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National Country Report

Ireland



ACKNOWLEDGMENTS

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This report is up-to-date as of 3 September 2013.

The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public and includes the development of a dedicated website which will be launched in the second half of 2013. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Statistics

Table 1: Applications and granting of protection status at first instance

	Total applicants in 2012	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subs. Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
Total numbers	955	65	30	0	840	7%	3%	0%	90%
<i>Breakdown by countries of origin of the total numbers</i>									
Nigeria	158	5	0	-	145	3,3%	0%	-	96,7%
Pakistan	104	0	10	-	115	0%	8%	-	92%
DR Congo	58	5	0	-	50	9%	0%	-	91%
Zimbabwe	48	0	0	-	35	0%	0%	-	100%
Albania	46	0	0	-	30	0%	0%	-	100%
South Africa	33	0	0	-	35	0%	0%	-	100%
China	32	0	0	-	15	0%	0%	-	100%
Afghanistan	31	5	0	-	40	11,1%	0%	-	88,9%
Algeria	29	0	0	-	35	0%	0%	-	100%
Iran	24	5	0	-	15	25%	0%	-	75%
<i>Others¹</i>									
Syria	15	15	0	-	5	75%	0%	-	25%
Russia	10	-	-	-	-	-	-	-	-
Somalia	10	0	10	-	10	0%	50%	-	50%

Source: Eurostat

¹ Other main countries of origin of asylum seekers in the EU.

Table 2: Gender/age breakdown of the total numbers of applicants in 2012

	Number	Percentage
Total number of applicants	956	
Men	599	62.7%
Women	357	37.3%
Unaccompanied children	23	2.4%

Source: Office of the Refugee Applications Commissioner (ORAC)

Table 3: Comparison between first instance and appeal decision rates in 2012

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions	935		-	
Positive decisions				
<i>Total</i>	95	10%	-	-
<i>Refugee Status</i>	65	6.90%	-	-
<i>Subsidiary protection²</i>	30	2.70%	-	-
<i>Hum/comp protection³</i>	0	0	-	-
Negative decisions	840	89.80%	-	-

Source: Eurostat

Table 4: Applications processed under an accelerated procedure in 2012

	Number	Percentage
Total number of applicants	956	
Number of applications treated under an accelerated procedure at first instance	34	3.6%

Source: Office of the Refugee Applications Commissioner (ORAC)

² No appeal.

³ No appeal.

Table 3: Subsequent applications submitted in 2012

	Number of subsequent applications submitted
Total number	16
Top 5 countries of origin	
Nigeria	2
Iran	2
Somalia	1
Albania	1
Bangladesh	1

Source: Office of the Refugee Applications Commissioner (ORAC)

Table 4: Subsidiary Protection Applications

Subsidiary Protection Applications Received in Ireland 2012 by Nationality, Gender and Age-group		
	Nationality	Applications
1	Nigeria	66
2	Pakistan	53
3	Congo, The Democratic Republic Of The	42
4	Zimbabwe	34
5	Afghanistan	30
6	Algeria	24
7	Cameroon	18
8	Moldova, Republic Of	18
9	Somalia	17
10	Georgia	13
	Other	196
	Total	511

Source: Reporting and Analysis Unit of the Department of Justice

Overview of the legal framework

The most recent version of relevant national legislation(s) is available at www.irishstatutebook.ie.

Acts

[Refugee Act 1996](#)

[Immigration Act 1999](#)

[Immigration Act 2003](#)

[Immigration Act 2004](#)

[Illegal Immigrants \(Trafficking\) Act 2000](#)

[European Convention on Human Rights Act 2003](#)

Statutory Instruments:

[S.I. No. 51/2011 - European Communities \(Asylum Procedures\) Regulations 2011](#)

[S.I. No. 52/2011 - Refugee Act 1996 \(Asylum Procedures\) Regulations 2011.](#)

[S.I. No. 518 of 2006 - European Communities \(Eligibility for Protection\) Regulations 2006](#)

[S.I. No. 730 of 2005 - Civil Legal Aid \(Refugee Appeals Tribunal\) Order 2005](#)

[Refugee Act 1996 unofficial restatement updated to 2004](#)

[S.I. No. 55 of 2005 - Immigration Act 1999 \(Deportation\) Regulations 2005](#)

[S.I. No. 714 of 2004 - Refugee Act 1996 \(Safe Country of Origin\) Order 2004](#)

[S.I. No. 708 of 2003 - Aliens \(Visas\) Order 2003](#)

[S.I. No. 423 of 2003 - Refugee Act 1996 \(Section 22\) Order 2003](#)

[S.I. No. 424 of 2003 - Refugee Act 1996 \(Appeals\) Regulations 2003](#)

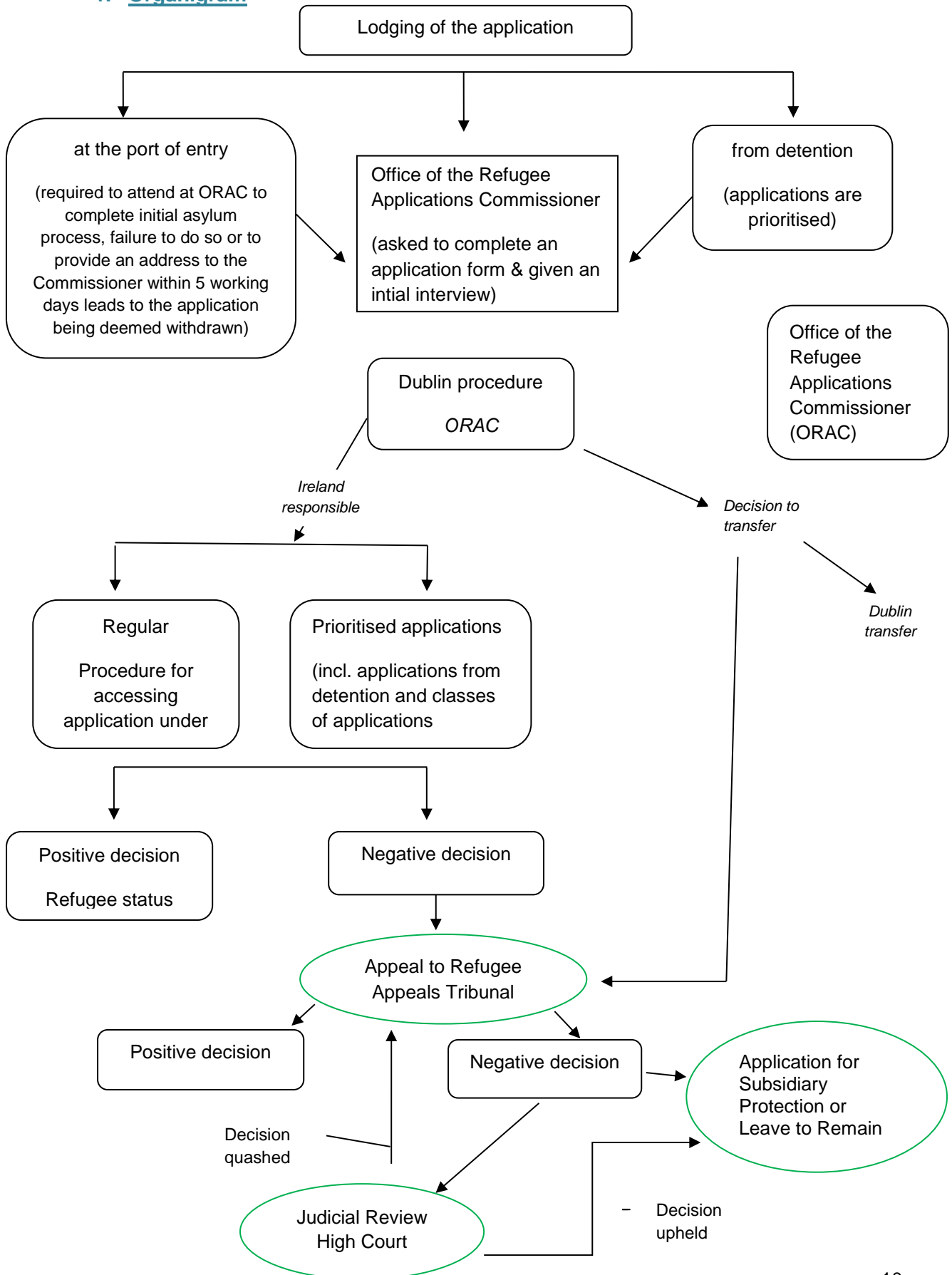
[S.I. No. 422 of 2003 - Refugee Act 1996 \(Safe Countries of Origin\) Order 2003](#)

[S.I. No. 103 of 2002 - Immigration Act 1999 \(Deportation\) Regulations 2002](#)

Asylum Procedure

A. General

1. Organigram



2. Types of procedures

Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure: yes no
- border procedure: yes no
- admissibility procedure: yes no
- accelerated procedure: yes no
- Dublin Procedure yes no

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)? None

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority in original language
Application at the border:	Border police
Application on the territory	Office of the Refugee Applications Commissioner (ORAC)
Dublin (responsibility assessment)	Office of the Refugee Applications Commissioner
Refugee status determination	Office of the Refugee Applications Commissioner
Appeal procedures : -First appeal -second (onward) appeal	Refugee Appeals Tribunal
Subsequent application Subsidiary Protection or Leave to Remain	Department of Justice

4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? Y/N
Office of the Refugee Applications Commissioner	Not available	Department of Justice, Equality and Defence	<p>If the Minister considers that it is necessary in the interests of national security or public order, he by order:</p> <p>(a) Provide that s. 3 (certain rights of refugees), s.9 (leave to enter or remain in the State) and s.18 (family reunification) of the Refugee Act shall not apply</p> <p>(b) Require the person to leave the State.</p>

5. Short overview of the asylum procedure

An asylum application may be lodged with at the Office of the Refugee Applications Commissioner (ORAC). The application should be lodged at the earliest possible opportunity as any undue delay may prejudice the application. If the applicant made a claim for refugee status at the port of entry, they must attend the ORAC to complete the initial asylum process. Failure to attend within 5 working days will lead to the application being deemed withdrawn.

