



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-seventh session

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**WRITTEN REPLIES BY THE GOVERNMENT OF IRELAND CONCERNING
THE LIST OF ISSUES (CRC/C/OPAC/IRL/Q/1) TO BE TAKEN UP IN
CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF
IRELAND UNDER ARTICLE 8 (1) OF THE OPTIONAL PROTOCOL TO THE
CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT
OF CHILDREN IN ARMED CONFLICT (CRC/C/OPAC/IRL/1)**

[Replies received on 28 November 2007]

Department of Defence response to the list of issues to be taken up in connection with the consideration of the initial report of Ireland (November 2007)

Question 1 of the list of issues

1. The Department of Defence leads the implementation of the Optional Protocol.

Question 2

2. **Section 8** of the International Criminal Court Act 2006 creates what is referred to as an ancillary offence which includes "conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities" (Rome Statute of the International Court, article 8, para. 2 (b) (xxvi)). There is no such provision for children between the ages of 15 and 18 in Irish law.

3. Defence Forces Administrative Instructions are part of the secondary legislation provided for under the Defence Acts 1954-2007 and regulations made by the Minister for Defence pursuant to those Acts. They are binding on all members of the Defence Forces.

Question 3

4. This issue has been considered and there are no plans to raise the minimum age of voluntary recruitment into the Irish Defence Forces to 18. In recent years, about 22 per cent of the personnel intake into the Permanent Defence Force has been under 18 years of age at entry. An increase in the minimum age to 18 could have serious implications for the maintenance of Defence Force strengths; in particular an increase in the minimum age of apprentice intake would have very serious consequences for the longer term provision of the types of specialist skills which are made available to the Defence Forces by these entrants when qualified. An increase in the minimum age of enlistment would also have a serious effect on the local units and activities of the Reserve Defence Forces.

Question 4

5. The minimum age for recruitment into the Defence Forces is set down by the Minister for Defence in Defence Force Regulation A. 10, which is made pursuant to Section 56 of the Defence Acts. There is no provision either in the Act or the Regulation for the age to be lowered in exceptional circumstances.

Question 5

6. Refer to section 8 of the International Criminal Court Act above. Section 12 of that Act gives limited extraterritorial jurisdiction for such a crime. Essentially, this offence could be applied to Irish nationals outside the State or to any other nationality if committed on board an Irish ship or Irish controlled aircraft.

Question 6

7. Human rights training takes place on a regular basis at the United Nations Training School Ireland (UNTSI) in the Defence Forces Training Centre both for members of the Defence Forces and for participants from armed forces abroad. The courses on human rights include foundation, induction and pre-deployment courses as well as a week-long "Train the Trainers" course. The Optional Protocol is covered in a module dealing with the protection of children and child soldiers.

Question 7

8. The Immigration, Residence and Protection Bill replicates in many respects the protections for minors contained in the Refugee Act, 1996 (as amended). However, the introduction of a single procedure for protection of applicants will ensure that the training and expertise of existing caseworkers is leveraged and built upon. The single procedure will streamline existing procedures and replace the current multi-layered process, thereby minimizing the time applicants will spend waiting for a final decision.

9. In addition, the Bill provides for the extension of current rules regarding the registration and residence of foreign nationals over the age of 16 years to include children under the age of 16. Requiring children to be registered will improve the protection of children as it will provide an official record of their presence in the State. It is intended that this information will assist in the provision of State services and will also assist in addressing other issues such as the trafficking of children.

10. Section 8(5)(a) of the Refugee Act, 1996 (as amended) provides that, where it appears to an authorized officer of the Office of the Refugee Applications Commissioner (ORAC) or to an immigration officer that a person who has arrived in the State is under the age of 18 years and unaccompanied, that child must be referred to the Health Service Executive (HSE). The provisions of the childcare legislation will then apply in relation to the child. The HSE will then decide whether or not to make an application for asylum on their behalf. The HSE is the authority with the primary responsibility for care and protection issues relating to children in Ireland. In the event that an application is made by the HSE on the child's behalf, it then assists the minor throughout the asylum process, including by accompanying the child to the interview.

11. Both the HSE representative and a legal representative for the child appointed by the Refugee Legal Service are informed of the applicant's interview date. Generally therefore, there is always a representative from the Refugee Legal Service present at the interview, either a solicitor or a paralegal, together with the HSE representative. An interview involving a separated child would generally not take place without a legal representative being present. The legal representative or the HSE representative can make submissions on behalf of their applicant in advance of the asylum interview or at the end of the interview.

