chaired by the Director General of the Irish National Immigration Service and the Assistant Secretary in the Department of Justice, Equality and Law Reform dealing with crime, will include representatives from the HSE, Department of Justice, Equality and Law Reform, Department of Enterprise, Trade and Employment, Department of Health and Children, Office of the Minister for Youth Affairs, Irish Naturalisation and Immigration Service (INIS), An Garda Síochána and the Anti-Human Trafficking Unit. The Committee will decide the most appropriate way to engage constructively with NGOs and other interested parties to ensure the most effective response to this crime. The NGO community will have an important role to play, particularly in relation to service provision for victims. See Migrant Right's Centre Ireland, *Submission to the Proposed National Action Plan to Prevent and Combat Human Trafficking* (MRCI, Dec 2007), at 5.

²² Written Reply to Dáil Question addressed to the Minister for Justice, Equality and Law Reform by Deputy Denis Naughten on Tuesday, 24th June, 2008. According to the AHTU, the five inter-disciplinary working groups will have representatives from both governmental (including representation from the Office of the Minister for Children and Youth Affairs), non-governmental organisations and international organisations, to deal with issues of Child Trafficking, Labour Exploitation, Sexual Exploitation, Awareness Raising and Training and the Development of a National Referral Mechanism.

²³ Press and Publications on the Department of Justice, Equality and Law Reform website. Available at

- [47]. The first working group on child trafficking is scheduled for 17th July 2008, and the Anti Human Trafficking Unit will host it.²⁴
- [48]. As the National Action Plan is not effective as of yet, there have been no changes as part of an impact assessment thereof.
- [49]. Data on unaccompanied minors is gathered from a range of secondary sources and public authorities who come into contact with separated minors at different stages of their time in Ireland.²⁵ All minors who enter the asylum process must be photographed. Minors over the age of 14 years who present to the Office of the Refugee Applications Commissioner are fingerprinted (although this does not appear to happen in all cases).²⁶
- [50]. GNIB operates data collection mechanisms for unaccompanied minors. In addition, the newly established Anti-Human Trafficking Unit has developed a detailed data collection instrument. It will be collecting data on suspects and victims of trafficking and have separate forms for children and adults. The data it collects will not be solely based on offences committed or the kind of exploitation suffered but will also examine demographics, the reasons victims had for leaving their country, information about the route they took into Ireland and the assistance they receive in Ireland. The data it collects is intended to be internationally comparable. Its intention is to collect data from a number of different organisations and sources. It will be important as well to distinguish between the victims at early stages of identification and those whom the Garda Síochána has reasonable grounds to believe are victims of trafficking. It is also developing a system to track potential victims as they pass through the system from initial identification to prosecution and beyond.
- [51]. The team for separated children within the HSE have a DISC system (Database Information for Separated Children, which is similar to the School Wide Information System²⁷ but more user-friendly and specifically formulated for this team). On the day of referral, the division note the referral in the DISC system as well as manually. At the end of the month statistics are collated. At the end of June and the end of December every year, national annual statistics are compiled, called the Interim Data Set. The statistics are noted in this format as well. Each child is allocated a reference number.

http://www.justice.ie/en/JELR/Pages/Human_Trafficking_Bill_Published (visited 19th June 2008)

²⁴ Nusha Yonkova, Immigrant Council of Ireland. The latter is a member of one of the interdisciplinary groups.

²⁵ Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003), at 25.

²⁶ *Ibid.*, at 36.

²⁷ The School-Wide Information System (SWIS) is a web-based information system designed to help school personnel to use office referral data to design school-wide and individual student interventions

- [52]. Information such as the child's age, nationality, their family systems, whether they have come in for reunification or as a separated child, their histories and stories (if possible), whether the child has come into care (and under what section of the Child Care Act) is noted. The DISC system holds the child's photo, information on the schools they attend, where they are at in the asylum process, who is their social or project worker, and where they have been placed throughout their time in care.
- [53]. Each hostel has a database that is updated monthly. Information can be cross referenced between the DISC and the database.
- [54]. The HSE keep information on each child who goes missing from care. This is also stored in the DISC system. Each child that has disclosed abuse is also noted. When children are reunified with family their addresses are noted and letters are sent out to the social work teams in the local areas.
- [55]. In addition, the Immigrant Council of Ireland (ICI) has commissioned research that has among other goals the collection and recording of cases of human trafficking in Ireland over the last 6 years. The researchers work with all agencies providing support, accommodation and assisted repatriation to victims. The research will be published by the end of the year.
- [56]. Section 108(1) of the Immigration, Residence and Protection Bill 2008 requires a foreign national to furnish on demand to the Minister, an immigration officer, a member of the Garda Síochána or a member of the civilian staff of the Garda Síochána, biometric information in such a manner as may be reasonably be required for the purpose of the performance of his or her functions under the act.²⁸
- [57]. Section 108(4) states that such biometric information can only gathered in the case of a foreign national who is under the age of 14 if the parent of the child or an employee of the HSE is present.
- [58]. The Bill does not specify what data shall be collected and made publicly available relating to the reception, treatment and care of separated children.²⁹
- [59]. The HSE, when requested, stated that they were not authorised to release the budget for anti-trafficking measures or protection of victims of child trafficking. There is no specific budget for anti-trafficking measures in the AHTU and any

²⁸ Irish Refugee Council, *The Right to Protection: Submission to the Oireachtas Committee on Justice, Equality, Defence and Women's Rights on the protection aspects of the Immigration, Residence and Protection Bill 2008* (IRC, March 2008), at 11.

²⁹ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council's Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 40.

measures being undertaken are paid from the Department's Vote and the Garda Síochána Vote.³⁰

- [60]. While the GNIB carries out anti-trafficking operations, it does not have a designated anti-trafficking budget.³¹
- [61]. Although the interdisciplinary groups have been established, as yet, no research has being undertaken by the Department in this area.
- [62]. In June 2006, the Government appointed Professor Finbarr McAuley and Mr Geoffrey Shannon as Special Rapporteurs on Child Protection. The Rapporteurs are independent legal experts whose functions are to keep under review and to audit legal developments for the protection of children; assess what impact, if any, litigation in national and international courts will have on child protection and to prepare, annually, a report to be submitted to the Oireachtas, setting out the results of the previous year's work. In it's first report, the Special Rapporteur paid special attention to child trafficking, dedicating a chapter to the issue. ³² Furthermore, Mr Geoffrey Shannon indicated his particular awareness of the problem of child trafficking in Ireland when contacted.
- [63]. Originally Ombudsman for Children Offices were set up to independently investigate complaints against public organisations. However subsequent to the Convention on the Rights of the Child, the Ombudsman for Children Office (OCO), in addition, endeavours to promote the rights of children as listed in the UN Convention. The OCO is governed by the Ombudsman for Children Act 2002.³³
- [64]. The Ombudsman for Children's Office has a role in examining complaints regarding actions by public bodies, schools and voluntary hospitals which adversely affect children but is not otherwise a service provider.³⁴
- [65]. The Office of the Minister for Children (OMC) is part of the Department of Health and Children. The role of the OMC, which was set up by the Government in December 2005, is to improve the lives of children under the National Children's Strategy and bring greater coherence to policy-making for

³⁰ Anti Human Trafficking Unit.

³¹ Garda National Immigration Bureau.

³¹ Geoffrey Shannon, *First Report of the Special Rapporteur on Child Protection*, December 2007, at section 4. Available at

<http://www.omc.gov.ie/viewdoc.asp?DocID=687> (visited 4th July, 2008)

³³ Ombudsman for Children's Office available at

<http://www.oco.ie/aboutUs/background.aspx> (visited 20th June, 2008).

³⁴ Mánuis de Barra, Ombudsman for Children's Office.

- children. Children now have a stronger voice on issues that affect them through the Minister for Children, who attends all Cabinet meetings.³⁵
- [66]. The OMC continuously works to establish a better standard of care for separated children, which includes victims of child trafficking, through its liaison with HSE staff who work with young people and its regular liaison with justice officials in relation to the provision of services in the 2008 Bill.³⁶
- [67]. There is currently no national referral mechanism for suspected victims of trafficking however one of the interdisciplinary groups is working on the development of such a mechanism. The following are the instruments for referral that currently exist.
- [68]. When a separated child is identified, the immigration officer or member of the Garda Síochána is required to inform Health Service Executive (HSE) as soon as possible and thereupon the provisions of the Child Care Act, 1991 shall apply. A social or project worker is appointed and meets with the child to carry out an initial assessment and provides support for each child throughout the Refugee Determination Process. Social workers consult with the child to determine if it is in the child's best interests to submit an application for asylum. He or she can also make application to the Minister for Justice, Equality and Law Reform for humanitarian leave for a child to remain in the State.
- [69]. 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 Service (RLS) in order to have access to a solicitor and caseworker. The RLS, which is part of the Legal Aid Board, has a specialised children unit dealing with separated children and is in charge of legally representing separated children after they apply for asylum.
- [70]. The Office of the Refugee Applications Commissioner (ORAC) deals with applications for a declaration of refugee status, under the Refugee Act 1996 (as amended). At first instance the Refugee Applications Commissioner makes a recommendation in relation to the applicant's case.
- [71]. The Refugee Appeals Tribunal (RAT) deals with appeals if the recommendation above is negative.

³⁵ Office of Minister for Children and Youth Affairs website
<http://www.omc.gov.ie/viewdoc.asp?DocID=687> (visited 19th June, 2008)

³⁶ Dilly O'Brien, Office of the Minister for Children, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

- [72]. The Minister for Justice, Equality and Law Reform makes a decision on refugee status, based on the decision of the Refugee Applications Commissioner or the Refugee Appeals Tribunal.³⁷
- [73]. Under the 2008 Bill, a new single procedure will be put in place and ORAC will be subsumed into the Irish Naturalisation and Immigration Service, and ORAC's staff will become part of the application's process office of this new Service. The Minister will assess whether someone is entitled to protection because of being a refugee; subsidiary protection and non-refoulement including leave to remain etc.³⁸ Persons not entitled to such may be granted residence for compelling reasons.³⁹
- [74]. Under the Immigration, Residence and Protection Bill 2008, the current independent appeal process for asylum claimants will remain with the establishment of the Protection Review Tribunal which will replace the Refugee Appeals Tribunal. The Protection Review Tribunal will be a vital opportunity for people denied protection at first instance to have a more thorough and independent hearing of the case. It will have an even heavier responsibility than RAT as it is at the last stage in the protection system, and an appeal to PRT will only be permitted on the protection aspects. This new body will have an expanded remit to consider, in addition to appeals against decisions not to grant refugee status, appeals against decisions not to grant subsidiary protection. On issues which are at the discretion of the Minister for Justice, Equality and Law Reform, there will be no option of appeal. As is the case at present, a person is legally entitled to remain in the country until their status is decided. These provisions will equally apply to children.⁴⁰
- [75]. The specialised unit of the Garda Síochána to deal with issues of immigration, the Garda National Immigration Bureau (GNIB), receive training.
- [76].

³⁷ http://www.citizensinformation.ie/categories/moving-country/asylum-seekers-and-refugees/the-asylum-process-in-ireland/applying_for_refugee_status_in_ireland (visited 20th July).

³⁸ David Costello, Refugee Applications Commissioner, speaking at the *One Day Seminar on Guardianship and Migrant Children*. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext,44512,en.html> (visited 25th June 2008).