The applicant first fills out an application form and is interviewed by an immigration officer or authorised officer of ORAC to establish basic information. The applicant is given a long questionnaire which must be completed and returned at a specified time and date. The information supplied in the questionnaire will be considered in assessing the asylum application.

The applicant is issued a Temporary Residence Certificate and referred to the Reception and Integration Agency (RIA), from where the applicant will be taken to a reception centre in Dublin. The applicant is advised that they may obtain legal assistance from the Refugee Legal Service.

An application for refugee status may be examined under the Dublin II Regulation by ORAC. The Commissioner takes into account all relevant matters known to them, including written submissions made by the applicant when deciding if the application is to be transferred.

The applicant is notified of the date and time of their interview. The purpose of the interview is to establish the full details of the claim for asylum.⁴

A report is completed based on the information raised at interview and in the written questionnaire as well as relevant country of origin information or submissions by UNHCR. The report contains a recommendation as to whether or not status should be granted.

- a) If a positive recommendation is made, the applicant is notified and the recommendations are submitted to the Minister for Justice, who makes a declaration of refugee status.
- b) The implications of a negative recommendation depend on the nature of the recommendation:
 - a. If the Refugee Applications Commissioner deems the application withdrawn, the Minister and applicant are advised of this recommendation. There is no appeal.
 - b. Following a normal negative recommendation, the applicant has 15 working days to appeal to the Refugee Appeals Tribunal (RAT). The applicant is provided with the reasons for the negative recommendation. They may request an oral hearing before the RAT; if an oral hearing is not requested the appeal will be dealt with on the papers. Free legal representation can be obtained through the Refugee Legal Service.
 - c. If the negative recommendation includes (1) a finding that the applicant showed little or no basis for the claim; (2) that the application is manifestly unfounded; (3) that the applicant failed to make an application as soon as reasonably practicable; (4) that the applicant has a prior application with another state; or (5) that the applicant is a national of, or has a right of residence in, a safe country, the deadline for filing an appeal is 10 working days. In these cases the applicant is not entitled to an oral hearing.
 - d. If the applicant falls within a category of persons designated by the Minister and the recommendation includes one of the findings listed above, the applicant has 4 working days to lodge an appeal. There is no oral hearing.

⁴ NOTE: Ireland operates a split protection system so subsidiary protection is not considered at this stage. It is not possible to claim subsidiary protection until after a decision refusing the application for asylum has been received.

If the applicant chooses not to appeal, the Minister may refuse a declaration of refugee status and make arrangement for removal.

Where a positive decision is made the applicant receives a declaration of refugee status. If a negative decision is reached the Minister may refuse to grant a declaration and issue a letter under s.3 of the Immigration Act 1999 requiring the applicant to leave the state. The applicant is given three options:

- a) To make representations to the Minister within 15 working days setting out an application for subsidiary protection or humanitarian leave to remain;
- b) To leave the state and to inform the Minister of arrangements for departure;
- c) To consent to the making of the deportation order within 15 working days.

An applicant may also seek to have the decision of the Tribunal Member judicially reviewed by the High Court. In order to do so, an applicant must be granted leave at a pre-leave hearing before proceeding to judicial review. This process can take several years. If successful, the applicant's case is returned to the RAT for reconsideration.

The application for subsidiary protection and leave to remain is handled by a division of the Department of Justice. It is an administrative procedure and there is no oral hearing.

B. Procedures

1. Registration of the Asylum Application

Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?
 Yes No
- If so, and if available specify
 - o the time limit at the border: 5 working days
 - o the time limit on the territory: n/a
 - o the time limit in detention: 21 days, renewable

The right to apply for asylum is contained in section 8 of the Refugee Act 1996.

The Office of the Refugee Applications Commissioner (ORAC) is the body responsible for registering asylum applications as well as taking the first instance decision. ORAC's remit is limited to asylum applications and not applications for subsidiary protection. However, an individual seeking protection must first apply for and be refused asylum before they can apply to the Department of Justice for subsidiary protection or humanitarian leave to remain. This takes place as part of the deportation process. Thus, in practice, all protection applicants make an initial application to ORAC.

In relation to families, the practice is that all adult family members must make their own applications. Children have the right to apply independently but if they are accompanied by a parent, they can be considered as a dependent on the parent's claim. Children born in Ireland to parents who have made an application must also apply for asylum or risk losing financial and medical support and accommodation with the reception system.

Immigration officers at the border have no power to assess a claim for asylum. Where a person has stated an intention to claim asylum at the border, they must present themselves at ORAC in order to

complete the initial asylum process. Failure to do so or, failure to provide an address to the Commissioner, within five working days will lead to the application being deemed withdrawn.

A person refused leave to land (entry to the country) may be detained pending removal and, at the point, claim asylum. If their detention is maintained, the notification to ORAC of the intention to claim asylum must, according to the procedures laid out by ORAC, come from the prison authorities and not from the detainee or their solicitor. This can lead to delay in the registration of the application. In addition, unless the passenger at the port is quite explicit about claiming asylum, there is a possibility that the authorities will, if they have issued a refusal of leave to land notice, not release the person to allow them to go to ORAC but may remove the passenger to the country from which they have just travelled.

If the application is not made to ORAC within what is described as a reasonable period and if there is no satisfactory explanation for the delay, the authorities (both ORAC and the Refugee Appeals Tribunal, are required, as a matter of law, to consider that as a factor which undermines the credibility of the claim for protection. This is set out in section 11B of the Refugee Act 1996 as amended by the Immigration Act 2003.

There is no assistance given to enable someone to travel to the ORAC office in order to register a claim for asylum. Despite this, delay in making the application as soon as possible after arrival can damage the credibility of the claim. After a claim has been registered, an applicant accommodated in the Direct Provision system of accommodation will be funded by a Community Welfare Officer to travel to official appointments which includes further attendance at the ORAC office in connection with their application for asylum.

At the screening process with ORAC, the applicant makes a formal declaration that they wish to apply for asylum. The applicant fills out an ASY1 form and is interviewed by an authorised officer of ORAC to establish basic information. The interview takes place in a room where other people are waiting and being interviewed by an official who sits behind a screen. If necessary, an interpreter may be made available if this is possible.

The applicant is required to be photographed and finger-printed. If the applicant refuses to be fingerprinted, they will be deemed not to have made reasonable effort to establish their true identity and to have failed to cooperate. This may affect the credibility of the application.

The interview seeks to establish identity, details of the journey taken to Ireland, including countries passed through in which there was an opportunity to claim asylum; any assistance obtained over the journey; the method of entry into the state (legally or otherwise); brief details of why the applicant wishes to claim asylum and preferred language. This interview usually takes place on the day that the person attends ORAC. If the person is detained, the interview may take place in prison.

The information taken at the screening interview enables ORAC to ascertain if the person applying for asylum has submitted an application for asylum in, or travelled through, another EU country by making enquiries through Eurodac.

At the end of the interview the applicant is given detailed information on the asylum process. This information is available in 24 languages. The applicant is given a long questionnaire which must be completed and returned at a specified time and date, usually ten working days but can be shorter. The information supplied in the questionnaire will be considered in assessing the asylum application.

The questionnaire is available in 24 languages, so that anyone able to read and write in one of those languages may be able to complete the questionnaire in a familiar language. Part 1 requests biographical information. Part 2 requests documentation or an explanation if no documents are available. Part 3 is about the basis of the claim: reason for leaving country of origin; grounds for fear

persecution; membership of any political, religious, or military organisation; fear of authorities; steps taken to seek protection of authorities or internally relocate; incidents of arrest or imprisonment of the applicant or friends or relatives; and reasons for fear of return. Part 4 addresses travel details including any previous trips or residence abroad, applications for visas, assistance with journey and any previous applications for asylum. Part 5 asks for information about completion of the questionnaire and any assistance given.

