

# TRAFFICKING IN UNACCOMPANIED MINORS IN IRELAND

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IOM International Organization for Migration

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# TRAFFICKING IN UNACCOMPANIED MINORS IN IRELAND

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By  
Dr Pauline Conroy

August 2003



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This publication is part of a three-stage project funded by the European Commission's STOP programme in 2000/2001, 2001/2002 and 2002/2003. The first project, steered by the International Organization for Migration in Brussels, comprised a series of studies on unaccompanied minors and victims of trafficking in human beings in four European Member States: Germany, Belgium, Italy and the Netherlands. It also received co-funding from the governments of Belgium and Italy.

The second project was co-ordinated by the IOM office in Paris. A further three studies were undertaken in Spain, France and Greece and a European Conference held at the Institute of Advanced Studies on policing and public safety (IHESI) in Paris on 18<sup>th</sup> and 19<sup>th</sup> April 2002.

The third project provided an opportunity to produce a comparative analytical document by adding the results of the new studies conducted in three more countries (Ireland, Portugal and the United Kingdom) and to organise a European Conference held in Paris on 25<sup>th</sup> and 26<sup>th</sup> September 2003. This project has received co-funding from the Government of France – Ministry of Social Affairs, Employment and Solidarity, Direction Generale de l'Action Sociale, the Government of Ireland – Department of Justice, Equality and Law Reform, and the Government of the United Kingdom – Home Office – Policing Organised Crime Unit. This report is an Irish study, which formed a part of the third project.

The views expressed in this publication have not been adopted by the European Commission or the Department of Justice, Equality and Law Reform and should not be considered to be a statement made by the Commission or Department of Justice, Equality and Law Reform.

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## EXECUTIVE SUMMARY

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Trafficking in human beings is of growing concern to the European Union Member States and the international community. The European Union, the United Nations agencies and the International Organization of Migration (IOM) have decided to develop legislative and policy initiatives to counter trafficking and provide assistance to the victims. The STOP programme is one of the main results of this work by the European Commission, EU Member States and IOM. The study on *Trafficking in Unaccompanied Minors in Ireland* is part of a ten country series of studies supported by the STOP programme. The Irish study was co-funded by the Department of Justice, Equality and Law Reform and co-ordinated by IOM Dublin and Paris.

The study had three objectives. The first objective was to examine the legal framework in Ireland for addressing the prosecution of perpetrators of trafficking in minors. A second objective was to describe the institutions and services for the protection of unaccompanied minors who are victims of trafficking and their reception into the care of public authorities and thirdly, to identify the policy responses being implemented in Ireland to combat trafficking in children and protect the victims.

The study found that Ireland had a relatively modern and comprehensive legal framework in place to prosecute suspected trafficking in children and related offences, in a range of circumstances. While there was evidence of extensive resources applied to trafficking investigations, this has not manifested itself in successful prosecutions. The legal framework for child protection in cases involving suspected trafficking or smuggling of children was also wide in scope.

Based on interviews and contacts with frontline service professionals, the study found evidence of trafficking and smuggling of children into Ireland for the purposes of both labour and sexual exploitation. South Eastern Europe and West Africa were the regions of origin of a number of the children concerned. The study reported that children – boys and girls – smuggled into Ireland had also been sexually abused en route to Ireland.

The study recommends the following issues to be addressed:

- More detailed reporting on child trafficking in the Annual Reports of the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal would heighten awareness of the issue
- The absence of a clear legal status for child victims who are not asylum-seekers, programme refugees or displaced persons posed dilemmas for planning their future
- The accommodation of children outside of designated Residential Children's Centres is unsatisfactory from the point of view of supervision and care
- The staffing level of social workers for children's services within Health Boards was below that which could reasonably provide a comprehensive child-centred service to child victims.

# INTRODUCTION

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Ireland has developed a comprehensive range of laws since 1995, to outlaw the criminal phenomena of child trafficking and child pornography. A complementary updating of civil law for child protection has taken place and is under review in the light of European and international developments. The adoption by the Council of Ministers of a Framework Decision on combating trafficking in human beings in 2002 requires Ireland to bring its legal framework into line with the Framework Decision. The enforcement of the law against child trafficking and child pornography in Ireland is active.

Compared with other European capital cities, the sex industry in Ireland is relatively new and small. There is no tradition of tolerance zones, however this could change. There are massage parlours, lap dancing clubs, escort agencies and other manifestations of the industry. There is advertising outside Ireland for sex workers to come and work in Ireland, from as far away as South Africa (Ajam, 2003:1). There are prosecutions of massage parlours, and lap dancing clubs, which do not comply with the exact terms of their liquor and dance licenses, and of those who maintain brothels. Both soliciting for prostitution and living on the earnings of prostitution are prosecuted.

So-called massage parlours and lap dancing clubs compete for space in cities of Dublin, Limerick and Cork. They are often staffed by young women from outside the European Union with tourist visas, education visas or no visas on three-week working rotations. Since late 2002, no work permits have been issued by the public authorities to employers or recruitment agents for such entertainment clubs. In other instances, sets of city apartments have been rented by companies for use as brothels, by clients using credit cards and phone lines located in Ireland or overseas. In June 2003, a special operation led by the Irish Gardáí (police) raided so-called clubs across Ireland. Over 100 persons were detained and questioned in this anti-trafficking action.

Societal tolerance of sexual abuse of children, non-disclosure, disbelief of child victims and harassment or isolation of those who denounced paedophiles, has been widespread. In the most recent large-scale study of its kind, one in five women and one in six men disclosed childhood sexual abuse (McGee et al, 2002). The majority of these victims experienced abuse in the pre-pubescent period before the age of 12 years. Systematic sexual abuse of children in residential care institutions over the decades and more recently in sports clubs has been an ongoing scandal, layers of which remain to be exposed.

Despite a relatively high level of trade unionisation, there is an underground economy in Ireland. Groups from among the 40,000 migrant workers from outside the European Union have been deceived into paying fees to local agents to bring them to Ireland for non-existent jobs (Conroy and Brennan, 2003). Organisations of reputable employers have been alarmed by these developments orchestrated by recruitment agents inside Ireland and outside the European Union. The Irish context has been fertile for the development of contemporary trafficking in human beings for both labour and sexual exploitation.

The Common Travel area between Ireland and the UK, the proximity and similarity of the labour markets and the North South Peace Process, are all arguments to view the island of Ireland as a single whole. The study made preliminary enquiries in relation to child trafficking in Northern

Ireland (UK).

At a European Union level, besides repressing and reducing trafficking for the purposes of sexual and labour exploitation, the European Commission has begun to signal interest in a wider agenda of child interests. This study briefly touches on some of these areas: the lack of regulation for under-age au pair placements and the unregulated or problematic movement of unaccompanied children across European borders and jurisdictions.

Discussion on child trafficking in Ireland is frequently punctuated with anecdote. There have been no systematic studies published on the topic to which the researchers could refer. The short study that follows falls into the class of small-scale investigative studies of an emerging problem as viewed by institutional actors.<sup>1</sup> It is not a study of the underground economy, nor a survey of the victims. However, it is the first of its kind. Many professionals, public servants and voluntary organisations expressed support that a report on the topic should be produced that would serve as a reference point for wider or more specialised studies in the future.

## THE OBJECTIVES OF THE STUDY

The study had three objectives. The first objective was to examine the legal framework in Ireland for addressing the prosecution of perpetrators of trafficking in minors, secondly, to describe the institutions and services for the protection of unaccompanied minors – victims of trafficking – and their reception into the care of public authorities and thirdly, to identify the policy responses being implemented in Ireland to combat trafficking in children and protect victims.

## RESEARCH METHODOLOGY

The method selected for the research was based on interviews or discussions with professionals or front-line staff meeting with or providing services to unaccompanied minors, among who were children who had been smuggled or trafficked into Ireland or Northern Ireland (UK). In March 2003 an information note about the study was mailed out to twenty organisations or bodies believed to be providing services or to have contact with unaccompanied minors who may have been victims of trafficking (see Appendix 1). Organisations and bodies were selected from public services, not-for-profit bodies or academic researchers who were known to be in the field of child protection, child services, social work or law enforcement or to have gathered data or studies in the field of trafficking. The organisations or bodies were located in the greater Dublin area on the East Coast of Ireland, in the Southern region of Cork city and in Belfast. These three areas have seaports and airports where a large number of unaccompanied minors are known to arrive in Ireland.

In response to the information note (see Appendix 2) a number of organisations sent documents or data. Others were telephoned or interviewed after follow-up calls or emails. A total of 16 organisations responded to this part of the research. In the border area between Ireland and Northern Ireland, the non-governmental organisation EXPAC made enquiries from individuals in social services, journalism or road haulage to ascertain whether there were signs of child trafficking in the Border area. A total of 20 organisations or individuals responded to the requests for information.

A draft of the final report was examined in detail by the Department of Justice, Equality and Law

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<sup>1</sup> Examples of larger studies can be found in IOM (2000) *Migrant trafficking and human smuggling in Europe*, IOM, Geneva.

Reform. This led to a number of amendments and adjustments which clarified the final report.

# 1. THE LEGAL FRAMEWORK

In addressing trafficking in children, Ireland shares a similar legal framework with the United Kingdom. The development of laws in relation to trafficking in children in Ireland has taken place with an eye to similar laws in the UK. International developments in child protection are carefully watched. The Irish government intends to ratify the Optional Protocol to the United Nation's Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (DJELR, 2002:52).

Ireland was one of the first European countries to introduce legislation to allow the prosecution of persons accused of sex offences against children, where the offence had taken place outside the jurisdiction. 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.

The legal instruments for the prevention, suppression and protection of victims of child trafficking are contained in a range of laws, old and new, which read together or in tangent, provide a significant number of mechanisms which recognise the phenomena of child trafficking and take steps to combat it. The changing complexity and scale of the phenomena involving both vulnerable victims and organised crime pose a challenge. Many of the laws are being, or will be, scrutinised for their effectiveness, or the severity of sanctions or the enhancement of prevention systems in the coming period.

## 1.1 DEFINING UNACCOMPANIED MINORS, TRAFFICKING AND SMUGGLING

While a child is a person under the age of 18 years, the age for consent to sexual relations is 17 years. It is an offence to have sexual relations with a girl under 17 years, unless the two parties are married. Criminal law distinguishes between children aged 15, 16 and 17 in terms of some sexual offences. Sexual relations with a child under 15 are prohibited, regardless of whether she/he consents or the age of the other party. The age of consent for sex between male partners has been 17 years since 1993.

## 1.2 CHILD TRAFFICKING AND PORNOGRAPHY ACT, 1998

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. 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 penalty for this crime is life imprisonment. Providing accommodation for the child for such a purpose while s/he is in the State is also prohibited under the Act. '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*"

The Child Trafficking and Pornography Act, does not criminalise trafficking for the purposes of

labour exploitation. The Act has been extensively enforced with consequent prosecutions and convictions in the courts in relation to child pornography, the downloading from computers or storing of electronic images of child pornography and other related electronic crimes in relation to child pornography. The Act has been enforced in relation to migratory movements of children and trafficking in terms of preparations of prosecution files and the charging of persons under the Act. As yet, convictions for migratory movements, as opposed to pornography-related crimes, are less visible. During 2003, prosecution files were prepared or served on a judge (child pornography), a member of the Defence Forces (Irish army peacekeeping mission in Eritrea) and a Garda (police headquarters, Dublin).