³⁹ Irish Refugee Council, *The Right to Protection: Submission to the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights on the protection aspects of the Immigration, Residence and Protection Bill, 2008* (IRC, March 2008), at 9.

⁴⁰ *Ibid*, at 8.

- [77]. Members of the GNIB regularly attend international meetings, seminars and conferences aimed at sharing information and intelligence and devising strategies to combat immigration offences, including trafficking and smuggling of human beings. These facilitate training and keep An Garda Síochána up-to-date concerning international trends. For example, GNIB personnel have participated in a series of EU training seminars in a number of EU Member States entitled “training of border guards, border police and customs officials in identifying of and providing assistance to the victims of trafficking”. The training is provided by the International Organisation for Migration (IOM) and is funded under the EU AGIS programme.
- [78]. In September 2005, Dublin was the venue for one of these seminars. It brought together representatives of border guards, customs services and immigration liaison officers from 13 European countries, including Ireland. The Irish delegation also included personnel from the Garda College in Templemore.⁴¹
- [79]. In addition, GNIB personnel have participated in a series of EU training seminars in a number of EU Member States entitled “training of border guards, border police and customs officials in identifying of and providing assistance to the victims of trafficking”. The training is provided by the International Organisation for Migration (IOM) and is funded under the EU AGIS programme.
- [80]. The work undertaken by the Garda Síochána in relation to human trafficking is assisted by a network of members of the Garda Síochána who are employed as liaison officers in major cities in a number of EU Member States and in international organisations such as Europol and Interpol.

The Garda Síochána has developed its own human trafficking related training course with such training having been delivered to about one hundred and fifty participants in 2006/2007. Arising from Ireland’s involvement in Operation Pentameter⁴² a number of officers from the Police Service of Northern Ireland have also participated in the training courses provided by the Garda Síochána Training College.⁴³

- [81]. The training provided by IOM is based on an inter-agency approach; therefore Ruhama (a non-governmental organisation which works with women involved in prostitution), the Migrant Rights Centre Ireland and the HSE are all present at these trainings. IOM has also provided training to, among others,

⁴¹ *Report of Department of Justice, Equality and Law Reform and An Garda Síochána Working Group on Trafficking in Human Beings* (May 2006), at 15-6.

⁴² See para. [28] below.

⁴³ Written Reply to Dáil Question addressed to the Minister for Justice, Equality and Law Reform by Deputy Denis Naughten on Tuesday, 24th June, 2008.

- representatives from the Department of Justice, Equality and Law Reform and the HSE.⁴⁴
- [82]. UNHCR Ireland facilitates an inter-agency training on separated children for staff working in the asylum process. This training includes trafficking issues, and includes attendance by the HSE, RLS etc.⁴⁵
- [83]. The Irish Refugee Council is very active in the area through its separated children's officer, and recently hosted a One Day Seminar on Guardianship and Migrant Children in conjunction with University College Cork.⁴⁶
- [84]. One of the five inter-disciplinary working groups of the High Level Working Group is considering training and awareness-raising for a whole range of professionals in the field.
- [85]. Section 93(7) of the 2008 Bill states that the chairperson of the Protection Review Tribunal may make provision for training programmes for the members of the Tribunal. There is no other mention of training in the Bill.⁴⁷
- [86]. Currently there is no policy of non-punishment provision enshrined in legislation in Ireland. However some NGOs are lobbying for guidance for prosecutors on such matters as has been issued in the UK. The Anti-Human-Trafficking Unit (AHTU) recently reported that:
- [87]. "In view of the concerns raised by some NGOs regarding the implementation of Article 26 of the Council of Europe Convention on Action Against Trafficking in Human Beings, the AHTU have met with the Deputy Director of the DPP's Office who has agreed to consult the Garda Síochána in relation to the practical issues which will arise. After such consultation it is likely that the guidelines issued to prosecutors will be amended to address this issue."⁴⁸
- [88]. Section 60 (2) of the 2008 Bill states that those under 18 years of age will not be held liable for the costs of their removal from the State. Otherwise, the Bill does not exempt separated children from punishment for immigration related offences and other offences related to their having being trafficked.⁴⁹

⁴⁴ Information provided by Dug Cubie, International Organisation for Migration.

⁴⁵ Emily Wiinblad Mathez, UNHCR Ireland.

⁴⁶ Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 30th June 2008).

⁴⁷ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council's Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 13.

⁴⁸ Jyothi Kanics, Separated Children's Officer, Irish Refugee Council.

⁴⁹ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council's Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 28.

B. Prevention of child trafficking

- [89]. Ireland is participating in an operation, “Pentameter 2”, launched by the UK. One of the main objectives of the operation is to raise awareness of the scale of the problem of trafficking of human beings for the purpose of sexual exploitation, particularly among those who avail of sexual services. The operation assists awareness-raising in showing Ireland and the UK as locations which are hostile to human trafficking.
- [90]. The Garda Síochána is taking a pro-active approach in Operation Pentameter to address the need for a coordinated approach to human trafficking within the Common Travel Area which operates between the UK and Ireland. This co-operation is taking place in a number of ways, including intelligence sharing, joint training exercises and operational co-operation where investigations have a cross-border, UK/Ireland, dimension.
- [91]. As part of Operation Pentameter a poster-campaign was launched in both Ireland and the UK to encourage victims of human trafficking to report their plight to State authorities. A confidential free phone number was displayed on posters and business cards which were displayed and distributed in key locations throughout the State, including all approved ports, bus and rail stations. The posters and cards are available in several different languages.
- [92]. An Garda Síochána along with the Department of Justice, Equality and Law Reform, the Irish Crimestoppers Trust and the International Organisation for Migration (IOM) are participating in the publicity campaign. It commenced in May 2006.⁵⁰
- [93]. A new campaign targeting the public awareness in Trafficking in Human Beings is due to launch in late summer 2008. It is entitled the “Blue Blindfold” campaign and is in conjunction with the UK, Poland, The Netherlands, Italy and Spain.⁵¹ Funding for the campaign will come from the AHTU.
- [94]. The issue of awareness raising for child trafficking will be examined by the Awareness Raising Working Group
- [95]. Action for Separated Children in Ireland — a group representing Barnardos, the Children’s Rights Alliance, the Irish Refugee Council and the Irish Society for the Prevention of Cruelty to Children — are active in seeking amendments to the Immigration, Residence and Protection Bill while being debated at committee stage in the Oireachtas. The group organised a meeting with the Minister for Justice in order to raise concerns about the care of children, their

⁵⁰ The details of the campaign are available at <http://www.justice.ie/en/JELR/Pages/PR07000952> (visited 1st July 2008)

⁵¹ Garda National Immigration Bureau.

- protection from traffickers and measures to stop them from going missing.
- [96]. The NGO, Concern Ireland, run an awareness raising campaign called Stop Child Labour-School is the best place to work. The campaign seeks to eliminate child labour through the provision of full time good quality education. If children are all in school they are visible to society and accounted for and therefore much less likely to be trafficked. Ireland is one of six EU Countries involved in the Campaign.
- [97]. Amnesty International Ireland has been campaigning on trafficking for a number of years now, in the general context of its “Stop Violence Against Women” work. The awareness campaign has been driven towards general awareness and activism on calling for government action on the issue, particularly around steps to be taken to ratify the Council of Europe Convention on action against Trafficking in Human Beings.
- [98]. The ICI has also given numerous presentations on the issue of human trafficking, has provided training at public forums and has also visited direct provision centres to provide information on human trafficking and the protections available to victims of trafficking. ICI is currently applying for funding for an awareness raising campaign which, if approved, will have a national remit.
- [99]. Proceeding a conference in University College Cork to highlight the issue of sex trafficking, some participants decided to initiate a campaign to STOP sex trafficking. The focus of the campaign is to raise public awareness on the issues surrounding trafficking in Ireland and Cork in particular. The campaign in conjunction with the Bishop organised that on the 15th July 2007 every priest in Cork and Kerry would highlight the issue of sex trafficking in their masses. Approximately 70% of the churches highlighted the issue, with the remainder having leaflets concerning sex trafficking available for parishioners in the church. The campaign also organised for the Gaiety Theatre to host a play highlighting the issue for four nights. In 2007, Cork STOP Sex Trafficking further organised 16 Days of Action which included various public awareness events to highlight the issue of sex trafficking and collected signatures for a petition that was sent to the Minister of Justice, Equality and Law Reform.⁵²
- [100]. The STOP Sex Trafficking campaign also involves certain schools in helping to raise awareness for the issue. One such school, Scoil Mhuire Gan Smal, were awarded runner-up in the Social Innovator Competition in Dublin for their efforts. The group of twenty children, aged 16-17, organised information nights, petitions, set up a website, held workshops in the school to, and put on a school

⁵² Mary Crilly, STOP Sex Trafficking Campaign. For more information, see <http://stopsextrafficking.ie/> (visited 26th June 2008)

play highlight the problem of trafficking. The group is currently aiding another school in the area on similar projects.⁵³

- [101]. Many local community groups are involved in Ireland en Route, a forum of NGOs, academics, intergovernmental and statutory agencies, who work separately and jointly to share information and pool ideas and learning on all aspects of trafficking in women and children for the purpose of sexual exploitation with a view to raising awareness and influencing best practice in each member organisation. Such organisations include: the Mercy Justice Office; St. Patrick's Missionary Society, County Wicklow; and the Sexual Violence Centre Cork.
- [102]. In June 2008, Labour Women in Sligo hosted the Labour Women Human Trafficking & the Sex Industry Conference in Sligo as part of Labour Women's campaign to raise awareness on human trafficking in a call for action in reducing the demand in the sex industry.
- [103]. Ruhama is a Dublin-based NGO which works with women involved in prostitution. In February 2007, Ruhama was asked to speak about the issue of trafficking and the work of Ruhama at the Diocesan Renewal Day Co. Longford.
- [104]. Where an unaccompanied child arrives in Ireland, the immigration officer is obliged to notify the HSE as soon as is practicable. 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 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 HSE.
- [105]. If an unaccompanied minor arrives outside of office hours, at night-time or on a weekend and is aged 12 years or over, the child is referred to the HSE's crisis intervention unit, and the following day to the social work team for separated children.⁵⁴
- [106]. Section 12 of the Child Care Act 1991 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

⁵³ For more information, see <http://www.stophumantrafficking.co.nr/> (visited 26th June, 2008)

⁵⁴ Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003), at 37.

await the making of an application by the HSE, which is mostly implemented by the Garda Síochána. Children will be taken to a children's hospital, until they can be referred to the HSE the following day.

- [107]. Because of current staffing in the HSE, it is not possible to assign a social worker to each separated child (ratio in 2003 was 1:42).⁵⁵
- [108]. In the new Bill, section 24(1) states that when a child under 18 years of age arrives accompanied by an adult taking responsibility for the child, the officer may require that person to verify that he or she is taking responsibility.
- [109]. At present however, it is thought that approximately only 5% of victims of trafficking are being identified at points of entry.