The applicant is issued a Temporary Residence Certificate and referred to the Reception and Integration Agency (RIA), from where the applicant will be taken to a reception centre in Dublin.

The applicant is advised that they can register with the Refugee Legal Service (RLS), a division of the Legal Aid Board. At RLS they are allocated a solicitor and caseworker to work on their file. Due to financial constraints, the RLS usually limits its legal advice and representation to appeals. At the initial stage, the applicant is seen by a caseworker who can provide legal information which complements the information provided by ORAC. The IRC is piloting a free early legal advice service through its law centre (see below).

There is no accelerated procedure for the delay in lodging an application but applications from certain nationalities (currently Nigerian) can be prioritised which leads to a quicker determination of the application and the curtailment of appeal rights. Other nationalities (currently Croatian and South African) may also find themselves subjected to a truncated procedure on the grounds that those countries are not considered to give rise to protection claims.

As mentioned above the questionnaire is usually completed within 10 working days and without legal advice. Once the questionnaire is submitted, the applicant is notified of their interview at ORAC in Dublin. If the questionnaire is not in English it is submitted for translation.

2. Regular procedure

General (scope, time limits)

Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): N/A
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? Yes No
- As of 31st December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered N/A

The Office of the Refugee Applications Commissioner (ORAC) is a specialised independent office, tasked with determining asylum applications at first instance, and assessing whether the Dublin II Regulation applies. ORAC does not assess claims for subsidiary protection or leave to remain. These are handled by the Irish Naturalisation and Immigration Service, a division of Department of Justice.

ORAC endeavour to deliver a first instance decision on asylum within six months of the application. If a recommendation cannot be made within 6 months of the date of the application for a declaration, the Refugee Applications Commissioner shall, upon request from the applicant, provide information on the estimated time within which a recommendation may be made. However, there are no consequences for failing to decide the application within a given time period. In most cases, ORAC will make its decision within six months of the application being made.

Under section 12(1) of the Refugee Act 1996, the Minister may give a direction to the Commissioner to give priority to certain classes of applications. The Minister has issued prioritisation directions that apply

to persons who are nationals of, or have a right of residence in, Croatia and South Africa. This means that if an applicant falls within the above categories their application will be given priority and may be dealt with by the Commissioner before other applications. All prioritised applicants were processed in a median time of 30 working days during 2011. In 2011, 3.5% of all applications were processed under the Ministerial Prioritisation Directive. These applications were normally scheduled for interview within 9 to 12 working days from the date of application and completed within a median processing time of 30 working days from the date of application.

All other cases were processed to completion within a median time of 11.7 weeks. In the final quarter of 2011, the median processing time was 9.6 weeks. Processing times are determined by a range of factors such as the increasing complexity of the caseload and sometimes judicial review proceedings.

In accordance with requirements under the Refugee Act, 1996, ORAC also prioritised applications from persons in detention. The preliminary interview in these cases is carried out within 3 working days of the date of their application in so far as possible. Such applications are scheduled for their substantive interview on average within 9 working days and were finalised within an average of 17 working days for those applicants remaining in prison throughout the process. However the majority are released before their claims were finalised.

Appeal

Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure: Yes No
 - o if yes, is the appeal judicial administrative quasi-judicial
 - o If yes, is it suspensive Yes No
- Average delay for the appeal body to make a decision:
The median length of "time taken" by the Tribunal to process and complete Substantive 15 day appeals was approximately 22 weeks based on a sample of 735 cases. The median length of time taken by the Tribunal to process and complete Accelerated appeals received was 5 weeks in 2011 based on a sample of 335 cases.

The Refugee Appeals Tribunal ("the Tribunal") was established on 4 October, 2000 to consider and decide appeals against Recommendations of the Refugee Applications Commissioner that applicants should not be declared to be refugees. This legislation makes provision for both substantive appeals and accelerated appeals. It also provides for appeals of determinations made by the Refugee Applications Commissioner pursuant to the Dublin II Regulation. Appeals against decisions under the Dublin II Regulation do not have a suspensive effect.

The Tribunal is a quasi-judicial body which is ostensibly independent in function. The Tribunal Members are appointed by the Minister for Justice. They work and are paid on a per case basis. Cases are allocated by the chair of the Tribunal.

The rules surrounding the right to appeal and time limits to do so depend on the nature of the negative decision of the Refugee Applications Commissioner:

- a. If the Commissioner deems the application withdrawn, the Minister and applicant are advised of this recommendation. There is no appeal.
- b. Following a normal negative recommendation, the applicant has 15 working days to appeal to the Refugee Appeals Tribunal (RAT). The applicant is provided with the reasons for the negative recommendation. They may request an oral hearing before

the RAT; if an oral hearing is not requested the appeal will be dealt with on the papers. Free legal representation can be obtained through the Refugee Legal Service.

- c. If the negative recommendation includes (1) a finding that the applicant showed little or no basis for the claim; (2) that the application is manifestly unfounded; (3) that the applicant failed to make an application as soon as reasonably practicable; (4) that the applicant has a prior application with another state; or (5) that the applicant is a national of, or has a right of residence in, a safe country, the deadline for filing an appeal is 10 working days. In these cases the applicant is not entitled to an oral hearing.
- d. If the applicant falls within a category of persons designated by the Minister and the recommendation includes one of the findings listed above, the applicant has 4 working days to lodge an appeal. There is no oral hearing.

The length of time for appealing a decision is between four and fifteen working days, depending on the recommendation of the Commissioner. The legal aid for appeals is available through the Refugee Legal Service, however as legal representation is not provided for the first instance process, the applicant must engage and brief their solicitor within the limited time period for lodging an appeal.

Where an oral hearing is held, these are conducted in an informal manner and in private. The applicant's legal representative may be present as well as any witnesses directed to attend by the Tribunal. The Refugee Applications Commissioner or an authorised officer of the Commissioner also attends. UNHCR may attend as an observer. Every reasonable effort is made to secure an interpreter if required.

If an oral hearing is not granted, the Tribunal makes a decision based on:

- Notice of Appeal submitted by the applicant or their legal representative
- Documents and reports furnished by the Office of the Refugee Applications Commissioner (ORAC)
- Any further supporting documents submitted by the applicant or their legal representative
- Notice of enquiries made or observations furnished by ORAC or the High Commissioner.

The length of time for the Tribunal to issue a decision is not set out in law. According to the most recent Annual Report of the RAT available the median length of "time taken" by the Tribunal to process and complete substantive 15 working day appeals was approximately 22 weeks based on a sample of 735 cases and the median length of time taken by the Tribunal to process and complete accelerated appeals received was 5 weeks in 2011 based on a sample of 335 cases.

The chair of the Tribunal has discretion not to publish decisions that they consider are not of 'legal importance'.⁵ The extent of the discretion was expounded in *A, O & F v RAT* (7 July 2006), where the Supreme Court held that the obligation to provide reasonable access to previous judgments was based on the general constitutional requirement of fair procedures and natural justice. The term 'legal importance' should not be given a narrow definition. The Supreme Court considered that in refugee cases it was generally beneficial for decision-makers to have access to the decisions of other tribunals in analogous situations from the same country of origin.⁶ The Court also emphasised the value of published decisions to creating consistency in the interpretation of country of origin information. The Honourable Mrs Justice McGuinness expressed concerns over the lack of transparency and consistency brought about by the lack of published decisions:

"One of the problems here is secrecy. The decisions of the Refugee Appeals Tribunal are only made available in a very limited way. The giving of reasons is very important in a common law system.....[the

⁵ Sect. 19(4A)(a), Refugee Act 1996 as amended.

⁶ *Manzeka v Secretary of State for the Home Department* [1997] Imm AR 524.

secrecy] means it is very difficult for lawyers to advise their clients, and there is no coherent jurisprudence of the right of appeal. Very different decisions have come from different members of the RAT and some members have resigned from it for principled reasons.”⁷

The applicant is notified of the Minister’s intention to deport after they have received a negative decision from the Tribunal.

A decision of the RAT may be challenged by way of judicial review in the High Court. This is a review on a point of law only and cannot investigate the facts. In addition, the applicant must overcome a pre-leave hearing before proceeding to judicial review. This is a lengthy process. The most recent figures available show that the average waiting time for a pre-leave hearing was 27 months with a further 4 months delay for a full hearing.⁸ When the application for judicial review is made, a stay on the deportation process is also sought.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the regular procedure? Yes No
- If so, are interpreters available in practice, for interviews? Yes No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision? Yes No
- Are interviews ever conducted through video conferencing? Yes No

The Refugee Act 1996 as amended provides for an initial interview by an authorised officer of the Office of the Refugee Applications Commissioner (ORAC) or an immigration officer on applying for a declaration. This first interview is to establish:

- a) Whether the person wishes to make an application for a declaration of refugee status and is so, the general grounds upon which the application is based;
- b) The identity of the person;
- c) The nationality and country of origin of the person;
- d) The mode of transport used and the route travelled by the person to the State;
- e) The reason why the person came to the State; and
- f) The legal basis for the entry into or presence in the State of the person.