### 1.3 ILLEGAL IMMIGRANTS (TRAFFICKING ACT), 2000

The Illegal Immigrants (Trafficking) Act 2000 deals with the phenomenon of smuggling in migrants rather than trafficking, and its main objective is to criminalise the activity of smuggling or facilitating the illegal entry of persons to Ireland. The legislation was enacted in response to the significant increase in the number of persons being smuggled into Ireland.

In Section 2(1), the Act penalises *“a person who organises or knowingly facilitates the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or person who intends to seek asylum...”* It permits the forfeiture of ships, aircraft or other vehicles, which were used to bring illegal immigrants into the State.

This is a core piece of legislation addressing the issue of smuggling of persons into Ireland, although, of course criminal law particularly in relation to crimes such as assault and rape, can be used to prosecute traffickers for trafficking-related crimes.

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.’* The Irish Refugee Council stated at the time that there was little hard evidence of trafficking in children for the purposes of sexual exploitation (Irish Refugee Council, 2001). The Child Trafficking and Pornography Act, had been enacted three years earlier.

### 1.4 REFUGEE ACT, 1996 (AS AMENDED)

The Refugee Act 1996 (as amended by the Immigration Act 1999 and the Illegal Immigrants (Trafficking) Act 1999) came fully into force on 20 November 2000. It incorporates the 1951 Convention Relating to the Status of Refugees into Irish law. It sets out the procedure for processing claims for refugee status and provides for the establishment of two independent bodies: the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT).

ORAC has two main functions: to process all claims for refugee status at first instance and to make a recommendation to the Minister whether or not each applicant should be recognised as a refugee and to process claims for family reunification from persons recognised as a refugee.

Age is not a barrier to seeking asylum in Ireland and the same refugee determination procedure applies to both adult and minor applicants. In the case of unaccompanied minors, Section 8(5)(a) of the Refugee Act provides that where it appears to an immigration officer or authorised officer that a

child has arrived, who is not *'in the custody of any person'* in the State, the officer shall inform the health board *'in whose functional area the child is.'* The provisions of the Child Care Act 1991 will apply to the child. The local Health Board must decide whether an application for refugee status should be subsequently made on behalf of the child.

If an unaccompanied minor is recognised as a refugee, s/he will be afforded rights similar to those of an Irish citizen. In addition, s/he may apply for family reunification. The recognition rates are low as a proportion of all applicants (RAT, 2002; ORAC, 2002) and persons who are not successful at that stage may appeal the recommendation of the Commissioner to the Refugee Appeals Tribunal. Most unaccompanied minor asylum seekers are represented by the Refugee Legal Service. The Tribunal has appointed three of its Members to hear appeals from unaccompanied minors.

If the unaccompanied minor is unsuccessful at the appeal stage, s/he will be informed in writing that the Minister for Justice, Equality and Law Reform intends to make a deportation order in respect of him/her. S/he has three options at that stage: to agree to the making of the deportation order, to leave the State voluntarily or to make representations to the Minister setting out reasons why s/he should not be removed from the State. If the Minister agrees that the unaccompanied minor should not be deported, s/he will be granted leave to remain for a period of one year which is renewable. This status is granted at the discretion of the Minister.

The Refugee Act provides for family reunification in the case of recognised refugees. Under Section 183(b)(ii), a person who is under 18 and not married at the time of their application for family reunification, may apply to be joined by his/her parents. In the case of adult applicants, they are entitled to apply for family reunification, if married for their spouse and children under the age of 18 years. A refugee may also apply for family reunification in respect of other dependent members of his/her family. In this case, permission is given at the discretion of the Minister. ORAC is responsible for investigating all applications for family reunification and preparing a report for the Minister. The investigation will try to establish the relationship between the refugee and the family member, using all available information including that given by the asylum seeker in the asylum questionnaire.

A significant proportion of children 'age out' of the status of unaccompanied minor while awaiting the processing of their cases. When their case comes to be heard or appealed, they have reached the age of 18 years and are then an adult.

## 1.5 CHILD CARE ACT, 1991

The Child Care Act 1991 is the core legislative instrument to exercise protection over a child who may be, or is, a victim of trafficking. The Act allows the public authorities to immediately or gradually interrupt the relationship of a child to a caregiver in a number of significant circumstances and places, and to transfer authority for the child from an individual to the State.

The Child Care Act, 1991 is a comprehensive legislative instrument conferring broad ranging powers, obligations and competencies on the public authorities. It permits the public authorities, among other powers, to address situations of children at risk, to take children into the care of the state, and to seek emergency protection orders. A child means a person under the age of 18 years who is not or has not been married (Section 2).

The Act places “*the welfare of the child as the first and paramount consideration*” (Section 3 (2) (b) (i)). The Child Care Act, 1991 is a civil law instrument. The paramount consideration given to a child could be overridden where there is a competing criminal law provision. Criminal law frequently takes precedence over civil law.

The Health Board can act in relation to a child in a variety of situations such as:

- Where a child is found homeless (Section 5)
- To take a child to safety where “*there is an immediate and serious risk to the health or welfare of a child*” including from a tent, caravan, vehicle, lorry, ship or aircraft (Section 12).
- To seek a care order where the child requires “*care or protection*” (Sections 4 and 16)
- To seek “*an emergency care order*” for eight days (Section 13) or “*interim care order*” (Section 17) for eight days.
- To seek a “*supervision order*” (Section 19) in relation to a child who is not in the care of the state.

The Child Care Act provides for the regulation of Children’s Residential Centres, foster care and placement with relatives.

The Act does not provide for the enforcement of Children’s Centre regulations for children residing in hostels provided by Local Authorities, that is, hostels which are not maintained by Health Boards under Section 69 (2) of the Act. This loophole means that unaccompanied minors in adult hostels or homeless hostels are not entitled in law to inspection of their accommodation and environment against the standard for Children’s Residential Centres. Nevertheless, some of these centres are in fact inspected by the Social Services Inspectorate against Children’s Residential Centre Standards.<sup>2</sup>

## 1.6 THE CHILDREN ACT 2001

The Children Act 2001 updates and modernises some of the provisions of the 1908 Children’s Act. The provisions of the Act have been brought into force selectively.<sup>3</sup> A number of provisions came into effect in May 2002.

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.

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.

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. A child in this instance is a person under 17 years of age.

Section 251 allows a prosecution to proceed against a person without the child having to be present

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<sup>2</sup> See Reports of the Irish Social Services Inspectorate, Department of Health and Children, Dublin.

<sup>3</sup> Statutory Instrument No.151 of 2002, Children Act 2001 (Commencement) Order 2002.

in court for all or part of the proceedings, where a court considers that this is not necessary.

Section 255 allows depositions to be taken from a child for a prosecution or by video link, while Section 252 preserves the anonymity of the child in any media or broadcast reporting of such cases.

## 1.7 CHILD ABDUCTION AND ENFORCEMENT OF CUSTODY ORDERS ACT 1991 AND ORDERS MADE PURSUANT TO IT

The Act gives effect to the Hague Convention and provides for applications to be made for the return of children removed from the State or removed into the State from, for example, the UK.

The Non-Fatal Offences Against the Person Act 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.

## 1.8 IMMIGRATION ACT 1999

This Act provides for the deportation of non-Irish nationals from the State. It sets out the circumstances in which the Minister for Justice, Equality and Law Reform may make a deportation order including under the provisions of the European Communities (Aliens) Orders, where a person has been refused leave to land. Before making a deportation order the Minister shall consider a number of factors including the age of the person to be deported, any humanitarian considerations and the character and conduct of the person both within and outside Ireland. The deportation process applies in a similar manner to minors as to adults.

## 1.9 THE CROSS BORDER AREA IRELAND AND UK (NORTHERN IRELAND)

As part of the IOM Ireland study, a cross-border dimension was included on an Island of Ireland basis crossing the Ireland-UK (Northern Ireland) border. The legal jurisdictions of Ireland and the UK meet along several hundreds of miles of mainly rural countryside in the North East and North West of the island. This part of the study was conducted at two points of geographical contact:

- Belfast metropolitan area
- Louth, Monaghan/Down, Armagh non-metropolitan border area

Contacts and enquiries were made with statutory and not-for-profit organisations, community organisations, social professionals, community workers, a journalist, and in the sector engaging private road haulage and hackney cab drivers. A community worker from a voluntary organisation in the border area undertook a part of this enquiry.

The Border between Ireland and Northern Ireland (UK) is an open and relatively unmanned border. Thousands cross this border north to south and south to north daily for work, leisure, worship, education, vocational training, shopping, visiting relatives, buying petrol, moving cattle or going to the dentist. Smuggling of goods and adults takes place.

There were no reports or documentation of trafficking in children for the purposes of sex or labour exploitation arising from the research enquiries and meetings. Organisations such as the Red Cross (Northern Ireland) and the Northern Ireland Council for Ethnic Minorities (NICEM) confirmed that

no evidence had come to light of such trafficking in their work with unaccompanied minor asylum seekers. This was also the view of the racism desk of the Equality Commission, Northern Ireland.

A very small number of the 3,469 unaccompanied minors aged 17 or under applying for asylum in the UK present themselves in Northern Ireland, despite a rise in the overall UK numbers between 2000 and 2001 (Home Office, 2002:3). The numbers may be as few as 10 children per year, the majority aged between 15 years and 17 years (NICEM, 2003). The statistical recording of the monitoring of the employment of migrant workers was previously undertaken in Northern Ireland. This moved to the UK in 2002. Asylum interviewing previously undertaken in Northern Ireland is now centralised in Liverpool. Asylum applicants from Northern Ireland have to be accompanied by boat or plane to Liverpool. Some interviewing of asylum seeking children takes place at Belfast International Airport. Social Services, NICEM and the Red Cross (UK) all participate in accompanying, supporting and preparing children for the interviews. NICEM undertakes this work under a service agreement with the Refugee Council UK.

The settlement and integration of unaccompanied teenagers is fraught. Professionals interviewed pointed out the risks for unaccompanied children aged 16 years who are no longer entitled to a full-time education place at school. Such children may be living in hostels for homeless people (Simon Community), refuges for women victims of violence (Women's Aid), in Bed-and-Breakfast or other young adult accommodation. Attempts are made to foster children under the age of 16 years, sometimes with families of similar ethnic background.

Cross border co-operation in the field of unaccompanied minors is being promoted by NICEM who organised a North-South Seminar on the topic in Belfast on June 18<sup>th</sup> 2003.

- Anja is a teenage girl from Albania of Kosovar origin. She came to the attention of a welfare worker in Northern Ireland as an unaccompanied minor in mid 2002 at the age of 17. She was taken into care and placed with an Albanian foster family. Anja was pregnant and reticent to discuss her origins, circumstances or situation. She had become pregnant since arriving in Ireland. By early 2003 Anja had turned 18 years and was referred to support and settlement services to support her as a young 'adult' in the asylum system.

*Source: Professional, Belfast. 2.04.03*

## 1.10 PROSTITUTION

There is an old history of trafficking in children from Ireland. In the 19<sup>th</sup> century girls aged 14 to 18 were transported out of Ireland in a collective and organised manner, to be placed in brothels and made available for prostitution in Australia and Tasmania. During the same period, barriers had to be erected at the New York quaysides to stop traffickers taking emigrant Irish girls and women into brothels. This history is ignored or forgotten (Jackson, 1984).

Prostitution itself is not an offence in Ireland. However, a wide range of offences, prohibit soliciting on the street, the operation and management of brothels, living on the earnings of prostitution, or coercing, organising or compelling a person to be a prostitute. The advertising of brothels or prostitution is also prohibited in law under the Criminal Justice (Public Order) Act of 1994.