12. As concerns female children, it is important to note that gender-specific issues are taken into account by the ORAC as they arise in the asylum process and induction training addresses issues specific to female applicants and to the management of their claims. Where a gender related issue has been highlighted by either the legal representative or the HSE representing a female asylum applicant, a female interviewer will always be assigned to the case and ORAC will endeavour to ensure that the interview is serviced by a female interpreter. ORAC endeavours to conduct interviews involving children in its "child friendly" interview rooms.

13. Certain applicants or groups of applicants in the asylum process may be vulnerable and have special needs, including in particular separated children who may have been affected by armed conflict in their countries of origin. In order to deal with these applicants in a fair and appropriate manner, ORAC has developed procedures which take into consideration any specific factors and circumstances arising in these cases. ORAC also participates in the Inter-Agency Working Group on Unaccompanied Minors which is attended by the relevant departments and agencies who are responsible for dealing with minors.

14. ORAC has put in place guidelines in relation to the determination of applications from unaccompanied minors or separated children which take into consideration any specific factors and circumstances arising in such cases. In developing these guidelines, account was taken of past experience, guidelines and advice of the United Nations High Commissioner for Refugees (UNHCR), as well as the EU Children First Programme.

15. In order to ensure that the special needs of this group of applicants are properly taken into account, a group of experienced interviewers has received additional specialized training to assist them in working on cases involving separated children. The training has been provided in the past by UNHCR or a law lecturer with the Law Faculty, National University of Galway. Currently, this training is facilitated by UNHCR. This training also involves presentations from a number of childcare experts, with a focus on issues such as psychological needs, child-specific aspects of the refugee process, the role of the social worker and other issues particular to refugee determination for separated children. Similar training was provided for ORAC unit managers involved in determining claims of separated children.

16. In addition, ORAC, together with the other agencies involved in dealing with separated children, believes that there are advantages to adopting a multi-agency approach in the training of practitioners in this area. As a result, the specialized training programme detailed above is also attended by representatives from the Health Service Executive, Refugee Appeals Tribunal and the Refugee Legal Service.

17. It is recognized that some children, especially young children, may manifest their fears in ways different from adults and may not be able to fully elucidate the reasons why they left their country of origin. Consequently, in examining the claims of children, it may be necessary to have greater regard to certain objective factors such as information on the country of origin in determining the application of the child.

18. It may also be necessary to take into account that particular policies and practices in the country of origin amounting to violations of specific rights of the minor (for example, the forced recruitment of children into army or rebel groups) may, under certain circumstances, lead to situations that fall within the scope of the 1951 Geneva Convention relating to the Status of Refugees.

19. While the emphasis in preparing and putting in place the above arrangements has been on the needs of separated children, the approach taken and in particular the training provided is also of considerable benefit in the interviewing of children who are accompanied but whose parents should be the subject of a separate application for asylum.

20. Whereas most applications received from separated children are in respect of children of 16 or over, a small number of applications are received from very young children (12 years of age and under). The statutory framework for the investigation of applications for a declaration for refugee status affords all applicants the opportunity of an interview before any recommendation is made, with the exception of children who are included in their parents' applications.

21. As a result, guidelines and appropriate facilities have been put in place to provide a suitable response to the receipt of applications from very young children, including where the child is accompanied by an adult but has an independent or separate claim for asylum. Additional inter-agency training was organized by ORAC in conjunction with UNHCR for officials of the Refugee Appeals Tribunal, the Refugee Legal Service, the East Coast Area Health Board (Health Service Executive) and officials of ORAC who would be involved in interviewing very young children and determining their status.

22. ORAC endeavours at all times to ensure that case workers dealing with separated children have the required knowledge on how best to process and assess an asylum claim for a separated child; that they have a knowledge of the activities and processes of the different actors involved in separated children asylum applications in Ireland; that they have a detailed understanding of child sensitive behaviour/questioning techniques and that they have good knowledge of the relevant guidelines and standards applicable for separated children as outlined in the training facilitated by the UNHCR.