The legislation provides for a further substantive interview for all applicants, including those prioritised, after the submission of the written questionnaire. The interview is conducted by an Authorised Officer who has consulted country of origin information. The interview is to establish the full details of the claim for asylum. A legal representative can attend the interview to observe but this rarely happens. The Irish Refugee Council offers free early legal advice to a limited number of applicants, but representation is not available through the Refugee Legal Service. It is possible to request gender sensitive interviewers, however granting this request is at ORAC’s discretion.

Children are usually accompanied by their social worker or another responsible adult. Interviews are conducted without the presence of family members save in certain circumstances where the Commissioner considers it necessary for an appropriate investigation. For most people this is the

⁷ ‘Replace refugee tribunal – McGuinness: Independent appeals system needed, says former judge’, *Irish Times*, 21 February 2011.

⁸ *Roadmap for Asylum Reform*, (Irish Refugee Council) 2011.

primary opportunity to tell why they are seeking asylum and cannot return home. An interpreter in the applicant's preferred language is provided where available.

The ORAC officer conducting the interview makes a record of the information given and that information is read back to the applicant at the end, when they are given an opportunity to have the written record read to them at the end of the interview and to sign each page to confirm that it is accurate or to flag any inaccuracies. The interview is usually recorded on a laptop but may also be recorded by handwritten notes. There is no system for independent recording of the interviews, even where a legal representative is not present. The official record of the interview remains the possession of ORAC and a copy is not given to the applicant or their legal representative unless the applicant receives a negative decision.

In some cases, a subsequent interview is required. These tend to focus on a particular aspect, sometimes following research by the interviewing official.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision? Yes not always/with difficulty No
- In the first instance procedure, does free legal assistance cover:
 representation during the personal interview legal advice both Not applicable
- In the appeal against a negative decision, does free legal assistance cover :
 representation in courts legal advice both Not applicable

The Refugee Legal Service (RLS) is a division of the state-funded Legal Aid Board. To qualify for legal services, the applicant's income (less certain allowances) must be less than €18,000 per annum. Applicants in Direct Provision (the state system of reception) are generally eligible for legal services at the minimum income contribution, but may apply to have some of the contribution waived, at the discretion of the Legal Aid Board. Strictly speaking there is a small fee to be paid of €10 for legal advice and €40 for representation but this is invariably waived by the Refugee Legal Service.

An asylum applicant can register with the RLS as soon as they have made their application to the Office of the Refugee Applications Commissioner (ORAC). At first instance, an applicant is given legal information about the process by a caseworker under the supervision of a solicitor. Unless the applicant is a minor or a particularly vulnerable person (e.g. a victim of trafficking), a legal advice appointment with a solicitor, where advice is offered on the particular facts of the case, is not normally offered until appeal stage. Full legal advice and representation is provided at appeal stage by in-house solicitors and through a panel of private solicitors and barristers maintained by the Refugee Legal Service.

RLS also restrict their services to the asylum procedure itself so matters outside the application (e.g. those related to reception conditions) are not covered by their legal advice and assistance.

In the event that the appeal to the Refugee Appeals Tribunal is unsuccessful, the applicant must first of all seek the assistance of a private practitioner to get advice about challenging the decision by way of Judicial Review in the High Court. If they cannot get such private legal assistance, the RLS will consider the merits of the application for Judicial Review and may apply for legal aid to cover the proceedings.

A number of private practitioners will act *pro bono* where there is considered to be merit in the case and therefore the possibility of getting costs paid for cases brought to the High Court. But getting access to such lawyers and knowing the difference between those who have expertise and those who do not is difficult for asylum seekers. There is also some evidence that it has been harder to get fees paid and this therefore has an impact on the ability or willingness of private practitioners to take on cases where they may be liable for significant costs.

3. Dublin

Indicators:

- Number of outgoing requests in the previous year: 199
- Number of incoming requests in the previous year: 245
- Number of outgoing transfers carried out effectively in the previous year: 70
- Number of incoming transfers carried out effectively in the previous year: 91

Procedure

Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State? Information not available from authorities.

The Dublin Regulation is transposed into Irish law through the Refugee Act 1996 (as amended).⁹ It is implemented by the Dublin Unit in the Office of the Refugee Applications Commissioner (ORAC). The unit is responsible for determining whether applicants should be transferred to another state or have their application assessed in Ireland. The unit also responds to requests from other member states to transfer applicants to Ireland. However, Ireland is primarily a sending country and receives few transfers from other states.

As mentioned above (Section B, Q.1), all applicants are photographed and fingerprinted during their initial interview with ORAC. As part of the process applicants and dependent children are required to have photographs taken. They are also required to have their and their dependent children's fingerprints taken. Fingerprints may be disclosed in confidence to the relevant Irish authorities and to asylum authorities of other countries which may have responsibility for considering the application under the Dublin II Regulation/Dublin Convention (an electronic system - Eurodac - facilitates transfer of fingerprint information between Dublin II Regulation countries).

A refusal to allow fingerprints to be taken is deemed as a failure to make a reasonable effort to establish true identity and a failure in duty to co-operate in the investigation of an application. This may affect the credibility of the application and lead to the application being deemed withdrawn, in which case the Minister shall refuse to give a declaration.

At any time during the first instance application process, the ORAC may determine that the person is subject to the Dublin II Regulation and make a decision that they will be transferred to another EU state. Where, before or during an interview under section 8 of the Act, it appears to an immigration officer or authorised officer that the application may be one which could be transferred under the Dublin

⁹ Section 22 Refugee Act 1996 (as amended), S.I. No. 423/2003 — Refugee Act 1996 (Section 22) Order 2003 and S.I. No. 343/2000 — Dublin Convention (Implementation) Order, 2000.

Convention to another convention country under paragraph (1), they shall send a notice to that effect to the applicant, where possible in a language that the applicant understands. It is then up to the individual to make submissions in writing if they wish for their applications to be processed in Ireland. At this stage the Commissioner takes into account relevant information or submissions and representations made on the behalf of the individual in coming to a decision about their transfer.

However, applicants are frequently unaware that they fall under Dublin II and do not make additional submissions. Anecdotal evidence also suggests that many applicants are served with notice of the Dublin II decision and transfer orders simultaneously, thus precluding them from seeking assistance to challenge the decision. This also means that they are not ordinarily informed that a request has been made to take charge or take back. Detention would occur at the same time in order to give effect to the removal to the third country.

When asked how long does it take in practice (on average) before the applicant is transferred to the responsible Member State, the Department of Justice stated: "We regret that we are not in a position to furnish this information."

Those seeking asylum in Ireland are given an information sheet at the outset which explains the asylum procedure, including the possibility that the Dublin II Regulation may apply to them.

In cases where Ireland has agreed to take back an asylum seeker under the Regulation, the person may be detained on arrival and have difficulty in accessing the asylum procedure (possibly for a second time). This is particularly where the state wishes to remove that person to their own country.

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
 - Yes No
 - o if yes, is the appeal judicial administrative quasi-judicial
 - o If yes, is it suspensive Yes No
- Average delay for the appeal body to make a decision: The median processing times for appeals dealt with by the RAT in 2011 was approximately 22 weeks in the case of substantive appeals (cases involving an oral hearing) and 5 weeks in the case of accelerated appeals (appeals dealt with on the papers). During 2011, 1,106 new appeals were received in the RAT with 1,330 decisions made.

An applicant has 15 working days to appeal from a decision of the Refugee Applications Commissioner under the Dublin II Regulation. Lodging an appeal does not suspend transfer and the Minister for Justice will have been notified of the Refugee Applications Commissioner's determination with a view to making arrangement for transfer. If the applicant is transferred before the Refugee Appeals Tribunal has handed down its decision, the duty is on the applicant to notify the Tribunal of their address in the relevant country. If the Tribunal overturns the decision of the Commissioner, the applicant is notified in writing and arrangements are made for their return if necessary. There are no oral hearings on appeals in relation to Dublin II.

The decisions of the Tribunal on Dublin II appeals are not published and there is no onward appeal. However, the decision of the Tribunal may be judicially reviewed. In 2011, the RAT heard 87 appeals from Dublin II decisions and affirmed 82 of them (94%).

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the Dublin procedure? Yes No

The Dublin II determination comes within the initial application process at the Office of the Refugee Applications Commissioner (ORAC). The Dublin Unit within ORAC is responsible for the implementation of the Dublin II Regulation. It determines whether the applicants should be transferred to other EU states or have their application assessed in Ireland. It also deals with requests from other member states to transfer applicants to Ireland.