⁵⁵ *Ibid.*

C. Appointment of legal guardian

- [110]. There is no framework in place for the appointment of *guardian ad litem* (GAL). The Court may only appoint a GAL in public proceedings under section 26 of the Child Care Act 1991 or section 11 of the Children Act 1997 and under the Children Act 2001 in respect of special care orders.
- [111]. In practice however, the HSE representative and the RLS representative operate as quasi-GALs for victims of child trafficking seeking asylum. As stated above, when a separated child is identified, the HSE is informed as soon as possible and thereupon the provisions of the Child Care Act 1991 shall apply. 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 Service in order to have access to a solicitor and caseworker. The RLS has a specialised children's unit dealing with separated children and is in charge of legally representing separated children after they apply for asylum legal advice and assistance to all children before their substantive interview.⁵⁶
- [112]. A project or social worker provides support for each child throughout the Refugee Determination Process. The social or project worker also helps 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 to intervene, except to ask for breaks or postponement if the child is in distress. The HSE is also involved in planning for aftercare – although provisions vary greatly throughout Ireland.⁵⁷
- [113]. There are some proposals for the development of a GAL system. For example,, the National Children's Strategy proposes that:

“Unaccompanied minors seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and guardian ad litem.”⁵⁸

⁵⁶ Dr. Nalinie Mooten, *Making Separated Children Visible; The Need for a Child-Centred Approach* (Irish Refugee Council, 2006), at 29.

⁵⁷ Irish Refugee Council, *Background and Discussion Paper on Guardianship for Separated Children* (IRC, November 2007), at 4.

⁵⁸ *The National Children's Strategy: Our Children – Their Lives* (The Stationery Office, 2000). For more information, see Dervla King, *Unaccompanied Minors: an Information Booklet* (Barnardos & Centre for Social and Educational Research, DIT, 2001), at 8.

- [114]. A GAL service is provided by the NGO Barnardos and is made up of staff and self-employed practitioners.⁵⁹ The GAL service is not a child advocate so that it would not increase the professional services to which a child victim would have continual access. In practice, it is almost unheard of for a separated child to be appointed a GAL, a matter which has been highlighted by many NGOs, and indeed by the Special Rapporteur for Child Protection. Indeed in the recent past there has only been one occasion where this has occurred.⁶⁰
- [115]. The age limit for being referred to the HSE where there is a suspicion of trafficking is 18.
- [116]. Although the age limit for being under the care of the HSE is 18, the RLS nonetheless has staff members who provide legal representation for ‘aged-out minors’ as well as separated children, despite no longer being under the age of 18.⁶¹
- [117]. Currently, section 9 (12)(b) of the Immigration Act, 1999 states that where the immigration officer has reasonable grounds for believing that the person is not under 18, he shall be treated as if he has reached the age of 18. There is no provision for the benefit of doubt being given to the alleged victim in question.
- [118]. A pilot project known as the ‘Greulich-Pyle’ method was used for a certain period by the Office of the Refugee Applications Commissioner. 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 groups. ⁶²
- [119]. In Ireland, it is the Office of the Refugee Applications Commissioner (ORAC) which conducts age interviews. The minor is brought into an interview room and informed that the ORAC have doubts as to his or her age and the

⁵⁹ Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003), at 40.

⁶⁰ *Ibid*, at 5. Seven Afghan minors were involved in a hunger strike in a cathedral in Dublin. Freda McKittrick, Barnardos, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext,44512,en.html> (visited 25th June 2008).

⁶¹ Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003), at 40.

⁶² Dr. Angela Veale, Laila Palaudaries and Cabrini Gibbons, *Separated Children Seeking Asylum in Ireland* (Irish Refugee Council, July 2003), at 34-6.

importance of telling the truth is emphasised. The types of questions typically 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 the Refugee Act 1996 (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 18.⁶³

- [120]. While there is no provision in legislation which requires the benefit of doubt be given to the alleged minor, in practice, 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.”⁶⁴
- [121]. 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.⁶⁵
- [122]. However, some criticise ORAC’s procedure as discretionary and subjective and a lack of an appeal mechanism casts doubt on its fairness.⁶⁶
- [123]. 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. 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 HSE. Section 5(6) of the Civil Legal Aid Regulations 1996 states that in the case of a minor:
- [124]. “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.”

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Dr. Angela Veale, Laila Palaudaries and Cabrini Gibbons, *Separated Children Seeking Asylum in Ireland* (Irish Refugee Council, July 2003), at 65.

- [125]. It is proposed throughout the new Bill including sections 24(7), 58, 71(8), 73(6) that an immigration officer or member of the Garda Síochána is responsible to assess the age of the person concerned. It is required from the immigration officer to have “reasonable grounds” or that “it appears to him or her” that the person is 18 years of age or over. It is unclear what happens if age is disputed and it is not required to give the benefit of the doubt to a person who may be under 18 years of age.⁶⁷
- [126]. There is no provision for the appointment of a legal guardian for separated children, and thus no provision for specialised training of such. However, the persons who deal with the child on a continuing basis, and thus act on a quasi-GAL basis, have some specialised training. All social workers working for the HSE and dealing with alleged victims of child trafficking have certified degrees. The HSE project worker dealing with same need not have any particular background.⁶⁸ According to the HSE most of the project workers are trained child care workers. All team members undergo initial training facilitated by the UNHCR formulated specifically for the HSE, ORAC and the Refugee Appeals Tribunal. The RLS representative is a trained solicitor.
- [127]. There are no statutory qualifications for the appointment of a GAL, therefore in theory, any person could be appointed as such.⁶⁹
- [128]. However, Barnardos adopts its own requirements for GALs. The person must have a social work or equivalent qualification, five years experience and proven record of assessment skills and sound knowledge of child care development, legal welfare assistance and skills in communicating with children. The importance of this would seem somewhat limited however, when one considers that a GAL is almost never appointed for an alleged victim of child trafficking.⁷⁰
- [129]. There are some proposals for such with the establishment of the Children Acts Advisory Board under the Child Care (Amendment) Act 2007 on the 23rd of July 2007. The Board aims to publish guidelines on the qualifications, criteria

⁶⁷ Irish Refugee Council, *Ensuring Protection for Separated Children – Submission on Provisions of the Immigration, Residence and Protection Bill, 2008 related to the Protection of Separated Children* (IRC, April 2008).

⁶⁸ Anke Boehm, RLS, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext,44512.en.html> (visited 25th June 2008).

⁶⁹ Geoffrey Shannon, *Report of the Special Rapporteur on Child Protection*, (Nov 2007), at 65.

⁷⁰ Freda McKittrick, Barnardos, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext,44512.en.html> (visited 25th June 2008). Barnardos adopted such requirements framework from the UK.

for appointment, training and role of any guardian ad litem appointed for children in proceedings under the Act of 1991.⁷¹

- [130]. As stated previously, UNHCR Ireland facilitates an inter-agency training on separated children for staff working in the asylum process. This training includes trafficking issues, and includes attendance by the HSE, RLS etc.⁷²
- [131]. There does not seem to be any issues with the time for the preparation of cases for the legal guardian. The RLS however has stated that it would be preferable to meet with the separated child before an age assessment has been carried out due to the importance of this procedure to the asylum process.⁷³

⁷¹ Children Acts Advisory Board, Strategy 2008-2010. Available at <http://www.srsb.ie/About-Us/Strategic-Objectives.aspx> (visited 26th June 2008).

⁷² Emily Wiinblad Mathez, UNHCR Ireland.

⁷³ Anke Boehm, Refugee Legal Service, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

D. Coordination and cooperation

- [132]. In 2007, a new **Anti-Human Trafficking Unit** was established in the Department of Justice, Equality and Law Reform under the stewardship of Executive Director, Marion Walsh and which cooperates with governmental and non-governmental agencies in developing and implementing a new comprehensive national strategy which will prevent trafficking, prosecute traffickers and protect victims. In particular, the office works closely with An Garda Síochána, the Irish National Immigration Service and those non-governmental organisations involved in the provision of follow-up services to victims.
- [133]. In addition, the Anti-Human Trafficking Unit has a central role in fostering, maintaining and developing cooperative linkages at the highest policy level with other EU Member States and international organisations and institutions. Close co-operation with the UK on this issue is prioritised in view of the common travel area and the land border with Northern Ireland.⁷⁴
- [134]. The **Garda Síochána National Immigration Bureau (GNIB)** is responsible for all immigration related to Garda operations in the state. Accordingly, specialised units have been set-up within it with responsibility for tackling the problem of human trafficking. GNIB also carries out deportations, border control and investigations related to illegal immigration and trafficking in Human Beings and has specialist units dealing with each area.
- [135]. An Garda Síochána has personnel specifically dealing with immigration in every Garda district and at all approved ports and airports. There is also a border control unit attached to Dundalk Garda Station. These personnel detect and deter illegal immigration.⁷⁵
- [136]. As stated previously, the immigration officer or member of the Garda Síochána necessarily cooperate with HSE by informing them as soon as practicable when a suspected victim of trafficking is identified at a point of entry.
- [137]. The HSE provides information to the GNIB on a regular basis arising from suspicions, including suspicions of trafficking for sexual exploitation, surrounding the arrival of unaccompanied minors in the State.

⁷⁴ http://www.irlgov.ie/crimecouncil/human_trafficking.html (visited 20th June, 2008)

⁷⁵ Garda National Immigration Bureau website, available at <http://garda.ie/gnib.html> (visited 20th June, 2008)

- [138]. Furthermore, the RLS and ORAC frequently cooperate with the HSE during the asylum process of the child.
- [139]. The Department of Justice, Equality and Law Reform collaborate on many publicity campaigns with GNIB, as stated above. The Department is in close contact with other Government organisations and NGOs in respect of child trafficking. As yet there are no written co-operation agreements in place between the Department and these organisations.
- [140]. The Government has enlisted the assistance of many NGOs in the drafting of the National Action Plan. Several NGOs are currently members of the five interdisciplinary working groups established to report to the High Level Group of the NAP.
- [141]. As previously stated, Barnardos operates a GAL system in conjunction with the HSE. As will be described below, the HSE further employ the assistance of the Irish Red Cross for the family tracing programme.
- [142]. Through IOM's Voluntary Assisted Return and Reintegration Programme it has the agreement of the Government that it can provide additional assistance at the pre-departure and post-arrival stages for victims of trafficking who wish to return home voluntarily.
- [143]. Ireland En Route (IeR) – as previously stated – a forum of NGOs, academics, intergovernmental and statutory agencies, work separately and jointly to share information and pool ideas and learning on all aspects of trafficking in women and children for the purpose of sexual exploitation with a view to raising awareness and influencing best practice in each member organisation.⁷⁶
- [144]. In terms of cooperation, within its jurisdiction in Ireland, GNIB continues to liaise with Government and non-Governmental agencies, including Ruhama and the International Organisation for Migration (IOM) to ensure the exchange of information regarding suspected trafficking in human beings. In recognising the needs of victims of trafficking, Garda Liaison Officers have been appointed to various non-Governmental organisations.⁷⁷
- [145]. Many round table discussions have occurred between governmental and non-governmental organisations, such as that previously stated between the Action for Separated Children in Ireland and the Minister for Justice.

⁷⁶ *Report of Department of Justice, Equality and Law Reform and An Garda Síochána Working Group on Trafficking in Human Beings* (Government Stationery Office, May 2006), at 19.