In relation to children, the situation is more complicated. The laws governing soliciting for prostitution apply to all, regardless of age. However, an offence occurs if a man has sexual

relations with a child under 15 years. Such an offence could attract a penalty of life imprisonment on conviction. A child, who solicits for prostitution aged, for example 14 years, is open to prosecution, while a girl of 16 years is protected by law where a man has sexual relations with her.

These apparent anomalies have raised questions of whether new criminal offences should be created to decriminalise soliciting for prostitution by children aged under 17 years and increasing the penalties for soliciting by adults of under age children, compared with adults. Some predatory adults might then ensure that young girls under a fixed age were placed in prostitution where they were 'exempt' from prosecution as 'children'. This question of the treatment in criminal law of so-called 'child prostitution' will be raised as Ireland approximates its law to European law in the coming period.

## 2. POLICIES AND PROVISION FOR UNACCOMPANIED MINORS, INCLUDING TRAFFICKED CHILDREN

### 2.1 MIGRATION AND ASYLUM SEEKING

There were 40,000 migrant workers inside the Irish economy in 2002<sup>4</sup>. Since work permits are concentrated by sector of industry, migrants are also relatively concentrated in localities of particular sectors of industry (Conroy and Brennan, 2003). Around the meat industry in the Midlands of Ireland there is a Brazilian community of about 500 persons, in the Border region there are many Baltic states migrants working in services and horticulture (mushrooms), in the south east region the forestry sector attracts migrants from Latvia. Dublin hospitals have recruited staff from the Philippines, Nigeria, Australia and South Africa. International companies from the United States (such as Intel, Hewlett Packard and Microsoft) recruit globally from Bangalore to Moscow.

Apart from migrant workers, there are about 100,000 persons<sup>5</sup> in Ireland who are asylum seekers, refugees, persons who have humanitarian leave-to-remain in Ireland, accompanying spouses and children of some of the latter categories, the parents of Irish born children, overseas students and au pairs residing on educational visas and others. Research reports that the Coombe maternity hospital in Dublin served women from 90 countries in the year 2000. Ten per cent of all births in Our Lady of Lourdes Hospital, Drogheda, were to asylum seeking women in the first half of 2002 (Kennedy, 2002).

The category 'migrant workers' include about 36,000 work permit holders, 1,000 work authorisation holders and 2,677 holders of working visas (see Table 2). Migrant workers come from 140 different countries. There is an unknown number of education visa holders who exercise the option to engage in casual student work for up to 20 hours a week. Among them there are many Chinese students from the estimated 40,000 Chinese community in Ireland (Metro Eireann, 2002).

Asylum applications to Ireland rose by 13 per cent between 2001 and 2002. This compares with a rise of 20 per cent in applications to the UK or Portugal. Using a comparable treatment of statistical data, Ireland had the third highest rate of asylum applications per head of population (11,600 asylum applications in 2002) of 17 EEA countries (see Table 1).

The majority of the substantial recent immigration movements to Ireland date back just five to seven years. There is no stock of data on ethnicity, immigration and asylum seeking; baseline data is only just emerging. There was no question on race in the last Census in 2002. The results of questions on last country of residence, religion and nationality were published in 2003 (CSO, 2003).

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<sup>4</sup> Department of Enterprise Trade and Employment, Employment Unit. 2002.

<sup>5</sup> Author's calculations.

TABLE 1  
ASYLUM APPLICATIONS TO EUROPEAN COUNTRIES, INCLUDING DEPENDANTS,  
PER 1000 POPULATION, 2002

Country	Applications in 2002 including dependants	Applications in 2002 per 1,000 of population
Austria	37,000	4.6
Norway (not EU)	17,500	3.9
Sweden	33,000	3.7
Switzerland (not EU)	26,000	3.6
Ireland	11,600	3.1
Luxembourg	1,000	2.1
Belgium	21,400 (e)	2.1
UK	110,700 (e)	1.8
Netherlands	18,700	1.2
Denmark	5,900	1.1
France	58,100 (e)	1.0
Germany	71,100	0.9
Finland	3,100	0.6
Greece	5,700	0.5
Spain	6,200	0.1
Portugal	200	0.0
Italy	N/A	N/A
Total (EU only, excludes Italy)	383,800	1.1

Figures rounded to nearest 100. e=dependant data estimated. Source: Cited in *Asylum Statistics: 4<sup>th</sup> Quarter 2002 United Kingdom*, IGC Secretariat, UNHCR, Home Office, London, UK.

TABLE 2  
WORK PERMIT HOLDERS, IRELAND, 2001

Country of origin	Percentage of all permit holders (n=36,436)
Latvia	11.9
Lithuania	7.9
Poland	6.8
Philippines	6.7
South Africa	6.3
Romania	4.8
Czech Republic	3.9
Russian Federation	3.9
Ukraine	3.6
Australia	3.0
Total	58.8
Other nationalities	41.2
Grand Total	100

*European Employment Observatory, Spring 2002, p. 33.*

TABLE 3  
PRINCIPAL COUNTRY OF ORIGIN OF ASYLUM APPLICANTS,  
IRELAND, 2001-2003

Country	2001	2002	2003
Nigeria	33.5	34.8	40
Romania	13.1	14.4	13
D.R. Congo			04
Ghana			3.5
Moldova	5.3	4.6	
Ukraine	3.6	3.0	
Croatia	2.8		
Russia	3.0		
Zimbabwe		3.1	
Poland		2.7	
Iraq			3.9
Other	38.7	37.4	35.5
Total	100	100	(100)

Sources: ORAC (2003) *Annual Report 2002*, p.65 and 69; 2003: *Sanctuary Bulletin*, 22/03 First two months only.

## 2.2 DATA ON UNACCOMPANIED MINORS

Data on unaccompanied minors is gathered from a range of secondary sources and public authorities who come into contact with unaccompanied minors at different stages of their time in Ireland. Estimates of the numbers and profiles of unaccompanied minors entering Ireland differ according to various relevant authorities. In the year 2000, data returned to international monitoring bodies varied substantially. Data returned to the European Council of Refugees and Exiles, the United Nations High Commission for Refugees and other bodies provide data on Ireland drawn from administrative records that can be extracted at a particular moment in the process.

In the year 2000 there were 300 asylum seeking unaccompanied minors in Ireland (see Table 4). The majority of unaccompanied minors presenting in Ireland that year came from three countries/regions of the world: Nigeria, West African Coastal countries and Romania. These three countries/regions accounted for 74 per cent of unaccompanied minors within the asylum process.

West African origin children (Ghana, Côte d'Ivoire, Cameroon, Sierra Leone) make up between 14 and 15 per cent of all unaccompanied minors in the asylum process (Table 4 column 4). In contrast, the total of asylum applicants from West Africa constitutes only four per cent of all applicants (Table 4 column 2). Thus, there is a statistical discordance between the presence of unaccompanied minors from West Africa in the asylum process and the presence of West African asylum seekers in general in the asylum process. These figures suggest that there are four times more unaccompanied minors from West Africa compared with West Africans asylum seekers as a whole.

TABLE 4  
TRENDS IN UNACCOMPANIED MINORS AND SEPARATED CHILDREN SEEKING ASYLUM  
IN IRELAND, BY PRINCIPAL NATIONALITY GROUPS, 2000

Nationality	(1) Total all asylum applicants	(2) %	(3) UAM/SC among asylum applicants	(4) UAM/SC as % of all children in nationality	(5) UAM/SC (3) as % of all asylum applicants (1)
Nigeria	3,404	31	155	52	5
Romania	2,384	21	28	9	1
Sierra Leone	206	2	20	7	10
Yugoslavia	55	0	13	4	24
Ghana	106	1	11	4	10
Côte d'Ivoire	87	1	9	3	10
Albania	98	1	7	2	7
Angola	191	2	7	2	4
D.R. Congo	358	3	5	2	1
Cameroon	76	1	*	1	5
Other	4,131	37	41	14	1
Total	11,096	100	300	100	3

\* Indicates numbers between 0 and 5.

(1) Indicates absolute numbers of asylum seekers.

(2) Distribution of all in percentages.

(3) Unaccompanied minors/separated children in asylum process/absolute numbers.

(4) Distributed in percentage.

(5) Unaccompanied minors as a proportion of all in their nationality category.

Source: *Trends in Unaccompanied Minors and Separated Children Seeking Asylum in Europe, 2000*, UNHCR (2001); United Nations High Commissioner for Refugees (UNHCR), November 2001, Table 2.

It is not the practice at immigration arrival posts to seek information on the particular ethnicity of applicants from nationality groups. Ethnic origin may be a core issue in an asylum application, but the representation of this issue is not in the public domain.

The majority of child applicants from Romania appear to be from the ethnic minority of Roma.<sup>6</sup> This is discussed further in section 3.

<sup>6</sup> Communications with social workers.

TABLE 5  
PROCESSING OF ASYLUM CLAIMS OF UNACCOMPANIED MINORS  
2001

Number of claims	Interviews scheduled	Recommendations issued	Appeals awaiting
2001	2001	2001	2002
600+	127	119	275

Source: *Annual Report 2001*, Office of the Refugee Applications Commissioner, (2002), Dublin, p. 38; *Annual Report 2002*, Refugee Appeals Tribunal, (2003), Dublin, p. 12.

The presence of unaccompanied minors within the asylum process almost doubled between 2000 and 2001 (from 300 claims to 600+ claims in Table 6). In addition to the child claimants, other children were waiting for their asylum application interview, the outcome of the interview or had had an appeal lodged on their behalf. At any one time during the process, a proportion of children are ‘ageing out’ of the category of child. On their eighteenth birthday, they will be returned/recorded as adults.

TABLE 6  
ESTIMATE OF UNACCOMPANIED MINORS SEEKING ASYLUM  
1998-2003, IRELAND AND UK

Year	Numbers Ireland	Numbers UK
1998	20	3,037
1999	50	3,349
2000	300	2,733
2001	603	3,469
2002	852	-
2003	918 (proj)	-

Sources: Ireland: UNHCR, ECRE, Irish Refugee Council, Office of the Refugee Applications Commissioner 2003, *Sanctuary Bulletin*. 2003: Author's projection based on first 8 weeks of data. UK: *Home Office Statistical Bulletin 09/02*. Table 2.3

A comparison between Ireland and the UK of the numbers of unaccompanied minors seeking asylum is interesting. This can be done for the year 2001. Ireland with a population of over 3 million and the UK with a population of approximately 60 million are not so dissimilar. The population of the UK is twenty times greater than that of Ireland. However, the UK has only five times more unaccompanied minor asylum seekers than Ireland. This would suggest that using the indicator of minor asylum seekers/per head of population, Ireland has a greater pull factor than the UK. Ireland had 155 child applicants from Nigeria in the year 2000 (see Table 3). The UK, in that same year 2000, had only 24 applicants, notwithstanding that Nigeria has a strong political and historical relationship with the UK.<sup>7</sup>

<sup>7</sup> Home Office Statistical Bulletin 09/02. London. Table 2.3.

TABLE 7  
 NUMBERS OF CHILDREN COMING TO THE ATTENTION  
 OF THE HEALTH BOARDS IN 2001 AS UNACCOMPANIED  
 MINORS IN ACCORDANCE WITH SECTION 8 (5) OF THE  
 REFUGEE ACT, 1996

Total number of unaccompanied minors	1,151
Male	663
Female	488

Source: Communication with the Department of Health and Children, Childcare Minimum Data (2003). Data unconfirmed at 6 June 2003.