Question 8

23. Section 8(5) of the Refugee Act, 1996 (as amended) which came into operation on 20 November 2000, provides that where it appears to an immigration officer or an authorised officer of the ORAC that a child under the age of 18 who has arrived at the frontiers of the State or has entered the State is not in the custody of any person, the immigration officer or authorized officer is required to inform the HSE. The provisions of the Child Care Act, 1991, which require that the HSE promote the welfare of children in its area who are not receiving adequate care and protection, will then apply in relation to the child. The Refugee Act, 1996 (as amended) also provides that the HSE will determine what is in the best interests of the child including the option of whether an application for refugee status should be made on behalf of the unaccompanied minor/separated child.

24. The HSE has nominated liaison officers who are contact persons for the Immigration Officer in this regard.

25. The immediate and the ongoing needs of unaccompanied minor asylum-seekers relating to accommodation, medical and social needs as well as their application for refugee status are the responsibility of the HSE in accordance with the Refugee Act, 1996 (as amended) and the Child Care Act, 1991.

26. The main responsibilities of the HSE are:

- the decision as to whether it is in the best interests of the child to make an application for asylum;
- if so, to support the child throughout the application process;
- to provide for the immediate and ongoing needs and welfare of the child through appropriate placement and links with health, psychological, social and educational services.

27. To date, the vast majority of unaccompanied minors have been presented or referred to the HSE in the eastern region. Referrals are received from either immigration authorities or the ORAC. The former East Coast Area Health Board has approval for a 22-strong team to work with unaccompanied minors. Assisting clients with the asylum process and appeals process, as appropriate, involves all members of the Social Work and Project Work Team.

The statistical information requested is not routinely collected by the HSE.

28. The following tables have been submitted:

- National statistics on the number of unaccompanied minors/separated children seeking asylum (Table A).
- Detailed statistics on the number of unaccompanied minors/separated children seeking asylum in the Dublin region (majority of such children in Ireland) (Table B)

Question 9

29. The Directorate for Asylum Support Services (DASS), which was set up on 10 April 2000 was replaced in April 2001, by the Reception and Integration Agency (RIA) under the aegis of the Department of Justice, Equality and Law Reform. The Agency has responsibility for:

- planning and co-ordinating the provision of services to both asylum-seekers and refugees;
- co-ordinating implementation of integration policy for all refugees and persons who, though not refugees, are granted leave to remain;
- responding to crisis situations which result in relatively large numbers of refugees arriving in Ireland within a short period of time, e.g. the Kosovar nationals who were invited here by the Government in 1999.

30. RIA has no mandate in respect of asylum-seeking or refugee children per se. RIA plainly accommodates children who form part of a family but accommodation of separated children seeking asylum falls to the HSE.

Question 10

31. In paragraph 64 of its concluding observations on Ireland's periodic report on the Convention on the Rights of the Child (CRC/C/IRL/CO/2), while noting the recent developments regarding asylum-seeking processes through the 2006 Immigration, Residence and Protection Bill, the Committee is concerned that unaccompanied children or children separated from their parents might still not receive adequate guidance, support and protection during the asylum process, in particular with respect to access to services and independent representation.

32. In paragraph 65, the Committee recommends that the State party take necessary measures to bring the policy, procedures and practice into line with its international obligations, as well as principles outlined in other documents, including the Statement of Good Practices produced by the United Nations High Commissioner for Refugees and Save the Children. The Committee further encourages the State party to ensure that the same standards of and access to support services applies whether the child is in the care of the authority or their parents. The committee also draws the attention of the State party to its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin.

33. It is the policy of the ORAC that each and every application for refugee status is fully and properly investigated and that a fair recommendation is made in relation to each application.

34. The ORAC recognizes the importance of addressing the special needs of all vulnerable groups including victims of torture and those who have suffered from gender based persecution and separated children. Extensive training of staff has been provided to ensure that each individual asylum applicant is treated with courtesy and professionalism by all members of staff.

35. Consequently, every effort is made at the interview to ensure that vulnerable applicants have an opportunity to fully explain their circumstances and any fears, and why they may be reluctant to return to their country of origin.

36. When an applicant applies for asylum, he/she is given full and comprehensive information in relation to the refugee status determination procedure in a language which he/she can understand. The information leaflets are available in 26 languages and interpreters are available to assist the applicants in completing the initial application. Applicants are also given information regarding the availability of legal advice from the Refugee Legal Services and information on how to contact the Irish Refugee Council, UNHCR, and organizations such as the Centre for the Care of Survivors of Torture (SPIRASI).

37. Further information requested here is provided above, in the answer to question 7.