⁷⁷ *Ibid.*

- [146]. In addition, the ICI have hosted 4 roundtables over the last 16 months, at which NGOs and statutory bodies gather to share information and concerns about the problem of human trafficking in Ireland.⁷⁸
- [147]. There is no independent monitoring of implementation of guidelines aimed at protecting personal data of trafficked children. There is a guarantee of anonymity for victims of trafficking in the Human Trafficking Act 2008.⁷⁹ Section 2(c) (i) of the Data Protection Act, 1988 states that data shall have been obtained only for one or more specified, explicit and legitimate purposes.⁸⁰
- [148]. Section 108 of the Immigration Residence and Protection Bill 2008 requires the presence and consent of guardians when gathering biometric data.
- [149]. ORAC guarantees in its administrative guidelines the protection of the personal data of children seeking asylum.⁸¹
- [150]. Ireland signed a bilateral agreement with Nigeria on the 29th August, 2001 to improve cooperation between the two countries in order to improve the implementation of provisions relating to the migration of persons and respect for the fundamental rights of each country. The agreement also aimed to combat the problem of illegal immigration. However, to date this agreement has not entered into force.⁸²
- [151]. Liaison at an international level between the Garda Síochána and other law enforcement agencies forms part of the approach of the Garda Síochána in tackling this aspect of criminality through the exchange of information, intelligence and best practice by attendance at high-level meetings, including those organised by Europol, Interpol and Frontex and interaction with countries from which it is suspected persons have been trafficked.

⁷⁸ Nusha Yonkova, Immigrant Council of Ireland.

⁷⁹ 11.—(1) Where a person is charged with an offence under the [Child Pornography] Act of 1998, any person who publishes or broadcasts any information, including—

(a) any photograph of, or that includes a depiction of, the alleged victim of the offence, or

(b) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of the alleged victim of the offence, that is likely to enable the identification of the alleged victim of the offence, shall...be guilty of an offence and shall be liable upon conviction on indictment to a fine, or imprisonment for a term not exceeding 10 years, or both.

⁸⁰ Irish Refugee Council, *The Right to Protection: Submission to the Oireachtas Committee on Justice, Equality, Defence and Women's Rights on the protection aspects of the Immigration, Residence and Protection Bill 2008* (IRC, March 2008), at 11.

⁸¹ David Costello, Refugee Applications Commissioner, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

⁸² Jyothi Kanics, Separated Children's Officer, Irish Refugee Council.

Ireland has taken a lead role in a human trafficking initiative known as the G6 Human Trafficking Initiative, which includes the UK, Poland, Italy, France, Spain and the Netherlands along with Interpol, Europol and Eurojust.⁸³ The most recent meeting of the G6 initiative took place in June. Ireland has recommended a particular focus on the trafficking of children in the course of the G6 Initiative. As part of this initiative the Garda Síochána has commenced an operation designed to prevent the trafficking of minors in to, out of, and within the State, to ensure the welfare of suspected victims of such criminal activity is adequately provided for, and to commence prosecutions where criminal activity of the nature concerned has been detected.⁸⁴ The new AHTU is currently responsible for coordinating an awareness raising campaign in conjunction with G6.⁸⁵

- [152]. At present, there are Garda Liaison Officers based permanently at embassies in
- [153]. France, Spain, the UK and the Netherlands. In addition, the GNIB commenced
- [154]. deployments of Airline Liaison Officers (ALOs) in 2005 with pilot deployments to Barcelona, Madrid, Charles De Gaulle and Schiphol Airports with the objective of reducing the number of improperly documented passengers from these key international transit hub airports. There have been similar deployments to train carriers and their agents with a view to ensuring the proper discharge of carrier liabilities for passengers travelling to Ireland. Liaison officers have up-to-date knowledge of all the relevant legal and operational issues in the countries concerned. They also link with a network of liaison officers in other jurisdictions.
- [155]. In 2005, the GNIB secured EU funding to conduct a conference entitled “Forum to improve best practice in the prevention, detection, and investigation of trafficking in human beings and examine best practice in fighting and preventing corruption of public figures in the administration of immigration regulations”. The UK and Hungary partnered Ireland in facilitating the conference, which was attended by representatives from a number of other EU Member States. As a result of the conference a manual of best practice has been published and distributed to all participating countries and to the relevant statutory and non-statutory agencies in this jurisdiction.

⁸³ Available at

http://www.justice.ie/en/JELR/Pages/Human_Trafficking_Bill_Published (visited 5th August 2008).

⁸⁴ *Report of Department of Justice, Equality and Law Reform and An Garda Síochána Working Group on Trafficking in Human Beings* (Government Stationery Office, May 2006), at 19.

⁸⁵ Barra O’Duill, Anti-Human Trafficking Unit.

- [156]. ‘Operation Gull’ is a joint initiative of the Garda National Immigration Bureau and the Immigration Services of the United Kingdom designed to assist with determining the extent to which the Common Travel Area between the two jurisdictions is used by non-nationals to engage in illegal immigration and criminality. There are plans for the continuation of ‘Operation Gull’ in both Dublin and Belfast for the foreseeable future.
- [157]. Also, An Garda Síochána has recently had discussions with the UK authorities following the introduction there of ‘Operation Pentameter’. The objective of this operation is to disrupt the activities of organised criminal gangs suspected of involvement in trafficking of persons. An Garda Síochána is supporting the operation by sharing intelligence and putting in place appropriate enforcement activities to counteract possible displacement to this jurisdiction.⁸⁶
- [158]. A number of co-operation agreements are in place with Governments and police forces in other jurisdictions, including the Russian Federation and Bulgaria. These cover a range of criminal justice matters, including co-operation in combating drug trafficking, money laundering, trafficking in persons, terrorism and other serious crime. Negotiations are ongoing in relation to proposals for agreements with other jurisdictions.⁸⁷
- [159]. Ireland has no current support programmes as part of its international development assistance in countries of origin or within the EU-area. Irish Aid has a multi-annual funding agreement with the ILO. A new funding round has just been finalised but not announced (this will happen in the autumn). The new funding includes support for the ILO’s International Programme for the Elimination of Child Labour. Currently, Irish Aid provided €3 million per year in support of ILO programmes on entrepreneurship, gender, disability and combating forced labour. The Forced Labour Unit and International Programme for the Elimination of Child Labour tackle trafficking in their programmes.⁸⁸
- [160]. The issue of support programmes as part of Ireland’s international development assistance in countries of origin will be examined as part of the Awareness Raising Working Group.⁸⁹

⁸⁶ *Report of Department of Justice, Equality and Law Reform and An Garda Síochána Working Group on Trafficking in Human Beings* (Government Stationery Office, May 2006), at 17.

⁸⁷ *Ibid.*, at 15-16.

⁸⁸ Lizzy Noone, Development Education Officer, Concern Ireland.

⁸⁹ Information provided by the Anti Human Trafficking Unit.

E. Care and protection

- [161]. Section 124(1) of the Immigration, Residence and Protection Bill 2008 grants a victim of trafficking or a “suspected victim” 45 days of “recovery and reflection” in the State. This applies to persons who the Gardaí have reasonable grounds for suspecting are victims of trafficking, and is in order to give the suspected victim time to recover from, and escape the influence of, the alleged perpetrators of the trafficking, and to make an informed decision on whether or not he or she is going to assist the Garda Síochána or other authorities in the investigation of the alleged trafficking.⁹⁰
- [162]. This means that a child trafficked into Ireland who is not entitled to either refugee status or subsidiary protection within the meaning of the Bill cannot lawfully be present in the State beyond the 45 day recovery and reflection period, unless he or she assists in the criminal proceedings against traffickers.⁹¹
- [163]. In order to ensure protection until the adoption of the 2008 Bill, the Department of Justice, Equality and Law Reform issued temporary administrative arrangements to apply where a foreign national is identified as a person suspected of being a victim of human trafficking, which came into effect on the 7th June, 2008.
- [164]. As stated previously, the temporary arrangements state that a person who has been identified by a member of the Garda Síochána as a suspected victim of human trafficking will be granted permission to remain lawfully in the State for a period of 45 days (a ‘recovery and reflection period’), in order to have time to recover and to escape the influence of the alleged perpetrators of the trafficking. It is also given to take an informed decision as to whether to assist Gardaí in relation to any investigation or prosecution arising from the alleged trafficking.
- [165]. A person who has been granted a recovery and reflection period will not be the subject of removal proceedings for so long as his or her recovery and reflection period remains valid. This recovery and reflection period may be terminated in circumstances where the Minister is satisfied that the person has voluntarily renewed contact with the alleged perpetrators of the trafficking, or it is in the interest of national security or public policy or victim status is being claimed improperly.

⁹⁰ Irish Refugee Council, *IRC Submission on Section 124 of the Immigration, Residence and Protection Bill and other provisions related to the protection of suspected victims of trafficking* (IRC, March 2008), at 2.

⁹¹ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council’s Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 19.

- [166]. A ‘foreign national’ means a person from outside the European Economic Area. However, a person from the European Economic Area who has been identified as a suspected victim of human trafficking will, for the purpose of these arrangements, be treated no less favourably than a person from outside that area. In this regard, certain administrative arrangements (in particular, the granting of a recovery and reflection period) will apply to persons from the European Economic Area (first time reflection and recovery period offered to EEA nationals).⁹²
- [167]. Section 124(7) of the new Bill provides that the Minister for Justice, Equality and Law Reform can grant the victim permission to remain in the State for six months so that he or she can assist the Garda Síochána in their investigation.
- [168]. This temporary residence permit can be revoked where the victim no longer wishes to assist the Garda Síochána, or the Minister is satisfied that, among other grounds, the victim no longer wishes to assist the Garda Síochána, or the Minister is satisfied that it is in the interests of public security, public policy or public order to revoke the residence permit. Upon revocation of the temporary permit the person is regarded as unlawfully in the State, is under an obligation to remove himself or herself from the State, and is liable to be removed without notice.⁹³
- [169]. The Temporary Administrative Immigration Arrangements state that a person will be granted a temporary residence permission where the Minister is satisfied that the person has severed all ties with the alleged perpetrators of the trafficking or it is necessary in order for the suspected victim to continue to assist the Garda Síochána. The Minister may renew this period on the same grounds.
- [170]. The Minister may revoke the temporary residence permission on similar grounds to the 2008 Bill.
- [171]. There are no statistics solely on victims of child trafficking – either relating to the number of children trafficked into Ireland, or the number who were granted temporary stay on ground of trafficking – due to the uncertain nature of such; the statistics relate to unaccompanied minors in general.
- [172]. The number of unaccompanied minors granted leave to remain is unavailable. Regarding applications for asylum, in 2000, ORAC received 302 applications for asylum from unaccompanied minors. The grant number was less than 10 and therefore

⁹² Nusha Yonkova, Immigrant Council of Ireland.

⁹³ Irish Human Rights Commission, *Observations on the Immigration, Residence and Protection Bill, 2008* (IHRC, March 2008)

cannot be released. In 2001, 22 unaccompanied minors were granted asylum from 600 applicants; in 2002, 93 from 288; in 2003, 38 from 271; in 2004, 58 from 128; in 2005, 56 from 131; in 2006 30 from 131; and in 2007, 32 from 91. The total number therefore of applicants was 1,942, with 321 of these being successful. It must be noted that these figures refer to the year in which grants were made which may or may not be the same year as that during which the application was made.⁹⁴

- [173]. In 2001, there were 53 appeals accepted from unaccompanied minors by Refugee Appeals Tribunal and 2 of these were granted. In 2002, out of 490 appeals accepted, 13 were granted; in 2003, 43 out of 167; in 2004 34 out of 156; in 2005, 19 out of 113; in 2006, 11 out of 88; and in 2007, 6 out of 83.
- [174]. 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), which provides for detention of an applicant in specific circumstances. Section 9(12)(a) states that these provisions “shall not apply to a person who is under the age of 18 years”.⁹⁵
- [175]. Separated children are not routinely detained in Ireland.⁹⁶
- [176]. Certain sections of the 2008 Bill permit the detention of children.⁹⁷ Section 54 of the 2008 Bill allows for the detention of a foreign national where it appears to an immigration officer or a member of the Garda Síochána that they are “unlawfully present” in the State and they may be removed. It does not exclude minors from these provisions but states that the person having charge or responsibility for the minor must cooperate in any way necessary to facilitate the removal for the minor and will be guilty of an offence if he or she does not do so.
- [177]. Section 70 of the 2008 Bill also allows for detention of a foreign national who makes a protection application at a frontier where it is “not practicable” to issue a protection application entry permit to him or her. Children are not excluded from these provisions. This detention is not subject to court supervision but the continued detention can be authorised simply by the notification of the arrest to

⁹⁴ Office of the Refugee Applications Commissioner.