Table 7 above reveals a quite different data picture of unaccompanied minors for 2001. According to Table 7, there were double the number of unaccompanied minors – over 1,000 coming into Ireland compared with Table 4 (600 children). The origins for the discrepancy between the two data sets are as follows:

- Health Boards are notified of children entering the country who are without parents or guardians, under the Refugee Act, 1996.
- Not all Health Boards subsequently enter children into the asylum process under the Refugee Act, 1996.
- Some Health Boards enter some but not all children into the asylum process.
- Some children are reunited with family members and do not enter the asylum process.
- Some children are smuggled into Ireland and come to the attention of Child Protection services at a later stage.
- Some children, determined in the first instance to be within a family group are later determined to be unaccompanied minors and come under child protection or children’s services, at that point.

In 2001, approximately 0.1 per cent of unaccompanied minors seeking refugee status were under 16 years of age. The age composition of those for whom no refugee application is lodged was more dispersed across the age spectrum. The gender composition of minors in 2001 was 58 per cent male, 42 per cent female.

The numbers of unaccompanied minors coming to the attention of the public authorities in Ireland in the period 2001-2 were double those actually being returned to international organisations.

No public data is reported specifically on child smuggling or trafficking, although such data is gathered under the Child Trafficking and Pornography Act. During 2001, legal proceedings to advance a prosecution were made in 206 cases of the offence of ‘living on the earnings of prostitution’ (Section 10 Criminal Law Offences Act, 1993) (An Garda Síochána, 2002:117). All the recorded proceedings were issued from the Dublin Metropolitan area. An Garda Síochána reports that 20 Internet investigations and 49 investigations into child pornography were undertaken in 2001 by its Computer Crime Unit (An Garda Síochána, 2002:53).

## 2.3 CASES OF SMUGGLING AND TRAFFICKING

Below are examples of investigations of trafficking for sexual or labour exploitation involving minor children, smuggling of minors and at risk minors in the years 2002-2003 in Ireland (as reported by persons qualified within their professions):

1. In January 2002 a woman from Nigeria was detained at Dublin airport in charge of a three years old child. There was a suspicion of trafficking in children. The child was taken into the care of the State and the woman's claim was investigated.

N. Haughey, citing Garda National Immigration Bureau (GNIB), *Irish Times*, 26/02/02

2. February 2002: A case is being prepared for prosecution of a Nigerian woman charged with trafficking a five year old girl into Ireland, on arrival at an Irish airport, via Amsterdam from Nigeria. A man subsequently presented himself as the father of the child. The woman had residency in Ireland in Co Kildare.

N.Haughey, citing GNIB, *Irish Times*, 26/02/02

3. A teenage girl aged 17 from Nigeria 'disappeared' on Saturday, 15 February 2003 in the Salthill district of Galway, in the West of Ireland. She had not been found by Monday, 24 February and the Gardaí issued an appeal for witnesses to her whereabouts to come forward on 24 February 2003.

*Irish Times*, 24/02/03

4. Four children, three boys and a girl, including some siblings, were found by the Gardaí in Co Galway in 2002. The Gardaí arranged to return them to Dublin and the Eastern Regional Health Authority (ERHA) was called in. The children recounted that they had been in Ireland for over a year and had been brought to Ireland to work. They had been living in Dublin. The boys had been working on a building site and the girl was begging. They had had enough of it and decided together to escape by bus to the West of the country. They had run away from their 'minders' to Galway. The children were taken into the care of the ERHA.

Source: Professional 21/03/03

5. A girl from West Africa was brought to the ERHA. She was between the age of 8-12. It seemed from her story that she had been moved from household to household in West Africa and had been put to work as a domestic slave. She was unclear about her mother and referred to several 'mother figures.' She told of the acquisition of household goods such as washing machines in a house where she was staying in West Africa. She did not appear to know why she was in Ireland. She may have been brought to Ireland as a child domestic worker. The Gardaí wished to bring a prosecution for trafficking in her case. A file was prepared for the prosecution with a view to trafficking charges being advanced against an individual in relation to the child. The preparation of the file was delayed by the difficulties in checking out, verifying and making sense of the garbled account presented by the child. The child herself had confusions about her identity and parentage. The time lapse between

the charges being prepared and the prosecution extended. The case was not pursued to prosecution. Reasons for the absence of a prosecution are not provided in Ireland.

Source: Professional 21/03/03

6. Zena was an Albanian teenage girl. She had been trafficked from Albania to Italy by her 'boyfriend' and placed in prostitution around the age of 16 years. From Italy, she had been moved, probably to the UK, for the purposes of prostitution. She was happy to come to Ireland on the promise of her boyfriend that this would be a fresh start and there would be no more prostitution. In Ireland, she heard her 'boyfriend' discussing with a friend to put her in prostitution again. She decided to make 'a run for it' and escaped. She presented herself to the Gardaí and ERHA for protection. By now she was 19 and not entitled to unaccompanied minors child protection. She was however still a teenager and was in a company, which exposed her to exploitation in the sex industry.

Source: Professional 21/03/03

7. A fifteen-year old Albanian girl was brought to Ireland by a man via Belgium. His intention was to place her in prostitution in Ireland, she said. She escaped and sought protection from the Gardaí and ERHA. She was facilitated to prepare an application for refugee status. She now has been granted refugee status.

Source: Professional, 21/03/03

8. A West African girl had been trafficked within her own country and was then brought to mainland Europe and then to Ireland in the company of six other women and girls. It would appear from her account that they were destined for the sex industry in Ireland. For whatever reason, this did not work out and the girl detached herself and sought protection from the ERHA.

Source: Professional, Phone discussion, 21/03/03

9. A West African girl was promised a job in another West African country. This job turned out to be in prostitution where she was sexually abused. She later surfaced in Ireland in the Dublin region. She was taken into the care of the ERHA and provided with psychological services in 2002.

Professional, phone discussion, 21/03/03

10. An Iraqi boy of perhaps 12 years old, was found wandering in the streets of Dublin. He was brought to the Garda National Immigration Bureau. He did not appear to know why he was in Ireland. He seemed to have been smuggled into the country. He had been robbed of all his money and belongings. The boy was taken into the care of the public authorities.

Source: Professional, 21/03/03

11. An African child was brought to Garda Headquarters in Dublin in the company of a woman. The child was perhaps 5 years old, perhaps older. The woman stated that she had been

'handed' the child by a man she did not know on a boat in a south eastern port in Ireland. She had travelled by bus with the child from the port. There were no passenger ships berthing at that port in previous days, only cargo. Asked if she could look after the child while enquiries were made as to the child's identity, she declined and preferred to leave the child with the Gardaí. The child was carrying a piece of paper on which the name and address of a woman in the city of Cork was written. The child was taken into the care of the public authorities. After several days of complicated enquiries, verifications and checks from and between several Departments of Government and social agencies, it was ascertained that the small child had a mother in Ireland, with whom he was reunited following further checks. The child had been smuggled for purposes of family reunification.

Source: Professional 21/03/03.

12. A girl of twelve years of Romanian Roma origin was taken into care on 3 April 2003 from a house in the West Dublin area. The Garda National Immigration Bureau was reported to hold a suspicion that the child had been smuggled into Ireland between 2002-2003 following an arranged 'marriage' in Romania during 2002. The child was living with the family of an eighteen-year old Roma man, to whom she may have been 'married' in a Church service. The girl was taken to a hospital and then placed in care following a Court application for an Emergency Care Order. The Gardaí suspect that this is a case which involves smuggling of a child rather than trafficking of minors. On 8 April 2003 the child disappeared from the children's hospital where she had been placed in care. The Gardaí issued a missing person's alert. Her picture appeared in newspapers and on the Gardaí Website on 11 April 2003 allowing the public to report sightings of her. Subsequently Gardaí searched 12 houses in the south of the country to try and locate her.

Source: N. Haughey, *Irish Times*, 15 April 2003, page 1.  
*Irish Times*, 11 April 2003, pages 1 and 9,  
*Irish Times*, April, 19 March, page 4 and Weekend.  
See also [www.garda.ie](http://www.garda.ie)

13. Two girls aged three and sixteen were the subject of a child trafficking investigation in Dublin in April 2003. The children allegedly arrived in Ireland via London on 24 April 2003 in the company of, and on the passport of, a Nigerian woman legally resident in Ireland. Gardaí suspected the children who were accompanying the woman were not those illustrated in her passport. The children were taken into the care of the State. At this point it was brought to light that the small child, dressed as a boy and with shaven head, was in fact a small girl of about three years old. It later emerged that a separate set of two children - the two children named on the passport aged four and sixteen - were residing with the woman close to County Dublin in the nearby County Kildare. So who were the two children who had arrived at the airport – why were they being brought to Ireland from the UK? The woman accompanying the children was arrested and a trafficking investigation into the case continued.

Source: N. Haughey, 'Woman suspected of child-trafficking,' *Irish Times*, 26 April 2003.

14. A judge declined to convict a Romanian child charged with possession of a false Italian identity card. The girl, aged 16 years, had come to Ireland to seek work at the instigation of

her sister. She was arrested on 31 March 2003 at her sister's home and placed in custody in a Children's Centre until documents showing her true age and identity could be found. At a hearing in the Dublin Children's Court on 23 April 2003 the girl was released without conviction and released under the Probation Act. The case had smuggling rather than a trafficking appearance. Information as to how a Romanian child came to have an Italian identity card in Ireland is not in the public domain.

Source: 'Romanian girl entered country with fake Italian identity card', *Irish Times*, 24 April 2003.

15. An unaccompanied minor teenage girl confided while in the course of treatment in a hospital that she was under pressure to marry a certain minor boy and did not wish to. She may have been 'bought' or a dowry may have been exchanged for her. The family of the boy denied it all. The girl was living in a hostel at the time but subsequently disappeared. The Gardaí found her in the Midlands region of Ireland with a family, where she was to marry the boy. The Gardaí contacted the Dublin authorities. The girl was returned to child protection care in Dublin. The Health Board obtained an injunction in the High Court in Dublin to restrain the boy's family from interfering with the girl.

Source: Professional, 21 March 2003

16. Increasing concern and interaction among professionals occurred in the south east area of Ireland in the first half of 2003. Six children – unaccompanied minors - boys and girls – aged 12 to 17 years 'disappeared.' The children arrived by air to Cork airport, usually alone. Their flights were often on Saturday afternoons when public services are at a low ebb. Most of the children were of Roma origin from Romania. Some were in possession of one or two mobile phones. Shortly after placement in a hostel, adult males or females came to 'claim' them and removed them from their accommodation. Local Gardaí and the Garda National Immigration Bureau were informed. The children have not been located.

Source: Professional, 6 May 2003.

In the course of the study, 23 cases of investigations or preparation of prosecutions for trafficking in children for labour or sexual exploitation purposes were identified for the 17 month period from January 2002 to May 2003. These are summarised in Table 8 below. The cases are those that came to light in the course of the study. They do not include cases being investigated for which no information is in the public domain or suspect cases which social workers are still exploring. The cases include children from four Health Board Areas and children who may or may not be asylum seekers. From a prosecutorial perspective the cases are complex and time consuming. Suspected perpetrators have fled the country or cannot be found, or children have had to be repatriated to other continents before a prosecution file could be taken to the next stage of enforcement.