At any time during the initial asylum process (preliminary interview, long questionnaire, interview with a caseworker, report from caseworker), ORAC may determine that a person is subject to the Dublin II Regulation and make a decision that they will be transferred to another state. It is not unusual for the asylum applicant not to be aware that the refusal of their application is on Dublin II grounds until they are picked up for transfer. It is up to the individual to make submissions in writing if they wish for their application to be processed in Ireland. The Refugee Applications Commissioner will take into account relevant information or submissions and representations made on behalf of the applicant in coming to a decision on the transfer. However, as previously mentioned applicants are frequently unaware that they fall under Dublin II and do not make additional submissions.

An applicant can appeal a decision to transfer to the Refugee Appeals Tribunal. The appeal is on the papers only.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? Yes always/with difficulty No

An applicant may access legal information through the Refugee Legal Service but technically it is not completely free legal representation. There is a small amount to be paid but it is often waived. This assistance also applies to the appeal. Like all asylum applicants, there is the opportunity to register with the Refugee Legal Service as soon as an asylum application has been made. The difficulty in accessing legal advice lies in the way in which the state notifies the applicant that they are liable to removal under the Dublin II Regulation as outlined above.

Suspension of transfers

Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? Yes No
 - o If yes, to which country/countries? Greece

Transfers to Greece were suspended following the European Court of Human Right's decision in *M.S.S. v Belgium and Greece*. The Minister was asked to formally indicate that removals were suspended and

that Ireland would take responsibility but he did not respond. The decision to consider such applications has not been set out in any publicly accessible record and it is not therefore known if it is policy not to transfer or decide on a case by case basis. In such cases where the Office of the Refugee Applications Commissioner considers the substantive application, the applicant is able to remain in reception facilities until the application is fully determined.

4. Admissibility procedures

General (scope, criteria, time limits)

There is no procedure for admissibility. Section 8.1 of the Refugee Act 1996, as amended, states that a person who arrives at the frontiers of the state (a) seeking asylum, (b) seeking protection of the State against persecution, (c) requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution shall be interviewed by an immigration officer as soon as practicable and may make an application for a declaration that they are a refugee to the Refugee Application Commissioner. There are sometimes practical impediments to making that application (e.g. failure by officers at the port to allow entry to make the claim). Immigration officials at the port may conduct the initial screening (known as the 'Section 8 interview').

Section 8.1(c) provides that a person who at any time is in the State (whether lawfully or unlawfully) and wishes to seek asylum may apply to the Minister for a declaration and shall be interviewed by an ORAC officer at such time as the officer specifies.

All cases are processed even for example where the country of origin is deemed 'safe'. There are no specific time limits.

There are practical problems associated with admission to the procedure. For example, unless a person stopped at the port is very clear that they wish to claim asylum and unless the officers respect that wish, a person can be removed from the country and denied access to the procedure. A specific example of this is where a person said that his life would be at risk if returned to their country but he did not mention the word 'asylum'. In addition, the information available about 'refusals of leave to land' in Ireland suggest that some of those refused and removed may well have been admitted to the asylum procedure or in need of protection (e.g. those who do not have proper documentation).

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the admissibility procedure:
 Yes No

The only way to challenge a decision about admissibility would be by way of Judicial Review to the High Court but there is often no way that a passenger is aware of this or has the knowledge and means to contact a legal representative before removal. This is not an appeal but an application for review of the procedure leading to the decision to refuse admission to the procedure. This is different to a person who is allowed to make an asylum claim as, if refused, there would be a right of appeal (albeit possibly limited) to the Refugee Appeals Tribunal. Only if the appeal is lost does Judicial Review come into the picture.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in the admissibility procedure? Yes No
- If so, are interpreters available in practice, for interviews? Yes No
- Are personal interviews ever conducted through video conferencing? Yes No

The interviews are conducted either by officers at the port or by the Office of the Refugee Applications Commissioner (ORAC) officials. There have been instances e.g. where a person already has leave to remain in a different category, where ORAC has refused to register an application for asylum. If that refusal is maintained, the only means of challenge would be by way of Judicial Review in the High Court. The decision not to register the application would not ordinarily be after a formal interview. In such cases, the potential applicant is informed through the early administrative procedure at ORAC that they cannot apply for asylum. The majority, however, will be allowed to make their claim and will fall within one of the applicable procedures, e.g. prioritised, Dublin II, substantive, etc.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision? Yes not always/with difficulty No
 N/A as there is no appeal procedure in such cases. Judicial Review might be available but that is not an appeal.

There is no legal aid available to advise people who are seeking to be admitted to the procedure. The Refugee Legal Service will only be available after the application for asylum has been registered by the Office of the Refugee Applications Commissioner (ORAC).

There is a difference to the regular procedure in that someone who has claimed asylum can register with the Refugee Legal Service.

5. Border procedure (border and transit zones)

General (scope, time-limits)

Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? Yes No
- Are there any substantiated reports of refoulement at the border (based on NGO reports, media, testimonies, etc)? Yes No
- Can an application made at the border be examined in substance during a border procedure? Yes No

The Refugee Act provides that a person arriving at the frontiers of the State seeking asylum shall be given leave to enter the State by the immigration officer concerned. This is on a temporary basis and does not entitle the person to apply to vary their leave. It is simply to admit them to proceed with their asylum claim. Persons to whom such temporary residence is granted is entitled to remain in the state

until (a) they are transferred under Dublin II; (b) their application is withdrawn; (c) they receive notice that their application for protection has been refused by the Minister. Applicants are referred to the Office of the Refugee Applications Commissioner to lodge their application for asylum.

Anyone applying for asylum, who does not have the means to support themselves can access support and accommodation through a section of the Department of Justice known as the Reception and Integration Agency (RIA). This is full board and accommodation and is given on a no choice basis.

Appeal

Indicator:

- Does the law provide for an appeal against a decision taken in a border procedure?
 Yes No

There is no appeal.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in a border procedure? Yes No
- If so, are interpreters available in practice, for interviews? Yes No
- Are personal interviews ever conducted through video conferencing? Yes No

An immigration officer grants leave to enter the state following an interview at the border. This is an informal procedure which seeks only to establish that the person wishes to seek protection.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure? Yes not always/with difficulty No

There is no free legal assistance at first instance in the border procedure.

6. Accelerated procedures

General (scope, grounds for accelerated procedures, time limits)

Under section 12, Refugee Act 1996, the Minister may give a direction to the Refugee Applications Commissioner or the Tribunal or to both, requiring them to accord priority to certain classes of applications by reference to one or more of:

1. the grounds for application for asylum;
2. the country of origin or habitual residence;
3. any family relationship between applicants;
4. the ages of applicants;
5. the dates on which applications were made;
6. considerations of national security or public policy;

7. the likelihood that the applications are well-founded;
8. if there are special circumstances regarding the welfare of the applicant or of their family members;
9. whether applications do not show on their face grounds for the contention that the applicant is a refugee;
10. whether applicants have made false or misleading representations in relation to their applications;
11. whether applicants had lodged prior applications for asylum in another country;
12. whether applications were made at the earliest opportunity after arrival;
13. whether applicants are nationals of or have a right of residence in a country of origin designated as safe under this section;
14. if the applicant is receiving from organs or agencies of the UN protection or assistance;
15. if the applicant is recognised by the competent authorities of the country of residence as having rights and obligations which are attached to the possession of the nationality of that country;
16. if there are serious grounds for considering that they have committed a crime against peace, a war crime or a crime against humanity, or has committed a serious non-political crime or is guilty of acts contrary to the purposes and principles of the UN.

This means that if an applicant falls within the above categories, their application will be given priority and will be dealt with by the Commissioner before other applications.

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
 - Yes No
 - o if yes, is the appeal: judicial administrative quasi-judicial
 - o If yes, is it suspensive? Yes No

Where an applicant is subject to the accelerated procedure and the recommendation of the Refugee Applications Commissioner includes one of the following findings that the applicant:

- a) showed either no basis or a minimal basis for the contention that the applicant is a refugee;
- b) made statements or provided information in support of the application of a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
- c) failed to make an application as soon as reasonably practicable, without reasonable cause;
- d) had lodged a prior application in another state party to the Geneva Convention;
- e) is a national of, or has a right of residence in, a designated safe country of origin,

they have **four** working days to make an appeal and that appeal shall be determined without an oral hearing. An applicant who is unsuccessful at appeal retains the option of seeking leave for a judicial review of the decision of the Refugee Appeal Tribunal in the High Court.