⁹⁵ Sara Mac Neice and Laura Almirall, *Separated Children Seeking Asylum in Ireland; A Report on Legal and Social Conditions* (IRC, Dec 1999).

⁹⁶ Dr. Nanilie Mooten, *Making Separated Children Visible* (Irish Refugee Council, 2006), at 33.

⁹⁷ Section 58(1) read with section 56(3). Irish Refugee Council, *The Right to Protection: Submission to the Oireachtas Committee on Justice, Equality, Defence and Women’s Rights on the protection aspects of the Immigration, Residence and Protection Bill 2008* (IRC, March 2008), at 5.

the member in charge of the Garda station of the prison Governor of immigration officer as appropriate.⁹⁸

- [178]. Where an immigration officer of a member of the Garda Síochána has reasonable cause to suspect, among other grounds, that a protected person poses a threat to the public order or public security of the State or has committed a non-political crime in another state, this person may be detained in a place of detention. Subsection 7 excludes persons under the age of 18 years. If, however, an immigration officer or member of the Garda Síochána who has the custody of a foreign 45 national believes and has reasonable grounds for believing that the foreign national is 18 years of age or over, that person may be detained⁹⁹.
- [179]. On the 20th June 2008, two boys in separate cases who are suspected victims of trafficking were remanded in custody by the Dublin Children’s Court. Boy A was remanded in custody earlier in the month following his arrest for burglary at a Dublin residence. Boy B was arrested for the theft of a wallet from a shop. Both were also arrested for failure to produce valid documents. 100
- [180]. A report in the Irish Times also accounted that a young woman was arrested during a raid on a suspected brothel in Kilkenny city and may be the victim of a human trafficking ring. She was remanded in custody to Mountjoy Prison to appear before Kilkenny District Court for failing to produce a valid passport or another form of identification. Judge William Harnett said there was a possibility the woman was in fact a minor and vulnerable and stated that the women’s section in Mountjoy Prison was a “lot safer than a lot of other places”.¹⁰¹
- [181]. This has been identified as a major problem, as none of the young people above were identified at ports of entry nor placed in the care of the HSE. The detention for failure to produce valid documents is clearly not the most satisfactory way of dealing with such minors.
- [182]. Regarding the detention of children, the HSE state:

“Not many separated children are detained, as it is not appropriate to imprison a child. All children should be allowed their freedom and separated children should be able to avail of the same level of care and services as Irish children in care. This is not the case of course, as Irish children in care would not be warehoused in hostels. In terms of safety, no child in care in Ireland is detained against their will (apart from children in secure units and occasionally children that have

⁹⁸ Ombudsman for Children, *Advice on the Immigration, Residence and Protection Bill, 2008* (OCO, March 2008), at 5.

⁹⁹ *Ibid.*

¹⁰⁰ See *Irish Times*, 21st June 2008. Available at <http://www.ireland.com/newspaper/ireland/2008/0621/1213993133624.html> (visited 27th June 2008).

¹⁰¹ *Irish Times*, 2nd July 2008. Available at <http://www.irishtimes.com/newspaper/ireland/2008/0702/1214935463784.html> (visited 2nd July 2008)

been picked up for breaking the law and who have no personal documentation). This means that any child in any unit (residential, foster care or hostel) can walk out of their home and disappear. We aim to take as many safety measures as possible but we cannot legislate for every moment.”

- [183]. Irish law does not make provision for tracing the family of the child or consulting with the parents on the situation of the child. The Irish Red Cross handles family tracing with limited resources. The organisation acts on behalf of separated children who have been referred to the tracing service by their social worker. Subsequent to a tracing request, the Irish Red Cross contacts a sister national society of an International Committee of the Red Cross delegation office.¹⁰²
- [184]. In the Refugee Act 1996, the term ‘dependent’ is used to mean ‘financial dependence’ and implies the reunification of parents with their children and/or a spouse with his or her other spouse. Separated children who are granted asylum are eligible for family reunification with their parents, but they are not entitled to family reunification with their siblings.¹⁰³
- [185]. In September 1997, the Dublin Convention 1990 became part of statutory procedures with the introduction of the Dublin Convention (Implementation) Order. Under these proceedings, the best interests of the separated child can be served by reuniting him or her with a family member seeking asylum in another country. Under the Dublin Convention, three Libyan minors were transferred to the UK where their parents were awaiting the decision of the UK authorities on their applications for refugee status, two Romanian minors transferred to the UK and one Nigerian minor to Germany. It is unknown as to whether these children were victims of child trafficking¹⁰⁴
- [186]. Section 50 of the 2008 Bill provides for the right to family reunification in respect of those who have been granted either refugee status or subsidiary protection. In case the applicant for family reunification is a child, the child has a right to reunification with one or both of his or her parents (marital status unspecified). Siblings can be reunited with the child only at the Minister’s discretion.¹⁰⁵

¹⁰² Dr. Nalinie Mooten, *Making Separated Children Visible: Need for a Child-Centred Approach* (IRC, 2006), at 52-54.

¹⁰³ Dr. Nalinie Mooten, *Making Separated Children Visible: Need for a Child-Centred Approach* (IRC, 2006), at 52-54.

¹⁰⁴ Dr. Angela Veale, Laila Palaudaries and Cabrini Gibbons, *Separated Children Seeking Asylum in Ireland* (Irish Refugee Council, July 2003), at 63.

¹⁰⁵ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council’s Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 36.

- [187]. The Child Care Act 1991 does not refer to separated children, so separated children are treated as homeless Irish children for welfare purposes.
- [188]. After the initial assessment, a social worker determines a care placement for the child. In contrast to Irish children in care, the majority of separated children do not reside in children's care centres, but in privately managed hostel accommodation (which contain up to thirty-five children). Interim care placements for separated children in Ireland include hostels for young people; residential care; foster care; supported lodgings in foster placement of independent living. The current types of accommodation include foster care for a small minority, two children's residential centres for those under 16 years of age, a mother and baby home and private hostels.¹⁰⁶
- [189]. The HSE currently have plans to open three more smaller residential homes for separated children in the Dublin area.¹⁰⁷
- [190]. The manner in which accommodation is provided for children in circumstances of this nature depends on where and when they are identified. If they arrive at the airport in the evening or at the weekend, they are referred to the emergency services and later transferred to hostel accommodation.¹⁰⁸
- [191]. There is some evidence that separated children are not treated the same as other children in the Irish care system. There are two tiers of care provision. For example, separated children accommodated in large hostels have inadequate adult supervision and no social or key worker attached to their case. In April, up to 35 separated children, boys, girls and teenagers were housed in a hostel with a concierge arrangement.¹⁰⁹
- [192]. In addition, the hostels are not covered by the National Standards for Children's Residential Centres and its system of internal and external complaints. The Health Information and Quality Authority (HIQA) and its Social Services Inspectorate (SSI) are responsible for inspecting accommodation facilities

¹⁰⁶ Dr. Nalinie Mooten, *Making Separated Children Visible: Need for a Child-Centred Approach* (IRC, 2006), at 44.

¹⁰⁷ Jyothi Kanics, Separated Children's Officer, Irish Refugee Council.

¹⁰⁸ Jyothi Kanics, Irish Refugee Council, *Parliamentary Debates on the Immigration Residence and Protection Bill 2008*, 8th April 2008. Available at <http://debates.oireachtas.ie/DDebate.aspx?F=JUU20080408.xml&Page=1&Ex=102#N102> (visited 26th June 2008).

¹⁰⁹ Maria Corbett, Children's Rights Alliance, *Parliamentary Debates on the Immigration Residence and Protection Bill 2008*, 8th April 2008. Available at <http://debates.oireachtas.ie/DDebate.aspx?F=JUU20080408.xml&Page=1&Ex=102#N102> (visited 26th June 2008).

where children are placed. NGOs have reported that nearly all hostels failed the inspection, but no inspection report has so far been made public.¹¹⁰

- [193]. According to the figures furnished by the Minister's officials, 5,369 referrals were made to the HSE and 2,536 children were placed in care between 2000 and 2007. Of the 441 children who went missing, 53 are accounted for.¹¹¹ Approximately one in five children from the period 2000-07 remain unaccounted for, including five Nigerian girls who went missing from their accommodation in June 2007, the youngest of whom was 11 years of age.¹¹²
- [194]. With regard to the patterns of when people go missing, it is known that children go missing from care in the early stages of entering care and they are therefore vulnerable at that time. The patterns show that children go missing from larger hostels where there is less adult supervision.¹¹³
- [195]. There is currently little information on why separated children leave care or what happens to them. The HSE stated in 2005 that they believed that the majority of separated children coming into care have been trafficked into the country. In a letter to the Department, the HSE stated that "the executive has on several occasions taken children into care following their rescue from desperate situations by the Garda National Immigration Bureau".¹¹⁴
- [196]. Some cases exist which show the exploitation of separated children. In 2005, An Garda Síochána rescued a 15-year-old Somali girl from a brothel and placed in HSE care. A request for an extra childcare worker to supervise the girl was refused. The girl went missing again from the centre within days.¹¹⁵

¹¹⁰ Thomas Hammarberg, *Report by the Commissioner for Human Rights on his Visit to Ireland* (Council of Europe, 30th April 2008). Available at http://www.coe.int/t/commissioner/WCD/visitreports_en.asp# (visited 25th June 2008).

¹¹¹ Between 2000 and 2005, 328 of the unaccompanied minors referred to the HSE went missing; 81 in 2001, 54 in 2002, 56 in 2003, 66 in 2004 and 71 in 2005.

¹¹² Deputy Denis Naughten, Parliamentary Debates on Immigration, Residence and Protection Bill: Committee Stage. 29th April 2008. Available at <http://debates.oireachtas.ie/DDebate.aspx?F=JUS20080429.xml&Page=2&Ex=228#N228> (visited 20th June, 2008)

¹¹³ *Ibid*, Norah Gibbons.

¹¹⁴ Carl O'Brien, "Asylum Seeking Children Exploited Warns HSE" *Irish Times*, 21st November 2005

¹¹⁵ Jyothi Kanics, "Missing Children Should be a Call to Action – not Indifference!" (IRC, 25th May 2007), available at <http://www.irishrefugeecouncil.ie/press07/action.html> (visited 20th June 2008).