TABLE 8  
SUMMARY PROFILE OF MINORS IN A SELECTION OF  
CHILD SMUGGLING AND TRAFFICKING CASES, IRELAND 2002-2003

Nationality	Sex		Under 12 years	Aged 13 to 17
	Girl, Boy, Not known (NK)			
Nigeria	Girl		✓	
Zambia	Girl			✓
Nigeria	Girl			✓
Albania	Girl			✓
-	Girl		✓	
-		Boy	✓	
-		Boy	✓	
-		Boy	✓	
West Africa	Girl		✓	
Albania	Girl			✓
West Africa	Girl		✓	
Iraq		Boy	✓	
Africa		Boy	✓	
Africa	Girl		✓	
Africa	Girl			✓
Romania	Girl			✓
Romania		NK		✓
Romania	-	NK		✓
Romania	-	NK	✓	
Romania	-	NK		✓
Romania	-	NK		✓
Romania	-	NK		✓
Romania	-	NK		✓
Totals		23	11	12

Source: Ralaheen 2003.

TABLE 9  
UNACCOMPANIED MINORS IN CARE OF THE PUBLIC AUTHORITIES:  
THEIR OWN DESCRIPTION OF SMUGGLING INTO IRELAND, 2001-2002

Nationality	Sex	Age	Mode
Sierra Leonean	boy	17	Smuggled in bottom level of a cargo ship
Armenian/Chechnyan	boy	15	Smuggled by car
Lithuanian	boy	16	Put in the back of a lorry or truck for a long time
Sudanese	boy	17	Arrived after 25 days hidden in a cargo ship
Nigerian	boy	16	Accompanied by plane by a "white man" to Amsterdam and put on a plane alone

Source: Extracted from: Vekic, K., *Unsettled Hope – Unaccompanied Minors in Ireland – from Understanding to Response*, Marino Institute, Dublin, 2003, pp. 11-15.

Examples of children’s reports of their being smuggled into Ireland are contained in Table 9 above. The accounts are extracted from a wider study where the stories and experiences of teenage children are tracked over a period of time. Considerable veracity can be attributed to their accounts.

Table 10 gives an indication of how some smuggled and abandoned teenage children came to the attention of the public authorities. It is interesting that all describe being sent or directed to a public authority body: the Office of the Refugee Applications Commissioner. Evidence of first port of call from some service providers varies. A number of children were directed or brought to Garda Stations (police) by the general public.

TABLE 10  
FIRST PORT-OF-CALL OF SELECTED SMUGGLED UNACCOMPANIED CHILDREN:  
ACCORDING TO THEIR OWN ACCOUNTS, 2001-2002 DUBLIN

First port of call	What happened next
Left at O’Connell Street	Made his way to the Office of the Refugee Applications Commissioner (ORAC)
Left at Busaras Bus Centre	Made his way to ORAC
Arrived in Dublin	Made his way to O’Connell Street and sought Mosque, given help at Mosque, directed to ORAC
Arrived at Phoenix Park, Dublin	Made his way to ORAC
Accompanied to ORAC by Irish man	Left there – never saw the man again
Arrived at Dublin airport, abandoned with an address	Stranger paid a taxi fare to ORAC

Source: Extracted from: Vekic, K., *Unsettled Hope – Unaccompanied Minors in Ireland – from Understanding to Response*, Marino Institute, Dublin, 2003, pp. 11-15

## 2.4 THE OFFICE OF THE REFUGEE APPLICATIONS COMMISSIONER

The Office of the Refugee Applications Commissioner devotes a one-page section of its Annual Report 2001 to the 600 applications for refugee status from unaccompanied minors (ORAC, 2002:38, see table 11). One third of the section is devoted to the 5 per cent of minors who are claiming to be minors but are found to be over the age of eighteen years.<sup>8</sup> There is no reference to trafficking in children. Two pages are devoted to unaccompanied minors in the 2002 Report, of which 25 per cent is devoted to the detection of suspected fraudulent claims from 6 per cent of applicants. There is no mention of trafficking.

The activities of the Office of the Refugee Applications Commissioner (ORAC) embrace some but not all unaccompanied minors in Ireland. As described in Section 2.2., about 50 per cent of minors coming to the attention of the public authorities do not have an application for refugee status made on their behalf.

<sup>8</sup> The use of radiological tests to examine bone density in the age of minors raises ethical issues, as to whether minors have the legal capacity to give voluntary consent to a medical verification process which has no individual therapeutic value. The precise efficacy of the test from a forensic anthropology perspective is a further question. The child protection issue here is nevertheless a serious and valid problem.

TABLE 11  
PROCESSING OF ASYLUM CLAIMS OF UNACCOMPANIED MINORS 2001-2002

Year	Number of claims	Interviews scheduled	Recommendations issued, Section 13	Appeals awaiting
2001	600+	127	119	275
2002	852	1,135	781	-

Sources: *Annual Report 2001*, Office of the Refugee Applications Commissioner (ORAC), 2002, p. 38; *Annual Report 2002*, ORAC, 2003, p. 44, Dublin; *Annual Report 2002*, Refugee Appeals Tribunal, 2003, Dublin, p. 12.

ORAC has developed guidelines for the treatment of claims from 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. Where ORAC has concerns regarding the welfare of a child or the relationship between a child and an adult, these concerns are notified to the local Health Board and/or the Garda National Immigration Bureau.

A number of issues arise in relation to children suspected of being victims of trafficking or smuggling operations, who have had claims entered to ORAC on their behalf, as follows:

- In 2002, minors were being called for their interview to process their claim for refugee status shortly after lodging their application. This faster system may be satisfactory for adults, but it may have perverse outcomes for child victims of trafficking or smuggling, as there is insufficient time for social workers to verify or construct a case file on their background in another continent or another region of Europe.
- In the opinion of some professionals, child victims of smuggling and trafficking, may have been coached or rehearsed as to their identity, and therefore will not disclose their origins until a relationship of trust is established over a period of time. The child in this instance is the object of a further crime: 'identity theft'. In some cases, such a relationship may not develop at all.
- The very low success rate of asylum claims for unaccompanied minors has led some social workers and social work theorists to question the efficacy of social workers encouraging their child clients to enter a process under Section 8 (5) (a) of the Refugee Act, 1996, where they are statistically very likely to 'fail' in their claim.
- Children who have been sexually abused while being smuggled<sup>9</sup>, sexually abused prior to entering the jurisdiction<sup>10</sup>, or who are suspected of being at risk of sexual abuse require, in many instances, therapeutic treatment. Interviews with such children can require delays, postponement, deferment or other procedures so that the child is not further psychologically disturbed by conversations as to the detailed nature of their claim.

Child victims of sexual abuse while being smuggled, or who are victims of trafficking for purposes of labour or sexual exploitation, have experienced one or more breaches of their human rights. It is not clear, however, that the legal instruments to address their status are to be found in the sphere of national and international refugee law.

<sup>9</sup> Communication with a Dublin-based professional in the public health services.

<sup>10</sup> Communication with a Dublin-based senior professional.

## 2.5 THE DISPERSAL POLICY AND THE CONCENTRATION OF MINORS

Since 1999, it has been Government policy for asylum seekers to be dispersed across the country, following a short stay at a reception centre or overflow centre. Asylum seekers are assigned a locality and residence in one of 72 accommodation centres across 22 of the 26 counties of Ireland. Unaccompanied minors/separated children are not part of the dispersal policy and tend to be relatively concentrated. The Health Act, 1970 and the Child Care Act, 1991 do not permit the dispersal of minors who come under the care, or into the care, of the regional Health Board area in which they are first found. At the beginning of March 2003, there were 3,900 persons in accommodation centres in 22 counties. However, half of the residents are in 7 centres in just 5 counties (Clare, Cork, Galway, Meath and Athlone).

Given the dispersal of the incoming adult asylum seeking populations, unaccompanied minors can be drawn towards fellow nationals in a wide range of locations, where they are no longer under Health Board supervision. In contrast to adults, asylum seeking unaccompanied minors/separated children are more concentrated.

The largest concentration of UM/SC asylum seekers is in the Dublin area. In 2000, there were approximately 500 such children in the Dublin area. In the first half of 2001 there were 657 unaccompanied children in the Dublin region. The majority are placed in hostels or Bed and Breakfast accommodation (O'Neill et al, 2001). Those in the B & B accommodation are usually aged 16 or 17 years old (Christie, 2002a).

Children who are victims of trafficking or have been smuggled are placed in asylum seekers hostels, in (the few) children's residential centres or hostels for homeless persons alongside other unaccompanied minors and adult refugees or homeless persons.

Children who are later discovered to have been trafficked inside 'family groups' or as part of 'family reunification' are in fact dispersed across the country with families. They are to be found across Health Board areas, and across different Garda (police) districts. The co-ordination of efforts to locate such children across the jurisdictions of child protection and perpetrator detection is complex, to say the least.

## 2.6 FAMILY REUNIFICATION

In 2001, some 38 per cent of UM/SC who came to the attention of the public authorities across the country were subsequently reunited with family members (Department of Health and Children, 2003). In 2002, some 58 per cent of UM/SC were in the category of 'reunited with their families.' The fate of those 'reunited with their families' is unknown. The numbers of 'reunifications' vary according to whether one reads data from social services or data from ORAC.

The actual or potential trafficking of children into Ireland for sexual or labour exploitation via the 'family reunification process' has been and is under review and investigation by child protection and immigration professionals, as well as by voluntary organisations such as the Irish Refugee Council. Asylum applications where the applicants asks to 'add on' children to their asylum application at a subsequent or later date are scrutinised<sup>11</sup>. Children not declared on the asylum application form held by the Office of the Refugee Applications Commissioner can only be

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<sup>11</sup> Communications with professionals in statutory and voluntary sector, 2003.

included as dependants of the applicant in exceptional circumstances.

Unaccompanied minors who themselves seek to reside with relatives, brothers and sisters, or other adults in Ireland have their situations examined on a case by case basis by professional social workers. Sometimes permission is granted.<sup>12</sup> Sometimes tracing has to be undertaken in the country of origin to ascertain the status of the adult with whom the child wishes to reside.

Asylum applicants may wish to be joined by their children. Migrant workers who hold working visas may apply to be joined by their families and children, after the working visa holder has worked and resided in Ireland for a three-month period. This is a discretionary entitlement and no right of family reunification is conferred on any holder of a working visa. Such a request can be refused.<sup>13</sup> Where working visa holders successfully obtain the right to be joined by husband or partner, the husband or partner has no right to work in Ireland and becomes an adult dependent of the working visa holder. Migrant workers, whose employers hold work permits (as opposed to working visas) authorising them to work in Ireland, may apply for family reunification after a period of one year.

TABLE 12  
ATTEMPTS AT TRAFFICKING AND SMUGGLING OF CHILDREN

- Persons seeking asylum presenting at airports or coastal ports accompanied by children who are not familial children. The children are presented as part of the extended family.
- Parents seeking asylum who ask ORAC or voluntary organisations to help them to 'add on' a child to their application – a child not originally declared in their asylum application. Such a child can be described as a child-outside-marriage, child of a former partner, former marriage, stepchild or other difficult to verify relationship.
- Unaccompanied minors from outside the European Union, arriving alone in Ireland and seeking to be joined by brothers or sisters living in third countries, such as France or Spain.
- Children arriving alone in Ireland, or smuggled into Ireland, later 'claimed' by persons purporting to be uncles, aunts, mothers or fathers who arrived in Ireland after the children.
- Asylum seekers, who arrive without some or all of their children in Ireland, enter the asylum process and seek to be joined in Ireland by some or all of their children at a later stage.
- Persons from outside the European Union, presenting at airports or ports with children approximate in age, sex and ethnicity to children they actually have and who are recorded in documentation, but who are not, it emerges later, their own children.
- Persons who have children on their own passport or 'laissez-passer' documentation and who have right of residence/leave-to-remain in Ireland and who exit the country returning with children approximate in age and sex to their own children, and who are not their own children.