At the appeals stage, the applicant may obtain free legal assistance, however, the short time frame for preparation of the appeal presents practical obstacles.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker systematically conducted in practice in an accelerated procedure? Yes No
- If so, are interpreters available in practice, for interviews? Yes No
- Are personal interviews ever conducted through video conferencing? Yes No

Personal interviews are conducted for all applicants at first instance. At appeal, there is no oral hearing where an applicant is subject to the accelerated procedure and the recommendation of the Commissioner includes one of the following findings that the applicant:

- a) showed either no basis or a minimal basis for the contention that the applicant is a refugee;
- b) made statements or provided information in support of the application of a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
- c) failed to make an application as soon as reasonably practicable, without reasonable cause;
- d) had lodged a prior application in another state party to the Geneva Convention;
- e) is a national of, or has a right of residence in, a designated safe country of origin.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice? Yes not always/with difficulty No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure? Yes not always/with difficulty No

Applicants under the accelerated procedure fall under the same rules for legal assistance as those not under the accelerated procedure.

C. Information for asylum seekers and access to NGOs and UNHCR

Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice? Yes not always/with difficulty No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice? Yes not always/with difficulty No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? Yes not always/with difficulty No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? Yes not always/with difficulty No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? Yes not always/with difficulty No

A person who states an intention to seek asylum or an unwillingness to leave the state for fear of persecution is interviewed by an immigration officer as soon as practicable after arriving. The

Immigration Officer informs the person that they may apply to the Minister for Justice for protection and that they are entitled to consult a solicitor and the UN High Commissioner for Refugees. Where possible this is communicated in a language that the person understands.

Where a person is detained, the immigration officer or member of the Garda Síochána (police) shall inform the person of the power under which they are being detained; that they shall be brought before a court to determine whether they should be detained or released; that they are entitled to consult a solicitor; that they are entitled to notify the High Commissioner of the detention; that they are entitled to leave the state at any time; and that they are entitled to the assistance of an interpreter.

On receipt of an application, the Refugees Application Commissioner provides in writing, where possible in a language the applicant understands, a statement of

- a) the procedures to be observed in the investigation of the application;
- b) the entitlement to consult a solicitor;
- c) the entitlement to contact the High Commissioner;
- d) the entitlement to make written submissions to the Commissioner;
- e) the duty of the applicant to cooperate and to furnish relevant information;
- f) the obligation to comply with the rules relating to the right to enter or remain in the state and the possible consequences of non-compliance;
- g) the possible consequences of a failure to attend the personal interview.

The Office of the Refugee Applications Commissioner (ORAC) provide written information to every asylum seeker and there is extensive information available on the ORAC website. The flaws in the information relate to language difficulties; literacy and computer literacy; and comprehension for traumatised applicants.

As stated above, information about the application of the Dublin II regulation is not sufficient and it is not uncommon for applicants to be unaware that they are being considered under Dublin II.

Access at reception centres is discretionary and in practice presents problems for NGOs.

D. Subsequent applications

Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?
 Yes No
- Is a removal order suspended during the examination of a first subsequent application?
 Yes¹⁰ No
- Is a removal order suspended during the examination of a second, third, subsequent application?
 Yes¹⁰ No

Section 17(7) of the Refugee Act 1996 (as amended) sets out that a person who wishes to make a subsequent asylum application must apply to the Minister for permission to apply again. The application must set out the grounds of the application and why the person is seeking to re-enter the asylum process. If the Minister agrees, the person goes through the asylum procedure in the normal way i.e. attends for interview at the Office of the Refugee Applications Commissioner etc.

¹⁰ if the person is allowed to make a subsequent application but not while the Minister is considering the application to re-admit to the procedure

If the Minister refuses to allow the person to submit a subsequent asylum application, the only challenge that there can be is by way of Judicial Review in the High Court, i.e. there is no appeal, and removal may go ahead unless the person obtains agreement not to remove pending a challenge or gets an injunction. It is common for the Minister to refuse to give consent for a subsequent asylum application to be made.

By the end of March 2013, there had been only four applications to the Minister to re-apply for asylum.

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special Procedural guarantees

Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? Yes No Yes, but only for unaccompanied children
- Are there special procedural arrangements/guarantees for vulnerable people? Yes No Yes, but only for unaccompanied children

There is no mechanism for the identification of vulnerable people, except for unaccompanied children.

Where it appears to an immigration officer or an officer of the Office of the Refugee Applications Commissioner (ORAC) that a child under the age of 18 years, who has arrived at the frontiers of the State or has entered the State, is not in the custody of any person, the officer informs the Health Services Executive (HSE) and the Child Care Act 1991 comes into play. The HSE is responsible for making an application for the child, where it appears to the HSE that an application should be made by or on behalf of the child. In which case, the HSE arranges for the appointment of an appropriate person to make application on behalf of the child. Any legal costs arising from the application are paid by the HSE.

2. Use of medical reports

Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm? Yes Yes, but not in all cases No
- Are medical reports taken into account when assessing the credibility of the applicant's statements? Yes No

It is the duty of the applicant to cooperate in the investigation of their application and to furnish to the Commissioner any relevant information. Applicants may approach an NGO called Spirasi, which specialises in assessing and treating trauma and victims of torture, to obtain a medical report. The approach is made through their solicitor. If an asylum seeker is represented by the Refugee Legal Service (part of the Legal Aid Board) then the medico-legal report will be paid for through legal aid. If the request is made by a private practitioner, the report must be paid for privately unless the fee is waived.

The Office of the Refugee Applications Commissioner (ORAC) and the Tribunal frequently do not accept the conclusions of the medico-legal reports as having any material value to their decisions. In cases looked at the IRC as part of its research on the assessment of credibility, both ORAC and Refugee Appeal Tribunal note that the medico-legal reports do not assist as they either do not say how the injuries were sustained or are mainly based on the testimony of the applicant.

3. Age assessment and legal representation of unaccompanied children

Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?
 Yes No
- Does the law provide for the appointment of a representative to all unaccompanied children?
 Yes No

Section 85(a) provides guidance on identification of unaccompanied children only once the applicant is recognised as a child. There is no procedure set out in law for assessment of age nor are there criteria to decide which young people should undergo age assessment. However, there is a method for assessing age. This is done by the Health Services Executive (HSE), by two social workers and often an interpreter by phone. They use a social age assessment methodology which includes questions about family, education, how the young person travelled to Ireland, etc. The social worker assesses the young persons aged based on how articulate they are, their emotional and physical developmental, etc. However, the Office of the Refugee Applications Commissioner has the final say. The procedure is commenced by ORAC or the Health Services Executive and initiated if a social worker in the HSE or an immigration official in ORAC believes the young person is over 18.

Where the assessment cannot establish an exact age, young people are not generally given the benefit of the doubt. If someone seems over 18, even by a day, there is typically a decision to move the young person into adult accommodation.

The law provides for the appointment of a legal representative, but the sections of the Child Care Act that would need to be invoked, are not. Unaccompanied children are taken into care under S 4 and 5 of the Child Care Act 1991 as amended, neither section provides for a legal guardian. In terms of a legal professional – there are no provisions stating that a child must be appointed a lawyer in law. However, if the social worker determines the child should submit a claim for asylum (which is the duty of the social worker in accordance with S. 8.5(a) of Refugee Act 1996) the young person would then be referred to the Refugee Legal Service in the same way an adult applicant would.

There are no exceptions for age; however, under the constitution anyone who is married under Irish law is no longer considered a child.

The provisions on the appointment of a legal representative do not differ depending on the procedure (e.g. Dublin). Dublin II is engaged once an application is made. At that point, the child will typically have a solicitor. If the child is in care, they will also have a social worker.

There is no time limit to appoint a representative to an unaccompanied child is this time limit different.

Capacity of social workers and solicitors presents practical obstacles to representatives being appointed as soon as possible. At present, it does not seem to be an issue for social workers. The eligibility requirement is that they are social workers in accordance with section 8.5(a) of Refugee Act 1996.

The duties of the legal representatives with regards to the asylum procedure are set out in Section 8.5(a):

- where it appears to an immigration officer that a child under the age of 18 years who has arrived at the frontiers of the State is not in the custody of any person, the immigration officer shall, as soon as practicable, so inform the health board in whose functional area the place of arrival is situate and thereupon the provisions of the Child Care Act, 1991 , shall apply in relation to the child;
- where it appears to an immigration officer that a child under the age of 18 years who has arrived at the frontiers of the State is not in the custody of any person, the immigration officer shall, as soon as practicable, so inform the health board in whose functional area the place of arrival is situate and thereupon the provisions of the Child Care Act, 1991 , shall apply in relation to the child; and
- where it appears to the health board concerned, on the basis of information available to it, that an application for a declaration should be made by or on behalf of a child referred to in *paragraph (a)*, the health board shall arrange for the appointment of an officer of the health board or such other person as it may determine to make an application on behalf of the child.

F. The safe country concepts (if applicable)

Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? Yes No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? Yes No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? Yes No
- Is there a list of safe countries of origin? Yes No
- Is the safe country of origin concept used in practice? Yes No
- Is the safe third country concept used in practice? Yes No

Under s.12 of the Refugee Act 1996 (as amended), the Minister for Justice may give a direction in writing to the Refugee Applications Commissioner or the Refugee Appeal Tribunal or both, to prioritise certain classes of applications where applicants are nationals of or have a right of residence in a country of origin designated as safe.