- [197]. In 2006, a 17-year-old girl was discovered when detectives raided a brothel in Sligo. She had been placed into the care of the HSE after arriving unaccompanied in Ireland six months earlier and went missing.¹¹⁶
- [198]. More recently, a 12 year old Nigerian girl was taken into State care after being found in a house in North Dublin by detectives investigating suspected people-trafficking. Her discovery, came after immigration officers were contacted by their counterparts in Northern Ireland in relation to an inquiry into cross-Border trafficking.¹¹⁷
- [199]. Many NGOs and relevant actors are calling for a register to be established in order to track children in care, and those who subsequently leave such shelters.¹¹⁸
- [200]. Currently, there is a working group to examine and review the services provided through the HSE in the East Coast Area region in relation to separated children seeking asylum/unaccompanied minors.¹¹⁹ Also in respect to this, the HSE and Garda Síochána and GNIB are in the process of completing a ‘Missing Child from Care Protocol’.
- [201]. The HSE 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 the decision-making is transferred to the HSE. Minors over 16 years of age 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 development medical, including vision testing and audiometry
- Public Health Screening which involves taking blood samples for Hepatitis B, Hepatitis C, HIV, 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

¹¹⁶ *Ibid.*

¹¹⁷ See Ruadhán Mac Cormaic, *The Irish Times*, 9th June 2008. Available at <http://www.ireland.com/newspaper/ireland/2008/0609/1212947708043.html> (visited 27th June 2008).

¹¹⁸ Jyothi Kanics, Irish Refugee Council and Dr Jennifer Rylands, HSE Dublin South East Local Health Office Area.

¹¹⁹ Department of Health and Children website http://www.dohc.ie/working_groups/aum/ (visited 20th June 2008).

- 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.
- [202]. It is policy that all separated children are accompanied to appointments with doctors by a social or project worker, but this does not always happen in practice. All separated children are entitled to free health services and are entitled to a medical card.¹²⁰
- [203]. In Ireland, the HSE Dublin South East Local Health Office (LHO) Area was established in 1992 with the arrival of the Bosnian programme refugees in Ireland. Within this service a designated senior psychologist post was appointed in 2000 to develop and provide the service to separated children.
- [204]. The service aims to provide a culturally sensitive service, and works in close liaison with the HSE Social Team for Separated Children Seeking Asylum, foster parents and residential staff, and other relevant professionals and services if necessary.¹²¹
- [205]. In addition, the psychological issues that pertain specifically to suspected victims of trafficking are also taken into account. For example, such children are not likely to tell the truth, are psychologically in a state of fear, and may be pressurised by their traffickers not to divulge any information.
- [206]. Section 6 of the 2008 Bill states that those unlawfully present are still entitled to essential medical treatment or other services necessary for the protection of public health.
- [207]. Under Section 36 a long-term resident shall be entitled to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services and the same social welfare benefits as those to which Irish citizens are entitled. Section 97 extends this to those granted a temporary protection permit. There is no mention of separated children.¹²²
- [208]. In Ireland, all children are legally obliged to attend school up to the age of 16, and are entitled to complete secondary level education. Separated children have, therefore, the right to access full-time education at primary and secondary levels.

¹²⁰ Dr. Angela Veale, Laila Palaudaries and Cabrini Gibbons, *Separated Children Seeking Asylum in Ireland* (Irish Refugee Council, July 2003), at 52-3.

¹²¹ Dr Jennifer Rylands, HSE Dublin South East LHO Area.

¹²² ¹²² Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council's Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 31.

- [209]. Most separated children enter mainstream schools in Ireland. Sixteen and seventeen year olds often join in transition year (an exam-free-year between Junior and Senior cycle). This allows separated children exam-free year before preparing for the Leaving Certificate.¹²³
- [210]. Young people who have little or no previous formal education are placed in alternative programmes to mainstream education under the Department of Education and Science’s back to Education Initiative. Such programmes are organised through the Vocational Educational Colleges (VEC) in the Dublin area. One such programme is the City of Dublin VEC Separated Children Education Service Access Programme. The course offers modules in English, mathematics, computer skills, and personal and interpersonal skills.¹²⁴
- [211]. At post-secondary level, it is extremely difficult for separated children to access post-Leaving Certificate training and education because of the high fees charged to non-EU students. If a separated child is granted refugee status, he or she must meet the same refugee residency requirements of living three of the preceding five years in the EU to be able to benefit from a free-fees scheme.
- [212]. Separated children who are granted refugee status and who reach 18 years of age stop receiving €19.10 per week, and become entitled to unemployment assistance. Once on unemployment assistance they must be available for work and may be told that they are required to find employment. Some may not have yet finished secondary education or may be in post-secondary education.
- [213]. When this occurs, teachers, CDVEC or the Irish Association for Young People in Care (IAYPIC)¹²⁵ intervene on the person’s behalf for him or her to remain in schools and be entitled to education but this is not always successful.¹²⁶
- [214]. There is a restriction in the 2008 Bill on accessing public services or any service provided through public monies, which does not apply where a foreign national who is under the age of 16 years is unable due to insufficient funds to “access” education. However, the Bill does not address education for separated children between 16-18 years of age.¹²⁷

¹²³ Dr. Nalinie Mooten, *Making Separated Children Visible: Need for a Child-Centred Approach* (IRC, 2006), at 45-46.

¹²⁴ *Ibid.*

¹²⁵ IAYPIC advocates for and promotes the rights and needs of young people with care experience through their participation at all levels throughout the care system. See para. 63 below.

¹²⁶ *Ibid.*

¹²⁷ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council’s Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 31.

- [215]. As previously stated, on applying for asylum, a child registers with the RLS, which has a specialised children’s unit dealing with separated children and is in charge of legally representing separated children after they apply for asylum.¹²⁸
- [216]. As the HSE is a government body, they are not usually involved in judicial review procedures of those unsuccessful with their asylum applications before the courts. Therefore, judicial reviews are not generally sought for cases involving separated children. However, if it believes necessary, the RLS may bring a judicial review procedure before the courts, which is governed by section 28 of the Civil Legal Aid Act 1995.¹²⁹
- [217]. If asylum is refused, the RLS apply for subsidiary protection. If this is refused, the RLS will further apply for leave to remain, which is based on humanitarian reasons and completely at the discretion of the Minister. Leave to remain is a status which is granted at the discretion of the Minister for Justice, Equality and Law Reform to persons whose claims to asylum are not considered to meet the criteria set out in the 1951 Geneva Convention but who are not returned home for humanitarian or for some other compelling reason. Persons granted leave to remain have many of the same rights as persons granted refugee status. 130
- [218]. In the past, where a person claimed to be a minor, but is not recognised as such, he or she would not be under the care of the HSE and therefore could not avail of the legal aid provided by the RLS. However the RLS has since changed its policy on the matter and now represents age-disputed individuals, even when the HSE decide not to pursue the matter. Nonetheless, there are still cases where the RLS decides not to pursue the appeal on behalf of the minor seeking asylum.
- [219]. There have been some recent judicial review cases in which minors have appealed the decision of RAT refusing such minors refugee status. In *Marina Djimbonge (a minor) v Refugee Appeals Tribunal, Minister for Justice and the HSE*, the applicant arrived in the State as a 15 year old unaccompanied minor from the DRC and was placed in the care of the HSE. Proceeding RAT’s refusal to grant her refugee status, she sought to institute judicial review proceedings against the decision. However in order to obtain legal aid from the RLS, she was required – both by the Legal Aid Board’s policy and the Rules of the Superior Court – to bring about proceedings by a next friend (person who represents the minor in an action as he or she is unable to maintain a suit on their own behalf and who does not have a legal guardian). Because the HSE

¹²⁸ Dr. Nalinie Mooten, *Making Separated Children Visible: Need for a Child-Centred Approach* (IRC, 2006), at 29.

¹²⁹ Anke Boehm, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

¹³⁰ Section 17(6) of the Refugee Act 1996 sets out the Minister’s discretionary power to grant permission to remain to a person who has been refused a declaration.

refused to act as next friend, she was unable to institute such proceedings. She sought, with the services of a private practitioner who made the application on her behalf, an application in the High Court for leave to institute judicial review proceedings without a next friend. She sought a Declaration that she does not require a next friend for such as such acts as an inflexible prohibition on access to the Courts and is unconstitutional and in breach of the ECHR.

- [220]. Finlay Geoghegan J granted such an Order on the basis of the Court's inherent jurisdiction, granting the applicant leave to institute judicial review proceedings without a next friend. The case is ongoing, awaiting a leave hearing.¹³¹
- [221]. The same occurred in the case of Jamal Nourali (a minor) v the HSE and the Legal Aid Board (LAB). Jamal, a 17 year old Somali unaccompanied minor in the care of the HSE, sought a similar order for identical reasons; however during the course of the proceedings, the LAB decided to exercise its discretion and consider an application for legal aid by the applicant, which eventually was granted. The proceedings against the LAB and the HSE will stand until such time as the LAB institutes the JR proceedings against the RAT on behalf of the applicant. At that point, it may become moot.¹³²
- [222]. Currently the Irish Refugee Council is discussing the possibility with the RLS of acting as next friend for minors in age-disputed cases (as it did for a brief period in 2006 before the RLS changed its policy on providing legal aid in such cases).¹³³
- [223]. In the 2008 Bill, it states that civil legal aid is withdrawn, except in proceedings relating to the foreign national's removal from the State.¹³⁴
- [224]. The Refugee Applications Commissioner states that though in theory the asylum process is identical for adults and children, in practice, child claims are dealt with in a more sensitive manner, owing to the age of the applicants.¹³⁵
- [225]. ORAC and RAT give children a break during the interview, if the child or the HSE worker requests it, or if the child becomes distressed during the interview.
- [226]. There is currently a child-friendly room in ORAC for very young children, which consists of a small table and pictures on the wall and a large world map

¹³¹ *Unreported*, High Court, 16th October 2006, No. 1293 JR.

¹³² *Unreported*, High Court, 2006 No. 768 JR.

¹³³ Jyothi Kanics, Irish Refugee Council.

¹³⁴ Irish Refugee Council, *Ensuring Protection for Separated Children: the Irish Refugee Council's Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children* (IRC, 8th April 2008), at 32.

¹³⁵ Refugee Applications Commissioner David Costello, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

on the floor. There is no designated room for the majority of the applicants; teenage children.

- [227]. Minors are always accompanied by their solicitor or caseworker. The legal representative does not intervene during the interview, but may make comments at the end of the interview, or in writing within seven days of the interview. The Refugee Act 1996 (as amended) does not provide for submissions after the interview but ORAC generally accepts submission from minors.
- [228]. With regard to the appeal process, the appeal hearing is inquisitorial, for example, the minor is not interviewed but taken through his or her evidence by his or her legal representative. The HSE is present to represent the social needs of the minor.
- [229]. There is no hotline as of yet in Ireland to report missing children.
- [230]. As stated previously, under Operation Pentameter, the GNIB have put in place a confidential free number to encourage victims of human trafficking to report similar instruments to report exploitation their plight.¹³⁶

¹³⁶ The details of the campaign are available at <http://www.justice.ie/en/JELR/Pages/PR07000952> (visited 1st July 2008)

F. Best interests determination and durable solutions, including social inclusion/return

- [231]. If it emerges that the separated child has a family member already in Ireland, in line with the best interests of the child principle, the first option considered by the social worker is placement with family members already living in the State. As previously stated, in order to determine the relationship of the adult and the child, and to assess the ability of the parent, siblings or relatives to provide suitable care as guardian to the child, a brief assessment is made, which involves interviews with both the child and adult(s); a review of previous and present documentation; contact with current service providers; matching of photographs and stories; child's wishes and expectations; the appropriateness of their interaction. The Irish Naturalisation and Immigration Service are currently examining the introduction of DNA testing in cases of family reunification, but have not completed such research as yet.¹³⁷
- [232]. When the information provided matches, reunification is agreed to proceed. The social worker notifies the reunification to the ORAC, the Reception and Integration Agency (a governmental body, responsible for coordinating the provision of services to both asylum seekers and refugees, coordinating the implementation of integration policy for all refugees and persons granted leave to remain in the State and responding to crisis situations which result in large numbers of refugees arriving in Ireland within a short period of time) and other relevant actors. When there are considerable discrepancies in the information provided or serious concerns as to the suitability of the family members to care for the child, the child may be received into care voluntarily or on a Court Order. 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. 138
- [233]. The family reunification process has been criticised in Ireland as being flawed, as there is no follow up procedure following such reunification, and DNA testing is rarely carried out in practice due to the costs of such.¹³⁹
- [234]. The Health Service Executive (HSE), acting in locus parentis, can make application to the Minister for Justice, Equality and Law Reform for

¹³⁷ Irish Naturalisation and Immigration Service.