Source: Cases presenting to professionals and voluntary organizations, IOM Study, 2003.

A small number of child claimants - less than two per cent - are found to be over the age of 18 years and are treated as adults. Those shown or found to be over 18 are no longer entitled to the protection of 'unaccompanied minor' status and are supposed to leave the unaccompanied minors/child protection process. They may choose to enter the adult refugee process by themselves. Their social welfare status is reduced and their accommodation needs are treated differently.

<sup>12</sup> Communication with professional social workers, 2003.

<sup>13</sup> The Migrant Information Centre, Dublin reported two such refusals in their case load of the week beginning February 10<sup>th</sup> 2003. In one instance a husband and 5 children were refused permission to join the wife in Ireland, in a second instance a child of 15 years old was refused permission to join his mother.

Section 4 (4) of the Child Care Act, 1991 requires:

*“...where a health board takes a child into care because it appears that he is lost or that a parent having custody of him is missing or that he has been deserted or abandoned, the board shall endeavour to reunite him with that parent where this appears to the board to be in his best interests.”*

It is in the exercise of obligations such as Section 4 (4) of the Child Care Act, 1991, that staff of Health Boards face difficult decisions in relation to family reunification. The Health Board must determine what is in the child’s ‘*best interest.*’

## 2.7 CHILD PROTECTION AND CHILD VICTIMS OF TRAFFICKING IN CHILDREN

A combination of criminal and civil law instruments provide for prosecution of perpetrators and protection of children suspected or found to have been trafficked for the purposes of sexual or labour exploitation. The Child Care Act, 1991, the Children Act, 2001 and the Refugee Act, (Section 8) are the principal legal instruments conferring obligations on the public authorities to provide services to unaccompanied minors, including child victims or suspected child victims of trafficking. The interpretation which Health Boards give to the combined effect of implementing refugee and child protection laws varies from Health Board to Health Board. A number of these interpretations have been critically reviewed by social work analysts (Christie, 2002a, 2002b, 2002c; Fanning, 2003). The reviews have been published in peer-reviewed journals.

In September 2002, according to other sources, there were 308 unaccompanied minors in the care of the Eastern Regional Health Authority under the age of 17, of whom 50 were under the age of 16. Under the Refugee Act 1996, (Section 8) minors do not directly apply to enter the asylum/refugee system. Such an application is made by an official of one of the ten Regional Health Boards, who do so if it is deemed to be in the ‘*best interests*’ of the minor. Thus:

- Some minors will leave the State before being entered into the asylum system.
- Some minors will not be entered into the asylum system.
- Some minors will age-out to the age of 18 before they have entered the system.
- Some minors can be refused refugee status but an application for leave to remain on humanitarian grounds may be subsequently lodged on their behalf.
- Some minors are awaiting the preparation of a file for application for refugee status.
- Some minors have been refused refugee status, have lost their appeal against that refusal, and have been refused leave-to-remain on humanitarian grounds

TABLE 13  
UNACCOMPANIED MINORS IRELAND, 2001-2003

	2001	2002 new arrivals	2003 new arrivals
<b>Total number</b>	1,151	852	153
Male	663	-	51(e)
Female	488	-	102(e)
<b>Outcomes</b>			
Reunited with family/relatives	445	567	84
Taken into care	560	285*	-
Found not to be a minor	32	60	-
Other	114	-	-
<b>Total</b>	1,151	-	-

Sources: 2001, Department of Health and Children (2003), Childcare Minimum Data 2001, Dublin.

2002, Data: *Sanctuary 21/03*, Dublin has slight difference in numbers.

ORAC (2003) *Annual Report 2002*, p. 44\*, Applied for refugee status.

2003, Data: *Sanctuary 22/03*, Dublin, first two months only.

All minors who enter the asylum process must be photographed. Minors over the age of 14 years who present to ORAC are fingerprinted,<sup>14</sup> although this does not appear to happen in all cases. Children under the age of 14 years and those, who are not applicants for refugee status under the 1996 Refugee Act, are not fingerprinted.

The volume of social workers available to work with unaccompanied minors or separated children is small. The three Dublin Health Authorities who employ qualified social workers have combined to provide a joint service to unaccompanied minors under the Eastern Regional Health Authority. This service is located on the top floor of a hospital in the South Dublin area. The service employs both qualified professional social workers and project workers. A range of languages and ethnicity is to be found among the staff. This diversity policy is planned and deliberate. The staff are deployed as a team of 12 social workers and 6 project workers. An analogous service is organised in the Munster region covered by the Southern Health Board.

The ratio of qualified social workers to the Dublin population of unaccompanied minors was 1:50 approximately in 2001-2.<sup>15</sup> This ratio is in-between the ratio of social worker/client in South Africa (1:500) and the UK (1:12). Each child is allocated a social worker. Some visits and monitoring of the child are undertaken by project workers. Preparation for interviews in pursuit of an application for refugee status is undertaken by social workers. Weekly financial support is provided by a separate local area Community Welfare Officer. Housing is provided in some instances by the

<sup>14</sup> DJELR (2003) Information leaflet for applicants for refugee status see sections 3.1 and 3.2. See also Section 9 (A)(1) of the Refugee Act, 1996 which provides for fingerprinting of asylum applicants over the age of 14 years. The Minister of Justice has announced that all children will be fingerprinted at a future date to prevent trafficking. *Irish Times* 17 June 2003.

<sup>15</sup> Calculated by the author.

Department of the Environment under its hostel provision for the homeless.

Psychological services for unaccompanied minors are made available by Health Boards. About seven to ten per cent of Unaccompanied Minors under the Eastern Regional Health Authority receive services from the psychological services of the ERHA. Children from West Africa, Ghana, Nigeria and Albania were the countries frequently cited by a service provider.

It may be observed that a number of children have been sexually abused while being smuggled or trafficked into Ireland.<sup>16</sup> They are both boys and girls. The children do not know why. It may be that the abuse was recompense promised to traffickers or smugglers in return for getting them to Ireland. It may be that smugglers and traffickers opportunistically took advantage of the unaccompanied minors and abused them. Alternatively, one or more of the children were intended for sexual exploitation in Ireland and their abuse was a deliberate systematic induction.

## 2.8 THE HOUSING OF UNACCOMPANIED MINOR VICTIMS/SUSPECTED VICTIMS OF TRAFFICKING

The majority of unaccompanied minors, including victims or suspected victims of trafficking, are in hostel accommodation. The majority of unaccompanied minors are not in Children's Residential Centres or foster care (see Table10). Since they are not in Children's Centres, their detailed circumstances do not fall under the provision of the Social Service Inspectorate's surveillance systems under Section 69 (2) of the Child Care Act 1991. The children could not be directly reported on by the Social Services Inspectorate (SSI) up to 2002 when the 2001 Report was published. The National Standards for Children's Residential Centres (Department of Health and Children, undated) do not apply to them, since the unaccompanied minors are living in adult or homeless hostels under Part 11, Section 5 of the Child Care Act, 1991. At the invitation of such hostels, the Inspectorate visits hostels outside their remit and inspects them against the regulations for children's residential centres. Their recommendations in relation to them are just that: voluntary recommendations.

This is not satisfactory for child victims or suspected victims. The hostels may frequently be managed by private not-for-profit bodies or private agencies incorporated as private limited companies. Many of the hostels are legally under the Department of the Environment and Local Government provision for homeless persons or under the direct provision for asylum seekers of the Department of Justice, Equality and Law Reform. The child victims/suspected victims are therefore accommodated outside the direct surveillance for children of the public authorities responsible for children and for child protection.

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<sup>16</sup> Communication with a public service provider.

TABLE 14  
PLACEMENT OF UNACCOMPANIED MINORS 2001, DUBLIN

Total Numbers in data set	Minors in Family Placement	Children's Centre	Minors in Hostels	
422	10	4	408	
			Teenage Hostel	Adult Hostel
			38	370

Source: *Report of Findings Relating to Inspections of Children's Residential Centres*, Social Services Inspectorate (2001) Dublin.

It is the view of the Social Services Inspectorate (SSI) that:

*“It is rarely appropriate for young people of this age to find themselves in an adult hostel...the children shop and cook for themselves and spend their leisure time unsupervised and unsupported”* (SSI, 2001:8).

In this regard, unaccompanied minors are under the care rather than in the care of the Health Boards, since they are residing in facilities which are not under their jurisdiction directly (management) or indirectly (inspection). If they were to find themselves in children's residential centres, there could still be a difficulty in exercising child protection in relation to this group of children in the repeated and widespread absence of the comprehensive maintenance of records of child residents. In 2000, visits to 23 Children's Centres by the Social Services Inspectorate found that just half were keeping a Register of residents, four had some 'records' and nine had nothing at all (SSI, 2001). Such a Register is a requirement under Standard 2.7 of the National Standards for Children's Residential Standards. The Register is intended to keep a record of children resident, and to state the date of discharge and destination. It is an essential record for tracking the movement of children through a complex care system. This is discussed in the next section.

A qualitative study of 18 teenage unaccompanied minors in Dublin in 2001-2002 found that 14 of the 18 had moved accommodation during a single school year of less than 12 months, some more than once. Many of the children had been smuggled into Ireland. In some instances the moves had been requested by the children; in some they were recommended by social workers. Some of the children were living in dormitories with 10 to 16 others. A South African schoolgirl of 17 years described her insecurity as follows:

*“It is hell for me. Just the fear of sleeping with six people in my room...I do not want to be there... Sometimes the guys come in and they listen to music with the other girls”* (Vekic, 2003:18).

The Eastern Regional Health Authority and the East Coast Area Health Board which has to find accommodation for all unaccompanied minors in the Dublin area is undertaking a review of accommodation for this group of children. They acknowledge that the standard of care for the group may not reach the National Standards for Children's Residential Centres (SSI, 2003).

## 2.9 TRACKING AND TRACING CHILD VICTIMS

Contact with the Health Boards can be difficult for professionals or others who identify a child ‘at risk’. Health Boards are open for just under 40 hours of the 168 hours of a week. Children, including unaccompanied minors, identified as ‘at risk’ outside of these hours are reported to be held informally in Garda custody. This can occur on arrival at airports and ports or later during their stay. Children are held under supervision in a range of places including Garda stations and children’s hospitals.<sup>17</sup> The duration of these ‘detentions’ can last from a Friday afternoon until a Monday morning, or longer. Children’s hospitals are used as emergency childcare reception centres. In other instances, the Gardaí try to hold onto the children for as long as possible, although this is not their professional function and is not legally desirable. Gardaí in the West and the Midlands of the country ‘find’ children who have been smuggled or are suspected of having been smuggled or trafficked into the Dublin region and have to arrange the transport of such children back to other Garda districts across the country.

The absence of records in accommodation where children are housed is a core flaw in the protection of unaccompanied minors and child victims in particular. As a consequence of the absence of records, children who ‘disappear’ from such accommodation, are ‘removed’ or ‘collected’ by adults or teenagers, or who are otherwise unlawfully being held or detained by adults or other teenagers, cannot be systematically and promptly traced. Where this occurs shortly after arrival, there will be no fingerprints or photographs, since no asylum application will have been lodged on their behalf. If they disappear on a Saturday, their true identity may not be known, in the absence of a social work interview and the start of verification procedures.

The UK and Irish Red Cross both have a tracing and messaging service which can be used by social services to trace family and relatives of missing persons in certain circumstances. The UK service in Northern Ireland has not been used by unaccompanied minors, although the Irish service has been.<sup>18</sup>

In 2002, 14 unaccompanied minors sought to use the Red Cross Tracing and Messaging Service through the social work team of the Eastern Regional Health Authority. The Irish Red Cross observes that a number of the minors are and remain ‘in shock’ and are ‘unable to speak or communicate.’