The Minister may make an order designating a country as safe after consultation with the Minister for Foreign Affairs. In deciding to make such an order the Minister will have regards to:

1. Whether the country is a party to and generally complies with obligations under the Convention against Torture, the International Covenant on Civil and Political Rights, and where appropriate the European Convention on Human Rights;
2. Whether the country has a democratic political system and independent judiciary;
3. Whether the country is governed by the rule of law.

The Minister may amend or revoke any such order.

Where it appears to the Refugee Commissioner that an applicant is a national or has a right of residence in a designated safe country then the applicant is presumed not to be a refugee unless they can show reasonable grounds for the contention that they are a refugee. Their application will be given priority and may be dealt with by the Commissioner before other applications.

Countries currently listed as 'safe' under s.12 are Croatia and South Africa. There has not been any recent review. A person who is a national of one of those countries must demonstrate that they should be treated as an exception. Applications from nationals of these countries will have their applications fast tracked and therefore subject to an accelerated procedure.

G. Treatment of specific nationalities

On 15 November 2004, the Minister designated Croatia and South Africa as safe countries of origin, with effect from 9 December 2004. Therefore, if it appears to the Refugee Commissioner that an applicant for asylum is a national of, or has a right of residence in, a country designated by the Minister as a safe country of origin, then the applicant shall be presumed *not* to be an asylum seeker unless they can show reasonable grounds to that effect.

The Minister has also issued prioritisation directions that apply to persons who are nationals of, or have a right of residence in, Croatia and South Africa. This means that if an applicant falls within the above categories; their application will be given priority and may be dealt with by the Commissioner before other applications.

In addition, since 2003, applications from Nigerian nationals have also been prioritised and therefore subjected to accelerated procedures. This was challenged in a case referred by the High Court of Ireland to the Court of Justice of the European Union (HID and BA) where the Court of Justice held that the prioritisation of Nigerian claims was held to be lawful. Appeals by nationals whose claims are prioritised are dealt with on the papers and therefore without an appeal hearing.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
 - o During the accelerated procedure?
 Yes Yes, but limited to reduced material conditions No
 - o During admissibility procedures:
 Yes Yes, but limited to reduced material conditions No
 - o During border procedures:
 Yes Yes, but limited to reduced material conditions No
 - o During the regular procedure:
 Yes Yes, but limited to reduced material conditions No
 - o during the Dublin procedure:
 Yes Yes, but limited to reduced material conditions No
 - o During the appeal procedure (first appeal and onward appeal):
 Yes Yes, but limited to reduced material conditions No
 - o In case of a subsequent application:
 Yes Yes, but limited to reduced material conditions No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? Yes No

There is no legislation regulating reception conditions in Ireland. In practice, reception is carried out by the Reception and Integration Agency (RIA), a functional unit of the Irish Naturalisation and Immigration Service which is a division of the department of Justice, under a policy known as Direct Provision and Dispersal. Despite the name, RIA has no integration function.

On lodging an application with the Office of the Refugee Applications Commissioner, the applicant is referred to RIA and brought to a reception centre near Dublin airport. Within a few weeks, the applicant is allocated a space in one of the privately operated accommodation centres dispersed throughout the country. The applicant remains in such accommodation until they are granted status, are deported or transferred under Dublin II.

Support, including free medical treatment, accommodation, and cash allowance may be withdrawn by RIA for disruptive behaviour or failure to cooperate. There is no avenue for appeal.

2. Forms and levels of material reception conditions

Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): weekly cash allowance of €19.10 per adult or €9.60 per child

History

In 2000, following a dramatic increase in the numbers applying for asylum in the 1990s, a decision was taken to withdraw social welfare from asylum seekers and to provide for their basic needs directly through a largely cash-less system. This became known as Direct Provision (DP).

The Reception and Integration Agency (RIA) was set up as a division within the Department of Justice to manage DP. RIA has no statutory basis and the decision to establish it is not a matter of public record.¹¹ Originally, it was intended that asylum seekers would spend no more than 6 months living in DP.

Conditions: the Reality of Living in Direct Provision

There are approximately 4,806 asylum seekers in Direct Provision, 1,632 – or 34% of whom are children. DP centres are predominantly former hostels, hotels and holiday sites, mostly run by private contractors on a for profit basis. Asylum seekers receive full board and their basic needs, such as toiletries, are directly provided. Asylum seekers also receive a weekly allowance of €19.10 per adult and €9.60 per child. They cannot work and are not entitled to social welfare or child benefit.

Due to delays in the asylum system, most residents have been in DP for over three years and significant numbers for more than seven. The Irish Refugee Council has collected evidence that conditions in many DP centres are sub-standard to the point of inhumane. Broken, dilapidated furniture in common areas and infestations of mice, cockroaches and insects have been reported. Whole families including both parents and children of school-going age are often allocated just one room. Teenage children commonly share with siblings or parents of the opposite sex. Single residents and single mothers are often required to share bedroom and bathroom facilities.

A culture of fear and the constant threat of transfer mean residents are frequently afraid to complain and are discouraged from interacting with inspectors. Residents report incidents of intimidation and harassment by staff in some centres. Allegations have been made of abusive and foul language directed towards residents and frequent threats of transfer.

Food and Nutrition

Residents have reported poor quality, repetitive, insufficient and even expired foodstuffs are commonplace. Culturally appropriate food, e.g. Halal, is not always provided, or utensils used to serve pork are used to serve other foods. The scheduled meal times cause problems during Ramadan. The majority of DP residents are obliged to use their small weekly allowance to buy food.

The rigid meal times and lack of self-catering facilities are especially problematic for children with special dietary needs or who need to eat more regularly than three times a day. Child malnutrition appears in a large number of requests for transfer to self-catering accommodation. The requests frequently contain doctors' letters which attribute childhood illnesses to poor nutrition.

Sanitation

Lack or unavailability of basic toiletries, i.e. soap, tissue, shampoo, is common. Some centres will not provide these provisions after 5pm. Some centres have communal bathroom facilities such that children share with unrelated adults. Communal facilities mean single parents have to choose between leaving a child unsupervised while the parent uses the facilities or bringing the child with them to the bathroom.

¹¹ In April 2000, Minister O'Donoghue still anticipated that RIA would be placed on a statutory basis (*J. O'Donoghue, 13 April 2000*); this was later discounted by Taoiseach Bertie Ahern (*B. Ahern 5 December 2002*).

Child Protection

The 2012 report by the Special Rapporteur on Child Protection highlighted the 'real risk' of child abuse in DP arising from the shared sleeping arrangements. He cites an incident where a 14 year old girl was raped and became pregnant by a male resident.¹²

Transfers

Residents report that complaints about conditions are met with a transfer notice to a centre in a different part of the country. In recent years, centres have been closing in line with the decrease in asylum seekers. Residents are generally given little notice of closures and there is little consideration of the disruption of transferring children during the school year as well as the cost in terms of uniforms, etc.

Costs

Total cost of Direct Provision contracts 2000 – 2010 = €655 million
Cost per person (based on 2012 budget) = €13,000

Oversight

Accommodation centres are not subject to Health Information and Quality Authority (HIQA) inspections and no equivalent of HIQA national quality standards for residential services. RIA subcontracts inspections to private firm known as QTS Ltd, which follows a standardised inspection form. There is little interaction between residents and inspectors. RIA and DP centres are outside of the remit of the Ombudsman and the Ombudsman for Children

3. Types of accommodation

Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 5522
- Number of places in private accommodation: all privately operated.
- Number of reception centres: 35
- Are there any problems of overcrowding in the reception centres? Yes No
- What is, if available, the average length of stay of asylum seekers in the reception centres?
Over 3 years
- Are unaccompanied children ever accommodated with adults in practice? Yes No

There are 35 accommodation centres located in 17 counties around Ireland with a total capacity of 5522 and occupancy of 4822 as of the end of 2012. The Reception and Integration Agency (RIA) is currently reducing its capacity in line with the decrease in numbers arriving in the State. So far in 2013, one hostel in Donegal has shut down. Overcrowding of rooms is prevalent with whole families – adults and children of varying ages – sharing one bedroom. The centres are operated by private firms on contract with RIA.

Types of accommodation include former tourist accommodation, a former student hostel, a former convent and a former caravan park. There is one reception centre, close to Dublin airport, where new arrivals are brought.

There are some men only hostels but none for women only or women and children only.

Unaccompanied children are under the care of the Health Service Executive until they age out. This means they should be in foster care settings until their 18th birthdays. This does not always occur in practice, especially where the child is age disputed.

There are no provisions for traumatised asylum seekers or special facilities.

¹² G. Shannon, '[Fifth Report of the Special Rapporteur on Child Protection](#)' (2012).