¹³⁸ Dr. Angela Veale, Laila Paludaries and Cabrini Gibbons, *Separated Children Seeking Asylum in Ireland* (Irish Refugee Council, July 2003), at 38-9.

¹³⁹ Anke Boehm, speaking at the *One Day Seminar on Guardianship and Migrant Children*, 28th November 2007. Available at <http://www.ucc.ie/en/ccjhr/events/bodytext.44512.en.html> (visited 25th June 2008).

humanitarian leave for a child to remain in the State. Alternatively, the child, also through the HSE, may make an application for asylum to the Refugee Applications Commissioner.

[235].

- [236]. The RLS ensure the availability of asylum for the victims of child trafficking. The RLS explains the functions of the various agencies and what the questionnaire, which the minor is obliged to fill out, is about and the implications of such. The child is also advised to locate all their documents and is told of the family tracing programme. The format of the interview is also explained by the RLS representative.
- [237]. A second consultation will take place before the interview with ORAC. During this interview, the minor will be accompanied by his or her solicitor or caseworker.¹⁴⁰
- [238]. In relation to the court dealing with children charged with offences, Section 96 (1)(a) of the Children Act 2001 recognises the right of the child to be heard and to participate in any proceedings that can affect children.
- [239]. In 1999, the Department for Health and Children published “Children First: National Guidelines for the Protection and Welfare of Children” which embody the UN Convention on the Rights of the Child. Although the Guidelines are to improve the identification, reporting, assessment, treatment and management of child abuse, they contain the principles for best practice in child protection. One such principle is the child’s right to be heard and taken seriously. Taking account of their age and level of understanding, they should be consulted and involved in relation to all matters and decisions that affect their lives.¹⁴¹
- [240]. A person who arrives at the frontiers of the State shall be interviewed by the immigration officer. In the High Court case of *Emekobum v The Minister for Justice, Equality and Law Reform* Smyth J stated that:
- [241]. In my judgment the word “shall” in Section 8(1)(a)(i) of the Act of 1996 does impose a duty to interview but it does not impose an absolute obligation to do so. To insist on such a provision, irrespective of facts and circumstances, could lead to imposing unnecessary hardship and trauma on persons under a disability (such as minors) which is inimical to the purposes of the legislation.¹⁴²
- [242]. Peart J quoted this passage in the subsequent case of *Nwole v Minister for Justice, Equality and Law Reform* and stated that

¹⁴⁰ Dr. Nanilie Mooten, *Making Separated Children Visible* (Irish Refugee Council, 2006), at 29.

¹⁴¹ Available at http://www.dohe.ie/publications/children_first.html (visited 2nd July 2008)

¹⁴² *Unreported*, High Court, 18th July 2002

It seems to me that in enacting the provisions of the *Refugee Act, 1996*, as amended, the legislature has acted in a way which safeguards the rights and entitlements of an unaccompanied minor by ensuring that the interests of those persons are looked after by an officer of the health board...¹⁴³

- [243]. In the 2008 Bill, when assessing a protection application for a minor, there is provision to dispense with an interview if the Tribunal is of the opinion such an interview or oral hearing would not usefully advance the appeal due to the minor's age and degree of maturity.¹⁴⁴
- [244]. As stated previously, trafficked children have access to full health care and education.
- [245]. As stated previously, the Dún Laoghaire's Refugee Project's Drop-In Centre takes place every Monday evening with a large room for talks, socialising, workshops and other events. It especially works with "aged-out" minors and also focuses on accessing and administering funding for third level education, providing career guidance and assisting in enrolling for courses. Such aged out minors inevitably would include victims of child trafficking.
- [246]. In addition, the Irish Association for Young People in Care (IAYPIC) advocates for and promotes the rights and needs of young people with care experience through their participation at all levels throughout the care system. The organisation aids separated children's integration into Irish society by helping them access the requisite legal aid and education. They operate in conjunction with the Children First Guidelines and currently have a support group in place for young adults (all men at present), who were separated children in the past and who have uncertain status in the country. IAYPIC offer a leaving care programme by explaining how to cook and shop and by providing peer support.¹⁴⁵
- [247]. Occasionally IAYPIC also advocate for such aged out minors to remain in care, as it did successfully in the case recently of a young man who had turned 18 and was entering into his Leaving Certificate year (final year of secondary education).¹⁴⁶

The **Transition Supports Project (TSP)**, an EQUAL Community Initiative, funded by the European Social Fund and the Department of Education and Science, was an

¹⁴³ *Unreported*, High Court, 26th May 2004.

¹⁴⁴ Immigration, Residence and Protection Bill 2008, s 74(10) and s 85(6) (a). See Gráinne Brophy and Bernadette McGonigle, "The Immigration, Residence and Protection Bill 2008 – Protecting Children or Traffickers?" 2008 3(2) *The Researcher* 6, at 6-10. http://www.legalaidboard.ie/lab/publishing.nsf/Content/The_Researcher (visited 24th June 2008).

¹⁴⁵ Jennifer Gargan, Irish Association for Young People in Care. More information available at <http://www.iaypic.ie/ORG/index.html> (visited 1st July 2008).

¹⁴⁶ Information provided by Jennifer Gargan, IAYPIC.

interagency response to the need to coordinate, integrate, activate and deliver services to separated children seeking asylum (SCSA) and young asylum seeking adults (primarily 17 to 21 year olds) to enable them to participate in education, both formal and informal, with a view to preparing them for adult life, in Ireland or in their country of origin. The TSP Development Partnership was comprised of the Curriculum Development Unit, the Reception and Integration Agency, the HSE, the Dublin Inner City Partnership, Tallaght Intercultural Action, the City of Dublin Youth Services Board, the City of Dublin Vocational Education Committee's Separated Children Education Service and a representative of the target group. The project was for two years and finished in December 2007.¹⁴⁷ These separated children would also presumably include victims of child trafficking, although many agencies avoid direct questioning of such victims.

- [248]. The project was a major attempt to raise policy awareness and improve the co-ordination of and access to services provided to the target group across different service and statutory and voluntary agencies. The project also initiated and implemented a youth work outreach service and a mentoring programme.¹⁴⁸
- [249]. It carried out a needs analysis of separated children seeking asylum and aged out minors in certain areas of Dublin. It also considered the needs of these children, particularly as they relate to their move to and preparation for their transition to the RIA.
- [250]. The TSP also strove to provide educational, social and recreational activities for SCSA/young adults through established NGOs, including training and supporting aged out minors to act as peer mentors to separated children seeking asylum. Activities included (among others); a youth exchange with Spanish partners; bowling; gym passes; cinema trips; football; access to vocation skills and training courses; organisation of a multi-media programme; Microsoft training; arts, parenting programmes, language and cultural supports; a grant scheme to other NGOs aiding separated children seeking asylum and aged-out minors; provision of bus passes; and workshops for other EU partner countries.¹⁴⁹
- [251]. The TSP project has had a number of good outcomes at implementation level and has had some policy influence against a difficult backdrop. For example, the strong view is that project has had a positive impact on their living circumstances. The constant presence of youth workers in the hostels has

¹⁴⁷ Siobhán Phillips, *Evaluation of EQUAL Transition Supports Project for Aging out Minors*, forthcoming.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Ibid.*

influenced staff positively and the young people consider that as a result, the staff treats them with less disrespect than before. It is the only source of accessible emotional support available to a group of socially isolated and vulnerable young people living in hostel accommodation. In addition, the youth work and mentoring programme have helped bridge the care gap and are making a significant difference to the welfare and adjustment of the young people in transition to a minimal care environment. To underline this point, *three times* as many participants said they felt well or very well supported after the TSP.

- [252]. With the exception of aspects of care, outcomes at policy level have been more limited. For example, in terms of educational access, the restrictions put in place by the Department of Education and Science, which limit access to free third level and vocational education training for asylum seekers, have meant that the focus has been on the provision of once off or modular courses run specifically for the target group. Significant efforts were made by the TSP to access conventional vocational training courses but with no success. Regarding recreational activities, younger separated children seeking asylum have been more inclined to get involved than those who have aged out. Many of these young people are disenfranchised, or depressed and difficult to engage with. 150
- [253]. Overall, the project had positive outcomes and when asked whether the TSP should continue, the answer from the target group was a resounding yes by 92% of respondents.
- [254]. As stated previously, all separated children seeking asylum are provided with a translator for all asylum procedures. As in the case of all children in care in Ireland, it is very difficult to obtain the requisite access to psychological care, due to lack of resources. 151

¹⁵⁰ *Ibid.*

¹⁵¹ Jennifer Gargan, Irish Association for Young People in Care.

G. Prosecution

- [255]. Section 16 of the Criminal Evidence Act 1992 allows for video recording of statements of victims under 14 years of age to be admitted as evidence in criminal proceedings. The law allows for the video recording of the statement to be admitted in place of the child having to give live testimony (evidence) in open court. This also removes the requirement of the child witness having to physically confront and re-identify the accused in court. The statements of victims under 14 years of age can be made during an interview with a member of the Garda Síochána or other competent person. For those aged between 14 and 18, the prosecution can apply to the court for the witness to give evidence from a separate room using a video link.
- [256]. The Children Act 2001 created the Children Court, which deals with children under 18 years of age who commit an offence and came into operation in 2002. Judges who sit in the Children Court are required to undergo special training or education as deemed necessary by the President of the District Court. All such cases are heard in camera (places restriction on people entitled to attend).
- [257]. Until recently in Ireland neither the Illegal Immigrants (Trafficking Act) 2000 nor the Child Trafficking and Pornography Act 1998 has ever resulted in a successful prosecution for the crime of trafficking, though individuals have been arrested and charged.¹⁵² On the 4th March 2008, it was reported in the Irish Times that a man pleaded guilty at Dublin Circuit Criminal Court to child trafficking. The accused admitted that in October 2005 he incited a named woman “to organise or knowingly facilitate the use of a child for the purpose of sexual exploitation”, and was charged under the Child Trafficking and Pornography Act 1998. Judge Martin Nolan directed that his name be added to the register of sex offenders and remanded him on continuing bail for sentence at a later date.¹⁵³
- [258]. As there have been no prosecution cases (except the recent case referred to above) there has been no compensation paid to a victim of child trafficking in criminal case. It is unknown if there has been any paid in a civil case.¹⁵⁴
- [259]. There are no cases in Ireland establishing the amount of compensation paid to trafficked children per year.