Children disappear frequently from hostels and centres. In 2001, 96 teenagers disappeared in the Dublin area (Cahill, 2002). This is equivalent to ten per cent of all children in the care of the public authorities in the region. In the first half of 2003, six out of eighteen unaccompanied children under the care of a Health Board in the Southern Area went missing.<sup>19</sup> This is equivalent to 33 per cent of children under the care of the Health Board. In the case of the six missing cases, several had arrived alone by air to Cork airport in 2003 on late flights on Saturday afternoons when social services are likely to be closed. They had disappeared over the weekend before they could be interviewed by social workers. Some were ‘collected’ at the hostels by adults.

The Gardaí regard the disappearance of a minor as the disappearance of a vulnerable category of person. The number of missing persons is increasing in all categories (An Garda Síochána,

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<sup>17</sup> Author’s communications with front-line staff of Gardaí and of a Dublin hospital.

<sup>18</sup> Communications and visit with the UK Red Cross (Belfast) and Irish Red Cross (Dublin) 2003.

<sup>19</sup> Communication with social services, May 2003.

2002:134). The majority disappear in the Dublin Metropolitan region. The Gardaí can invite the public to assist in the tracing of a child by posting details on the Garda Missing Persons Website. In 2003, three children of non-national origin were on the website:

- Violeta x, Romanian, a girl, age 12
- Lisa x, African, a girl, age 16
- Sergail x, Moldovan, a boy, age 15

The disappearance of children is extremely worrying but is not in itself proof of trafficking for sexual or labour exploitation. Some children have not 'disappeared', they simply cannot be found or located when adults come to find them. Some children are not in view or sight but have not actually disappeared. Some children have indeed disappeared and cannot be found and are in fact 'missing and vulnerable persons'.

## 2.10 GUARDIAN-AD-LITEM OR CHILD ADVOCATE APPOINTMENTS

The study briefly enquired whether the appointment of legal Guardians within a national comprehensive Statutory Guardian-Ad-Litem service would be useful in the protection or needs provision of child victims of trafficking in their legal proceedings. Ireland has no comprehensive statutory Guardian-Ad-Litem services. A Guardian-ad-Litem service is provided by the not-for-profit organisation Barnardos and is under expansion during 2003. The view of some service providers and experts was that a Guardian-ad-Litem service would add to the judicial reporting requirements for child victims on a temporary basis but would not increase their needs provision socially, psychologically, linguistically or educationally. Since many child victims are not involved in legal claims for asylum, the expansion of such a service would be irrelevant to them.

The Guardian-ad-Litem is not a child advocate so that it would not increase the professional services to which a child victim would have continual access (Birmingham, 2001:30-33). The study found both professionals and volunteers supporting child victims in the legal process in which they were involved. A service in child advocacy beyond the resolution of specific legal issues is required.

### 3. UNREGULATED MOVEMENTS OF CHILDREN IN AND OUT OF IRELAND FOR REASONS OTHER THAN TRAFFICKING FOR THE PURPOSES OF LABOUR OR SEXUAL EXPLOITATION

Legal changes will occur across Europe in relation to children as a consequence of implementing European Directives and Framework Decisions. The study includes brief mention of some problematic areas where the movement of persons under the age of 18 across borders occur.

#### 3.1 UNACCOMPANIED ROMA MINORS

An unknown proportion of asylum seekers or persons with 'leave-to-remain' from Romania in Ireland are of Rom or Roma ethnic origin (UNHCR, 1997:242). The Rom or Roma are a distinctive people and have a strong presence in Central and Eastern Europe. Sometimes referred to by others generically as 'gypsy', the Rom were among the nomadic peoples singled out for persecution by the Nazis in Central and Eastern Europe (Lewy, 2000). Deep-seated and well documented prejudice and discrimination against the Rom, Sinti and other nomadic peoples such as the Jenisch, persists to this day in Central, South Eastern and Eastern Europe (Zoon, 2001a, 2001b; Hancock, 1997).

Rom from England and other countries have been visiting Ireland since the nineteenth century. In July-August 1998 groups of Roma from Romania were smuggled by freight container from Cherbourg in France to the South-Eastern port of Rosslare in Ireland. About 250 Roma arrived. One group of 47, of whom 27 were children, was reported to have come from the Arad region, a town in Eastern Romania not far from Hungary (O hAodha, 1998). The group had paid about Euro 360 each to a German to be smuggled via Prague in the Czech Republic, Germany and then France, to Ireland. The Roma had not chosen Ireland; the destination had been chosen by the smuggler. The Roma were refused asylum and were served deportation orders, against which they appealed.

The 1998 Rosslare arrivals marked a pattern of Roma movement to Ireland that attracted the attention of the public authorities. There are over 3,000 Roma now in Ireland from all areas of Romania. The Romanian Roma have come via Italy, France and Spain. A large proportion speaks only Romanian and Romani, with a smattering of English. A number are reported to have converted religion while in Ireland, from Orthodox Christian to Episcopalianism.

The presence of minor girls who are not familial children in asylum seeking groups of Rom arriving in Ireland has posed some issues for the public authorities. Roma girls of 14 and 15 in marriage style relationships with other Roma minors have been accepted as within family groups within the asylum application process. In other instances, minor girls have 'appeared' in Ireland to be 'married' into Roma families resident here. They are not therefore classified as unaccompanied minors for the purposes of refugee application status.

Civil marriages at this age are not permitted in either Ireland or Romania. According to Irish law, it is an offence to have sexual relations with a child of 14 or 15 years old. In one or more instances, it later emerged that such girls had not given full consent to these relationships and were afforded child protection as separate unaccompanied minors. These are not at first sight, situations of

trafficking for the purposes of sexual or labour exploitation;<sup>20</sup> rather they are issues of civil law and child welfare. However, some issues could give rise to criminal prosecutions.

Roma children of school going age may be observed begging or playing musical instruments on city streets. The Leanbh project recorded sightings of 252 Roma children begging on the streets in the 2001-02 period (ISPCC, 2002:5). From discussions it appears that the majority of such children are with family groups who are refusing to enrol the children or have the children attend school. A number of schools have enrolled Roma children who appear pleased to have the opportunity to attend school. There is no evidence that the children are, or have been, trafficked for economic gain.<sup>21</sup> Section 247 of the Children Act 2002 makes it an offence for an adult to place or allow a child to beg on a street, or door to door.

### 3.2 THE AGE ANOMALY OF AU PAIR PLACEMENTS

Au Pair placements are young people who move from their own country to another country to live in a 'host' family and experience a different culture. They are provided with board and keep and a weekly 'allowance' in exchange for light household help and care of children.

Au Pair placement of a young person in Ireland from inside or outside the European Union is treated as an educational-cultural exchange. It is neither precisely an educational nor a worker situation. As such it falls between the cracks of migration law and employment law. An Au Pair placement does not require a Work Permit from the Department of Enterprise Trade and Employment (DETE) under the Employment Permits Act, 2003. It does not require proof of full-time attendance at a recognised educational establishment under the Department of Education and Science. Thus it is not a student placement in the strict sense.

An Au Pair placement can involve girls (or boys) of 16 or 17 years old. While an Au Pair Placement is frequently a person of 18 to 25 years, there is no prohibition on the movement of younger Au Pairs into Ireland. Au Pairs from outside the European Union/European Economic Area obtain Visas (where applicable) to come to Ireland in their own country of origin. Once admitted to Ireland, they register with the Gardaí.

The Council of Europe attempted to obtain inter-country agreement on standards and conditions of Au Pair Placements as long as 30 years ago (Council of Europe, 1969). Neither Au Pair placements nor agencies are regulated in Ireland.

Ireland is advertised widely as an Au Pair placement destination on the Web.<sup>22</sup> Agencies suggest a minimum age which ranges between 17 and 18 years old. Various placement agencies suggest a minimum of 25 to 30 hours family support a week. Au Pairs usually pay their own transport and English language class and examination fees.

It is difficult in terms of working conditions to distinguish between an Au Pair placement in a household and a childcare worker in a household whose employer holds a Work Permit. Yet the two are under quite different legal regimes. The Department of Enterprise Trade and Employment does not, and may not, issue a Work Permit to an employer for a non-EU/EEA household childcare

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<sup>20</sup> Discussion with professionals, Dublin, 21 March 2003.

<sup>21</sup> Discussion with Romanian childhood support worker, 31 March 2003.

<sup>22</sup> Author's searches.

worker (or any other worker) who has not reached the age of 18 years.<sup>23</sup> Yet an Au Pair placement permits precisely such an arrangement on cultural grounds.

In April 2003, a change in the Regulations for the issuing of work permits for certain occupations was made. A ban was placed for three months on the issuing of new work permits for all forms of childcare or nursery work for workers from non-EU and non-EEA nationals. This curtails the supply of childcare workers from outside the European Union. Demand remains unmet and this potentially opened up the Au Pair placement system as an alternative.<sup>24</sup>

### 3.3. TEMPORARY VISITS OF UNACCOMPANIED CHILDREN TO IRELAND

Charitable, educational and humanitarian organisations organise the visits of thousands of children from inside and outside the EU and EEA areas for short stays in Ireland each year. About 10,000 children have visited Ireland in these circumstances since the 1990's. The children come without their parents or guardians, to attend English language courses, summer courses, to attend school in Ireland, to have operations in Irish hospitals or to improve their health. The supervision and regulation of these inward movements of children unaccompanied by their parents, ranges from very strict voluntary supervision, with child protection procedures and protocols to very casual arrangements. The extent of supervision is largely determined by the history and organisational management of the not-for-profit body or private enterprise involved.

The approval or fitness of families to host children from overseas for short or longer periods is often not tested or investigated. This is surprising since some of the visiting children do not speak English, or may be sick or without strong family environments in their country of origin. This can, and does give rise to ambiguities in the care relationship. This has occurred in relation to both Romania and Belarus where many Irish private bodies have directly engaged with individual orphanages or villages to offer temporary respite care or other services for the children during the 1990s.

The above can be illustrated by the case of a child of four years old of Romanian nationality and Roma origin. The child was taken to Ireland for purported health/holiday treatment and presented as an 'orphan.' In fact her parents were alive, and she was in state foster care in Romania. The child was detained by an Irish family in Ireland for five months who resisted returning her to the public authorities and her foster family. The child was eventually returned to her home country (McAleer, 2003).

A group of rural families called the Burren Chernobyl Project cared for children from a Belarus orphanage for three years from 1999-2002. The families hoped to 'adopt' the children and felt they were 'parents' to the children. When the children were returned to Belarus, the families campaigned to have them returned to Ireland.<sup>25</sup> The Chernobyl Children's Project, a separate well known charity organisation based in the city of Cork claims that it was party to brokering an adoption agreement between the Governments of Ireland and Belarus.<sup>26</sup> Families who care for vulnerable overseas children on a short term basis may therefore believe that the temporary care of children is a road towards inter-country adoption.

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<sup>23</sup> Communication with the DETE, 2003.

<sup>24</sup> Regulations of the Department of Enterprise Trade and Employment. See: *Irish Times*, 8.04.03.

<sup>25</sup> See *Irish Times*, 7.04.03. 'Irish families hopeful children from Belarus will return by June'.

<sup>26</sup> See website of Chernobyl Children's Project.

Inter-country adoption in Ireland is highly regulated in law. The Adoption Board provides ample and free advice on the circumstances in which it may occur.