4. Reduction or withdrawal of reception conditions

Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?
 Yes No
- Does the legislation provide for the possibility to withdraw material reception conditions?
 Yes No

In practice material reception conditions are withdrawn by the Reception and Integration Agency for abusive, disruptive behaviour in the hostels, disappearance for more than one night with notifying the hostel management or for failure to comply with requirements to sign in while awaiting deportation. There is no appeal.

5. Access to reception centres by third parties

Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
 Yes with limitations No

There is no law regulating access to reception centres. In practice access is granted on a discretionary basis and anyone wishing to visit must apply to Reception and Integration Agency (RIA) or get permission from the centre management. Residents may invite guests into the centres, but they are confined to the communal areas.

There is little consistency in when access is granted. The Irish Refugee Council for example has been refused access to all centres, while other NGOs who have been less critical of the system are more likely to be granted access. In general, access depends on the relationship between the person seeking access and RIA or the management of the hostel in question.

6. Addressing special reception needs of vulnerable persons

Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice? Yes No

There is no legislation on reception conditions in Ireland, nor are there any provisions to identify or assess special reception needs of vulnerable people. The one exception is unaccompanied children, who are not accommodated in reception centres until after they turn 18. They are taken into the care of the Health Services Executive and accommodated in foster home settings.

There are no provisions in practice that take into account the needs of vulnerable persons and there are no special reception conditions.

7. Provision of information

There is no legislation on reception conditions in Ireland. In practice, information is provided by the Reception and Integration Agency (RIA) on rights and obligations in reception and accommodation

through the House Rules and Procedures, which are available in each centre. These rules are available in 11 other languages on the RIA website.

8. Freedom of movement

Freedom of movement is not restricted but the Reception and Integration Agency (RIA) house rules require residents to seek permission if they are going to be away from their accommodation overnight. In practice it is restricted due to the very low level of income available to asylum seekers which means that, unless transport to and from a centre is free and at a suitable time, it is often too costly to travel out. Asylum seekers who spend more than three nights away from their centre risk losing accommodation.

B. Employment and education

1. Access to the labour market

Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? Yes No
- Are there restrictions to access employment in practice? Yes No

There is no access to the labour market for asylum seekers in Ireland. Section 9 (4) of the Refugee Act 1996 (as amended), on leave to enter or remain in the state provides that an applicant shall not seek or enter employment or carry out any business before the final determination on their application. Anyone who contravenes this provision is deemed guilty of an offence and is liable on summary conviction to a fine not exceeding £500 (approx. €643) or to a term of imprisonment not exceeding 1 month or both.

2. Access to education

Indicators:

- Does the legislation provide for access to education for asylum seeking children? Yes No
- Are children able to access education in practice? Yes No

Children attend local national primary and secondary schools. In practice, as the centres are often located in rural areas the local schools are not well-equipped to deal with the additional population.

There is no access to third level education or vocational training.

C. Health care

Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?
 Yes No
- In practice, do asylum seekers have adequate access to health care?
 Yes with limitations No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
 Yes with limitations No

Access to health care is free for asylum seekers living in Direct Provision. It is not therefore in legislation. Once in Direct Provision, they receive medical cards which allow them to attend local doctors office or general practitioners who are located in or attend the accommodation centres. They do not therefore pay for treatment but they need to meet the costs of a prescription from their weekly allowance.

Specialised treatment for trauma and victims of torture is available through an NGO called Spirasi. Spirasi staff have access to certain accommodation centres e.g. the reception centre in Dublin and can help to identify victims of torture. But no special arrangements or agreements exist to then deal with such people in a way that is different to someone who has not experienced torture. In addition, Spirasi has very limited funding and resources and therefore they cannot provide support or care for all victims of torture in Ireland.

There are significant issues about access to particular medical care which may arise from the location of asylum seekers away from specialised centres of treatment.

Detention of Asylum Seekers

A. General

Indicators:

- Number of asylum seekers who entered detention in the previous year: N/A
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): N/A
- Number of detention centres: 0
- Total capacity: 0

Detention is not widely used for asylum seekers. There are no detention centres for asylum seekers and irregular migrants in Ireland. Where any asylum seeker is detained they are brought to a mainstream prison.

There are **no figures recorded** for the numbers of asylum seekers in detention.

B. Grounds for detention

Indicators:

- In practice, are asylum seekers automatically detained
 - o on the territory: Yes No
 - o at the border: Yes No
- Are asylum seekers detained in practice during the Dublin procedure? Yes No
- Are asylum seekers ever detained during a regular procedure? Yes No
- Are unaccompanied asylum-seeking children ever detained?
 Yes Yes, but only in border/transit zones No
- Are asylum seeking children in families ever detained?
 Yes Yes, but rarely No
- What is the maximum detention period set in the legislation (inc extensions): 21 days renewable – may be renewed indefinitely where detained under 9A of the Refugee Act 1996, as amended or 8 weeks where detained pending deportation
- In practice, how long in average are asylum seekers detained? Depends on reason for detention

Detention is not used on a regular basis in Ireland, except in the following circumstances:

- A. Section 9A Refugee Act 1996 as amended: Asylum seekers may be detained by an Immigration Officer or a member of An Garda Síochána if it is suspected that they:
 1. Pose a threat to national security or public policy;
 2. Have committed a serious non-political crime outside the State;
 3. Have not made reasonable efforts to establish identity (including non-compliance with the requirement to provide fingerprints);
 4. Intend to avoid removal from the State, in the event of their application being transferred to a Dublin II Regulation;
 5. Intend to avoid removal from the State, in the event that their application is unsuccessful;
 6. Intend to leave the State and enter another without lawful authority;
 7. Without reasonable cause, have destroyed identity or travel documents or are in possession of forged identity documents.

Persons can be detained for a renewable period of 21 days. Where an asylum seeker is detained, they must be informed, where possible in a language that they understand, that they:

1. Are being detained
2. Shall be brought before a court as soon as practicable to determine whether or not they should be committed to a place of detention or released pending consideration of the asylum application.
3. Are entitled to consult a solicitor
4. Are entitled to have notification of his or her detention, the place of detention and every change of such place sent to the High Commissioner
5. Are entitled to leave the state at any time during the period of their detention and if they indicate a desire to do so, they shall be brought before a court. The court may make such orders as may be necessary for their removal.
6. Are entitled to the assistance of an interpreter for the purposes of consulting with a solicitor.

The detaining officer must inform the Refugee Applications Commissioner or Refugee Appeals Tribunal, as relevant about the detention. The appropriate body then ensures that the application of the detained person is dealt with as soon as possible and, if necessary, before any other application for persons who are not in detention.

- B. Section 5 Immigration Act 1999: In the case of an unsuccessful applicant for whom a deportation order is in force, they may be detained if it is suspected that they:
1. Have failed to comply with any provision of the deportation order;
 2. Intends to leave the state and enter another state without lawful authority;
 3. Has destroyed identity documents or is in possession of forged identity documents; or
 4. Intends to avoid removal from the state.

A person detained pending deportation may not be detained for a period exceeding 8 weeks.

C. Detention conditions

Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? Yes No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures? Yes No
- Do detainees have access to health care in practice? Yes No
- Is access to detention centres allowed to
 - o Lawyers: Yes Yes, but with some limitations No
 - o NGOs: Yes Yes, but with some limitations No
 - o UNHCR: Yes Yes, but with some limitations No

Asylum seekers are detained in regular prisons. Irish prisons have been subject to international criticism in particular for over-crowding and the practice of 'slopping out'.

There is no specific provision relating to health care for detained asylum seekers. They would have access to the same health care as the general prison population.

Where the person detained has custody of a minor, the health authorities are informed and the child is taken into care.

The Refugee Act provides that the person detained is informed of their right to consult a solicitor and to notify the High Commissioner of their detention. There is no right of access to an NGO or to UNHCR.

Detention conditions in Ireland have been criticised in relation to international standards but this has not been with specific reference to asylum seekers. It relates to the general prison population or specific groups such as young people.

D. Judicial Review of the detention order

Indicators:

- Is there an automatic review of the lawfulness of detention? Yes No

Where an asylum seeker is detained, they must be informed, where possible in a language that they understand, that they shall be brought before a court as soon as practicable to determine whether or not they should be committed to a place of detention or released pending consideration of the asylum application.

If the District Court judge commits the person to a place of detention, that person may be detained for further periods of time (each period not exceeding 21 days) by order of a District Court. However, if during the period of detention the applicant indicates a desire to voluntarily leave, they will be brought before the District Court in order that arrangements may be made.

The lawfulness of detention could be challenged in the High Court by way of an application for *habeus corpus*.

E. Legal assistance

Indicators:

- Does the law provide for access to free legal assistance for the review of detention?
 Yes No
- Do asylum seekers have effective access to free legal assistance in practice? Yes No

The Refugee Legal Service provides representation for person detained in the District Court under Section 9(8) of the Refugee Act. This would be on the same basis as others seeking asylum i.e. a nominal fee if it isn't waived. In practice it is difficult to access the RLS from prison.