¹⁵² Barra S.O’Duill, Anti-Human Trafficking Unit and Jyothi Kanics, Irish Refugee Council

¹⁵³ *Irish Times*, 4th March 2008. Available at <http://www.ireland.com/newspaper/ireland/2008/0304/1204240484326.html> (visited 24th June 2008)

¹⁵⁴ Barra S. O’Duill, Anti-Human Trafficking Unit.

H. Miscellaneous

- [260]. There has been an extensive debate in the media concerning the number of separated children going missing over the last number of years. As a result, the government has established a working group to examine and review the services provided through the HSE in the East Coast Area region to separated children seeking asylum/unaccompanied minors.¹⁵⁵
- [261]. There is also heated discussion regarding the proposed new Immigration, Residence and Protection Bill 2008, and many submissions have been made by interested parties to the Minister for Justice, Equality and Law Reform regarding the matter.¹⁵⁶
- [262]. The major concerns with the 2008 Bill include; no provision for the best interests of the child as the paramount consideration in all matters affecting the child; no definition of a separated child; no statutory footing for family reunification; the recovery and reflection period being contingent on assistance in the criminal investigation of the alleged trafficker; humanitarian considerations not included as a criteria when seeking protection; victims of trafficking limited to foreign nationals and not those within the EEA area; no provision for appointment of a GAL in all cases of separated children; extent of ministerial discretion; detention of children may be allowed in certain instances; and not enough protection for vulnerable groups.¹⁵⁷
- [263]. In failing to address some of these issues, many NGOs regard the Oireachtas as not implementing many of the recommendations of the UN Committee on the Rights of the Child, which concluded its observations of Ireland in September 2006 and January 2008.¹⁵⁸
- [264]. The government has proposed a 28th Amendment to the Constitution Bill 2007 to enhance the rights of children in the Irish Constitution. There is currently a Joint Committee on the Constitutional Amendment for Children examining

¹⁵⁵ Department of Health and Children website
http://www.dohc.ie/working_groups/aum/ (visited 13.23, 20th June 2008).

¹⁵⁶ Available at
http://www.oireachtas.ie/viewdoc.asp?fn=/documents/Committees30thDail/J-JusticeEDWR/Reports_2008/ListofSubmission.htm (visited 13.15, 27th June 2008).

¹⁵⁷ *Ibid.*

¹⁵⁸ For a comprehensive analysis on this matter, see Irish Refugee Council, *Ensuring Protection for Separated Children; The Irish Refugee Council's Submission on Provisions of the Immigration, Residence and Protection Bill 2008 related to the Protection of Separated Children*, 8th April 2008.

proposals for the amendment and the Committee is due to report its findings by 20 November 2008.¹⁵⁹

- [265]. This Government initiative, while in principle welcomed by Irish society, has stimulated broad and critical discussion on all levels. NGOs¹⁶⁰, experts¹⁶¹ and the Ombudsman for Children¹⁶² have expressed their concern that the approach taken by the Government is not going far enough to meet the recommendations of the UN Committee on the Rights of the Child¹⁶³ as it does not make the “best interests of the child” principle generally applicable.¹⁶⁴
- [266]. For the first time, Ireland was listed as a destination country for victims of trafficking for sexual exploitation and forced labour. The US Department of State Trafficking in Persons Report 2008, placed Ireland in the second of three performance tiers, based on an assessment of its record in prosecuting offenders, in protecting victims and in preventing abuses. ¹⁶⁵ This means the Government has failed to meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. However, during the time the rating review was undertaken, Ireland had not introduced the Criminal Law (Human Trafficking) Act 2008, and the temporary administrative arrangements had not been given legal effect.¹⁶⁶

¹⁵⁹ For more, see <http://www.omc.gov.ie/viewdoc.asp?fn=%2Fdocuments%2Flegislation%2FconstRef.htm> (visited 15.10, 20th July 2008)

¹⁶⁰ See the position paper on the proposed referendum of the Children’s Rights Alliance, *The Constitution and Children*, (CRA, January 2007)

¹⁶¹ For a detailed analysis also in the light of Irish case law see Kilkelly/O’Mahony, “The proposed Children’s Rights Amendment: running to a stand still?” (2007) *IJFL* 10(2).

¹⁶² *Report to the Oireachtas on the Twenty-Eighth Amendment of the Constitution Bill 2007* (OCO, March 2007) and *Submission to the Joint Committee on the Constitutional Amendment on Children* (OCO, February 2008).

¹⁶³ UN Committee on the Rights of the Child *Concluding Observations on Ireland*, 29th September 2006, CRC/C/IRL/CO/2

¹⁶⁴ Report by the Commissioner Thomas Hammarberg

¹⁶⁵ Available at <http://www.state.gov/g/tip/rls/tiprpt/2008/> (visited 13.25, 27th June, 2008)

¹⁶⁶ Editorial, *Irish Times*, 16th June, 2008. Available at <http://www.ireland.com/newspaper/opinion/2008/0616/1213369968694.html> (visited 27th June 2008)

I. Good practices

- [267]. The creation of the new Anti-Human Trafficking Unit within the Department of Justice, Equality and Law Reform which is exclusively dedicated to co-ordinating and facilitating the implementation of a new national strategy to address human trafficking could be considered good practice regarding the fight against child trafficking. The Unit involves all relevant actors, including government departments, NGOs and international organisations.¹⁶⁷
- [268]. The establishment of a new High Level Group on Combating Trafficking in Human Beings to draft a National Action Plan is also a positive measure in examining how to tackle the fight against child trafficking, as certain NGOs are members of the five interdisciplinary groups established to report to the working group. 168 NGOs and governmental actors are further cooperating in the Ireland en Route campaign.
- [269]. The 2008 Bill also includes some good practice regarding protection for victims of trafficking. In particular, the introduction of the single procedure to assess all forms of protection, to assess claims for asylum, subsidiary protection, non-refoulement and compelling reasons, is welcomed by many NGOs as it will allow for a more efficient process with less duplication of efforts.¹⁶⁹
- [270]. ORAC has worked to identify an appropriate age assessment methodology. Although there may be no legal provisions concerning the benefit of the doubt being given to suspected trafficked children arriving in Ireland, in practice ORAC invariably gives such to the unaccompanied minor when the interviewer has any doubt in her mind as to the age of the person.¹⁷⁰
- [271]. Although there may be a lack of statutory framework for the protection and welfare of children, it is noteworthy that the majority of both statutory¹⁷¹ and

¹⁶⁷ Migrant Rights Centre Ireland, *Submission to the Proposed National Action Plan to Prevent and Combat Human Trafficking* (MRCI, December 2007), at 5. For more information, see http://www.irlgov.ie/crimecouncil/human_trafficking.html (visited 12.50, 27th June, 2008).

¹⁶⁸ *Ibid.*

¹⁶⁹ United Nations High Commissioner for Refugees, *UNHCR's Comments on the Immigration, Residence and Protection Bill 2008* (UNHCR Dublin, March 2008), at 2; Irish Refugee Council, *The Right to Protection: Submission to the Oireachtas Committee on Justice, Equality, Defence and Women's Rights on the protection aspects of the Immigration, Residence and Protection Bill 2008* (IRC, March 2008), at 7.

¹⁷⁰ Dr. Angela Veale, Laila Palaudaries and Cabrini Gibbons, *Separated Children Seeking Asylum in Ireland* (Irish Refugee Council, July 2003), at 36.

¹⁷¹ For instance, the Garda National Immigration Bureau.

non-statutory actors¹⁷² utilise the “Children First: National Guidelines for the Protection and Welfare of Children”, when interacting with separated children. The guidelines embody the principles enunciated in the UN Convention on the Rights of the Child. They also included a recommendation for all voluntary and community services providing services to children to adopt their own guidelines on the matter and set out certain instructions in the drafting of such.

[272]. The RLS provides services in line with internal practice guidelines which in the case of separated children have been based on the Separated Children in Europe Programme’s guidelines. The RLS is constantly reviewing its guidelines and hope to undertake a detailed review of these guidelines over the next few months with a view to strengthening the services it provides to separated children.¹⁷³

[273]. ORAC has also developed guidelines for the treatment of claims of unaccompanied minors, developed training for addressing the claims of unaccompanied minors and exhibited an appreciation that unaccompanied minors, as children, should not be treated in the same way as adults. ¹⁷⁴

¹⁷² For example, the Irish Association for Young People in Care.

¹⁷³ Gráinne Brophy, the Refugee Legal Service, the Legal Aid Board.

¹⁷⁴ Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland* (International Organisation for Migration, April 2003), at 32.

Annex 1 - Tables and Statistics

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Number of children being granted temporary stay on grounds of trafficking	-	-	-	-	-	-	-	-	-
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)	Unav	Unav	Unav	Unav	Unav	Unav	Unav	Unav	Unav
Number of trafficked children receiving education/training, in particular secondary education and vocational training	Unav	Unav	Unav	Unav	Unav	Unav	Unav	Unav	Unav
Number of trafficked children receiving legal assistance (e.g. for claiming compensation)	Unav	Unav	Unav	Unav	Unav	Unav	Unav	Unav	Unav
Number of final convictions based on child trafficking cases, per year	-	-	-	-	-	-	-	-	1
Total of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-	-

Average of amounts of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-	-
Range of amount of compensation paid to trafficked children, per year	-	-	-	-	-	-	-	-	-

	2000	2001	2002	2003	2004	2005	2006	2007	2008 (Jan-May)
Number of separated children seeking asylum being referred to the HSE	520	1085	863	789	617	643	476	336	123
Number of Family Reunifications of Separated Children	107	416	506	439	418	440	299	185	75
Number of separated children placed in care	406	558	335	277	174	180	201	122	45
Number of children going missing from HSE care	34	81	54	47	66	65	53	39	1
Number accounted for	-	-	2	5	14	14	13	11	1
Number of Unaccompanied children seeking asylum	302	600	288	271	128	131	131	91	Unav
Number of Unaccompanied children granted asylum at first instance (ORAC)	u.10	22	93	38	58	56	30	24	Unav
Number of appeals accepted from unaccompanied minors	Unav	53	490	167	156	113	88	83	Unav

Number of appeals granted/set aside from unaccompanied minors	Unav	2	13	43	34	19	11	6	Unav
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Although other statistics were provided, the above statistics were not available, or indeed were not authorised to be released. Contacted were the Minister for Justice, Equality and Law Reform; the Anti-Human Trafficking Unit, the Garda National Immigration Bureau, the Health Services Executive and the Refugee Legal Service.

Any children not placed in care, or reunited with family, or going missing, were children who were age reassessed and deemed over 18 by ORAC, children accompanied by family members, children arriving on valid visas.

on provided by HSE, ORAC and RAT									(Jan-May)
of separated children seeking asylum being referred to the HSE									
of Family Reunifications of Separated Children									
of separated children placed in care									
of children going missing from HSE care									
accounted for									
of Unaccompanied children seeking asylum									
of Unaccompanied children granted asylum at first instance (ORAC)									
of appeals accepted from unaccompanied minors									
of appeals granted/set aside from unaccompanied minors									

Any children not placed in care, or reunited with family, or going missing, were children who were age reassessed and deemed over 18 by ORAC, children accompanied by family members or children arriving on valid visas.