## 4. DEVELOPMENTS FOR THE FUTURE WITH IMPACT ON UNACCOMPANIED MINORS IN IRELAND

### 4.1 EUROPEAN PROPOSED DIRECTIVE ON FAMILY REUNIFICATION

Agreement was reached in June 2003 at the Council for Justice and Home Affairs for an EU Directive on the Right to Family Reunification for third country nationals who reside lawfully in the European Union. This was based on an Amended proposal for a Council Directive of 2001. This was discussed at the Council of Justice and Home Affairs in February and March 2000. The meeting was attended by Irish Justice Minister Michael McDowell, TD.

Under the Directive:

- Minors seeking family reunification inside Ireland would have to have had an application submitted by their parent or guardian, prior to reaching their 15<sup>th</sup> birthday.
- Member States may also exercise derogation such that minors over the age of 12 years who arrive separately from the rest of their family must meet certain integration conditions provided by existing national legislation (at the time of the Directive implementation) prior to being authorised to enter. Since the majority of unaccompanied minors coming into Ireland are in the 15 to 17 age group, these proposals are likely to impact significantly if Ireland were to implement the Directive.
- Family reunification for spouses less than 21 years of age can be refused. This provision could impact significantly on Roma families moving across Europe.

### 4.2 COUNCIL FRAMEWORK DECISION ON COMBATING TRAFFICKING IN HUMAN BEINGS OF 19 JULY 2002

The originality of the Decision is that trafficking for both labour and sexual exploitation is combined in a single legal instrument. Children figure in several instances in the Articles of the Decision. Ireland has just 14 months to implement the Council Framework Decision on combating trafficking in human beings. In order to implement the Decision, a number of the provisions in the one or several Irish laws will have to be amended in relation to children. Among these are the following:

- Article 1 (4) defines a child as any person below 18 years. This could involve raising the age of consent in some Irish criminal and civil legislation, redefining 'child' in other laws, and increasing the responsibilities and resources of social professionals to embrace a broader age range of clients in terms of child protection. This should prompt some interesting discussion
- Article 3 (2)(b) requires minimum penalties where the victim is under the age of sexual majority. This may involve an increase in or differentiation of penalties for trafficking in children.
- In the case of children, the Article 3 (2) of the Decision requires Member States to make certain presumptions that trafficking has occurred without being obliged to demonstrate that the child victim was, for example, deceived or abducted.
- Trafficked children are to be regarded as especially 'vulnerable' when treated as victims in

criminal proceedings. This may or may not alter Irish practices.

- Ireland will have to produce a text of the legal changes taken to implement the Decision by August 1 2004.

### 4.3 MINIMUM STANDARDS FOR THE RECEPTION OF UNACCOMPANIED MINORS

Member States of the EU adopted a Directive on minimum standards for the reception of asylum seekers including unaccompanied minors in January 2003.<sup>27</sup> This is a new instrument of Community law. The Directive takes into account vulnerable categories such as minors. Article 10 deals with schooling and article 19 addresses unaccompanied minors specifically. Unlike the United Kingdom, Ireland has not signalled its intention to subscribe to the Directive.<sup>28</sup> This will over time, lead to a divergence of conditions of minimum standards for the reception of unaccompanied minors between the Republic of Ireland and Northern Ireland. Since asylum law is an area of legal jurisdiction reserved to Westminster, there is no convergence obligation on Ireland and the UK to approximate conditions on a North South basis.

### 4.4 PROPOSAL FOR A COUNCIL DIRECTIVE FOR SHORT TERM RESIDENCY PERMITS

In 2002, the European Commission presented a proposal for a draft Directive on short term residency permits to be granted to those persons who were victims of trafficking and who were co-operating with the authorities.<sup>29</sup> Article 14 of the draft Directive provides for the optional inclusion of child victims of trafficking in the proposal.

### 4.5 SELECTED RECOMMENDATIONS IN RELATION TO TRAFFICKING AND SMUGGLING OF MINORS IN IRELAND.

The following recommendations and observations arise from the study.

#### **4.5.1. Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal**

The Annual Reports of the Office of the Refugee Applications Commissioner and Refugee Appeals Tribunal should contain an anonymous report of cases, by sex, nationality and age, of presenting unaccompanied minors where trafficking is part of the claim or emerges in the process of the claim or appeal.

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<sup>27</sup> Council Directive laying down minimum standards for the reception of asylum seekers in the Member States, 2003/9/EC of 27 January 2003, OJ L 31 of 6. 02, 2003, p.18.

<sup>28</sup> Report on the situation of fundamental rights in the European Union and its Member States in 2002, Report submitted to the JHA of Commission March 31 2003 by the EU Network of Independent Experts in Fundamental Rights, see page 142, footnote 404

<sup>29</sup> COM (2002) 71 final. Published in the Official Journal C 126 E/399 on 28.5.2002.

#### **4.5.2. An Garda Síochána (Police) - The detention of victims of trafficking**

Officers of the Garda National Immigration Bureau and officers in other Garda units are put in a difficult position in placing child victims of trafficking into their ‘care’ where no social work service is available at night or between Friday and Monday. The Gardaí enforce anti-trafficking laws during all 168 hours of a week. Investment in social services for child victims must therefore be on a 168-hour basis.

#### **4.5.3 Legal status of unaccompanied children and child victims of trafficking**

Outside the Refugee Act, 1996, there appears to be no legal status in Ireland for child victims of trafficking. The provisions of leave-to-remain in Ireland for humanitarian reasons do not appear to be granted for such children. A number of children appear to be in a situation where it is not possible to determine their nationality via their parents or other custodial relatives. A number of children, including victims of trafficking, are not asylum seekers; they are not refugees or displaced persons and they will not be reunified with families in Ireland. Yet they are in the care of the public authorities under one or more civil law provisions. This situation is entirely unsatisfactory and needs resolution. The Government is committed to the implementation of the Stockholm Agenda for Action Against the Sexual Exploitation of Children.<sup>30</sup>

#### **4.5.4. Accommodation of victims in hostels for homeless persons or adults**

The housing of child victims of trafficking in hostels for adults or homeless persons is neither satisfactory nor acceptable. Child victims of trafficking and smuggling are vulnerable persons according to the European law and are entitled to accommodation adapted and suited to their needs.

#### **4.5.5 Opportunities for foster care within migrant and ethnic communities**

The development of foster care for child victims, or suspected victims, of trafficking or smuggling within ethnic communities might be further pursued.

#### **4.5.6 Disappearance of children from the care of the public authorities**

The high rate of disappearance of children as young as 12 years old from the care of the public authorities is worrying. While children may not be ‘detained,’ child protection principles require a higher level of daily supervision and care than currently prevails.

#### **4.5.7. Health care of child victims of trafficking**

Child victims of trafficking should be singled out for health screening to meet their health needs. This includes testing for their immunity to childhood diseases, their exposure to infection (TB) and conditions which will undermine their long term health status: HIV/ AIDS, congenital syphilis, Hepatitis C. Child victims of smuggling and trafficking require psychological and child psychiatric service supports. Where these are not available in the jurisdiction, they should be sought in Northern Ireland.

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<sup>30</sup> *The National Children’s Strategy Our Children – Their Lives* (2000) Objective 5, page 62, see also *Report to the United Nations on the National Plan for Women 2002 on the implementation of the Beijing Platform for Action*, chapter 12 The Girl Child, page 51.

#### **4.5.8 Photographing and fingerprinting of children**

There is a considerable body of argument developed in the field of civil liberties, privacy law and personal freedoms, to contest the systematic photographing and fingerprinting of persons, non-nationals in particular. These rights need to be placed or balanced against the right of the child to be protected from crime or a breach of his/her rights. The argument for the photographing and fingerprinting of suspected child victims of trafficking or smuggling, including young children under the age of 14 years, has some merit. The subject has been addressed under the Immigration Act, 2003 §s.9A (1)(2) and (3).

#### **4.5.9 .Maintenance of files on children in care**

The repeated observation by the Social Services Inspectorate of incomplete files (records), or no files (records) on children in children's residential centres displays a casual attitude to children's rights. It makes it impossible to track and monitor the care of the child, to meet the child's needs and to respond to situations of sudden disappearance of children from care. The placement of children in centres outside the provisions of the 1991 Child Care Act is a serious shortcoming in this regard. The enforcement of the 1991 Child Care Act on record keeping on children in care is a core method of prevention of and response to child trafficking.

#### **4.5.10 Safety of repatriated children**

The Eastern Regional Health Authority unaccompanied minors unit should receive funding for a designated post of international child welfare liaison with a view to deepening and developing contacts with reliable child welfare organisations in countries of repatriation. Without such services, there is a well-founded risk of the re-trafficking of already vulnerable victims.

#### **4.5.11 Regulating certain movements of under-age children into Ireland**

The Children's Office of the Department of Health and Children should initiate an inventory of types of unregulated movements of children into Ireland to ascertain whether there is a child protection or legal problem of vulnerable children, such as Third Country nationals, sick children, foster children, or others, such as under-age Au Pair placements, being mobilised into Ireland by non-regulated bodies.

#### **4.5.12. Staffing levels of children's services**

As unaccompanied minors constitute an ever greater proportion of children in the care of the public authorities, staffing levels for social workers must be increased. A desirable ratio of social worker: child clients is 1:12. The current ratio is about 1:50. To increase the ratio on a year-to-year basis would require at least additional 10 social workers in 2004, deployed in the Eastern, South Eastern and Southern regions.

## ABBREVIATIONS

ERHA	Eastern Regional Health Authority
GNIB	Garda National Immigration Bureau
IOM	International Organization for Migration
ORAC	Office of the Refugee Applications Commissioner
RAT	Refugee Appeals Tribunal
RLS	Refugee Legal Service

***Units and Bodies Consulted for the Purpose of the Study***

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Copine Project, Department of Applied Psychology, University College Cork

Children's Section, Department of Health and Children, Dublin

Criminal Law Division, Department of Justice, Equality and Law Reform, Dublin

Department of Social Policy and Social Work, University College, Dublin

Centre for Education Services, Marino Institute of Education, Dublin

Garda National Immigration Bureau, Dublin

Head of Migration, Department of Enterprise Trade and Employment, Dublin

Head of Unit, Unaccompanied Minors, East Coast Area Health Board, Dublin

Irish Red Cross Society, Dublin

Irish Refugee Council, Dublin

Leanbh Project, Irish Society for the Prevention of Cruelty to Children

Northern Ireland Council for Ethnic Minorities, Belfast

Pavee Point Traveller Centre, Dublin

Principal Social Worker, Liberty Street Services, Southern Health Board, Cork

Psychological Services for Asylum Seekers, Dublin

Red Cross Society United Kingdom (Northern Ireland) Belfast

Social Worker, Department of Applied Social Studies, University College, Cork

Women's Aid, Dublin

***Information Note on Research***

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Framework of research questions to service providers/professionals:

1. What is the scale of trafficking in children which you see in your service?
2. How are children referred to you?
3. Is it possible to distinguish between children who are smuggled and children who are trafficked?
4. Is there any evidence of trafficking in children among those who arrive in Ireland in family groups?
5. What are the countries of origin, ages and gender of the children?
6. Have the children been brought to Ireland to be put to work, to become servants or for the purposes of sexual exploitation?
7. What is known of the children's journey to Ireland?
8. Can the children give an account of their circumstances?
9. Is there any evidence that children have been coached into giving a version of their circumstances?
10. What services are provided to unaccompanied minor children?
11. What laws are available for your use in child protection/prosecution of alleged perpetrators?
12. What gaps in the law or amendments to existing laws appear necessary?

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