

# Barnardos' submission to the Joint Committee on Justice, Equality, Defence and Women's Rights: Immigration, Residency and Protection Bill 2008



**18th March 2008**

Barnardos would like to take this opportunity to highlight some concerns regarding the current draft of the Immigration, Residency and Protection (IRP) Bill from the perspective of children, particularly separated children and/or children who have been victims of trafficking.

## ***Summary of Key Recommendations:***

The term separated children be used and incorporated into Irish law

Ratify the Council of Europe Convention on Actions to Combat Human Trafficking

### Family Reunification

- Enshrine in legislation the principle of family reunification for all foreign nationals

- Ensure ongoing family support for children and families once reunification has occurred

- Ensure sufficient background checks are carried out to guarantee that the family are actual relatives

### Trafficking

- Include all victims of trafficking in the provisions of the IRP Bill not just 'foreign nationals'.

- Guarantee access to services such as medical treatment, accommodation, information on their rights and entitlements to assist victims overcome their traumatic experiences

- Grant temporary residency on humanitarian grounds

### Points of Entry

- Training for professionals in identifying victims of trafficking.

- Develop a 24 hour social services system

### Age Assessment

- Panel of experts conduct age assessments adhering to specific guidelines and procedures

### Guardian ad Litem

- Appoint a Guardian ad Litem to all cases of separated children and child victims of trafficking so that the children can apply for protection residency permits in their own right.

## ***Introduction***

Childhood is a time for learning and development and also a time of particular vulnerability. This particular group of children are very vulnerable and deserve to be protected. Barnardos believes this Bill as far as children are concerned should be viewed from a child protection perspective rather than purely a migration issue. In other words, any child entering this jurisdiction should be viewed as a child first and foremost and their immigration status is a secondary concern. In all cases the best interests of the child should be the primary consideration.

As Ireland ratified the UN Convention on the Rights of the Child in 1992, the primary principles in the Convention should be incorporated in all Irish legislation as was recommended by the UN Committee on the Rights of the Child in 1998 and 2006.

The primary principles include:

**An express recognition of the right of the child's voice to be heard in all matters affecting the child in accordance with age and maturity (UNCRC Article 12)**

**The principle of non-discrimination – that the same level of protection and care be afforded equally to each child regardless of migration status (UNCRC Article 2)**

**The principle of the best interests of the child should be seen as having paramount importance in all matters of welfare and protection of the child (UNCRC Article 3)**

**The principle that each child should be entitled to support in order to achieve their developmental potential (UNCRC Article 6 as well as articles dealing with education, health and disability Articles 23, 24, 26, 27, 28, 31 and 39)**

**The principle that separated children are entitled to special protection and assistance provided by the State (Art 20, UNCRC).**

It is within the remit of the IRP Bill, not the Trafficking Bill 2007, to outline services for children who are either separated or have been trafficked; however, the Bill has no explicit provisions to meet the needs of these children. This very vulnerable group of children have different needs to adult immigrants and as a result tailored services to meet their needs are required.

### **Context**

Separated children are children under 18 years of age who are outside their country of origin and separated from either parents or their previous legal/customary primary caregiver.<sup>1</sup> Approximately 5,000 separated children have arrived in Ireland between 1998 and 2007. From January to September 2007, 251 separated children were referred to the Health Service Executive, 144 of these were reunified with some of their family here, and the remainder were taken into the care of the HSE. Of these 89 were placed in care, usually private hostels, 21 were regarded as being inappropriate referrals, 4 were placed in foster care and 13 children went missing. In all, nearly 350 children who were in the care of the HSE have gone missing between 2001 and 2005.

The number of children who have been trafficked to Ireland, within Ireland and from Ireland has not been determined. It is clear that some of those missing children are thought to have been trafficked for sexual exploitation, domestic servitude (exploitation) or child labour. Some of these children have been later found in brothels. The Dublin unit of the HSE, Service for Separated Children Seeking Asylum (the Separated Children's Service) estimate that approximately 20 children in their care in 2005 were trafficked, the majority of these for the purpose of sexual exploitation.

Trafficking is currently an \$8 billion global industry with half of all victims being children. Ireland is regarded as a transit country as well as a destination point given its locality and its common travel area between Ireland and the UK.

### **Concerns with IRP Bill**

#### **General**

Barnardos is mainly concerned with the issues that arise for children but wish to highlight some general points also. It is the intention of the Bill to replace the present legislation on immigration and put in place an integrated statutory framework for the development and implementation of Government immigration and asylum policies into the future. Given this overarching aim, the Bill does not specify clear defined rights and obligations of migrants seeking to come to Ireland other than for those seeking protection in the State. With regard to migrants and their family members in general, their rights and obligations are to be outlined in subsequent regulations. However, the absence of these rights and obligations in primary legislation may lead to continued problems of inconsistencies in enforcing the Bill at an operational level, such as delays in obtaining decisions, inconsistencies in decision making, and an over reliance on Ministerial discretion.

1) Statement of Good Practice, Separated Children in Europe Programme

Overall, Barnardos believes that the 2008 Bill restricts adherence to international Human Rights obligations that Ireland has signed up to. For example the Bill has no independent appeals mechanism, except for protection applications, and places restrictions on the right to marry for non EU/ EEA citizens wishing to marry each other or to marry an Irish citizen.

Section 38 of the Bill envisages the development of a register of foreign nationals; such a register would include separated children and is welcomed as presently separated children are mainly only identified once they come to the attention of the HSE.

### **Family Reunification**

The IRP Bill does not allow for a statutory provision for family reunification for foreign nationals with the exception of those who are granted refugee status or subsidiary protection. This makes Ireland the only EU member state not to have family reunification enshrined in primary legislation. As a result confusion will remain over which members can be admitted and Barnardos believes that siblings should be included as family members with whom legally resident children have a statutory entitlement to family reunification.

Reuniting separated children and those children who have been trafficked with their families is the preferred option if it is in the best interests of the child. For these children who are already traumatised, they often have coinciding and multiple psychological demands, including that they may not have lived with their family for years. Reunification does not lead to instant family harmony with many feelings of anxiety, confusion and uncertainty and as a result there is a need for ongoing assessment and support to both the child and the family when they are reunited.

Also it is essential that the family to whom the child is being sent are their actual relatives. At present some background checks on the family are carried out by the Community Welfare Officer and Public Health Nurse but these need to be systematic and comprehensive including DNA testing. The placement of a child into a family that is not really their family could place this vulnerable child in a further precarious and threatening position. Therefore in the interests of protecting children all family reunification situations need to be recognised as potentially a child welfare and protection issue.

### **Victims of trafficking**

*'Trafficking in persons shall mean: the recruitment, transportation, transfer, harbouring or receipt of persons by the use of threat, force, coercion, abduction. Abusing power for payment and control in order to exploit', (UN Protocol, 2000).*

As trafficking occurs across and within borders, the legislation needs to take account of Ireland's ratification of international instruments and co-operation set up to prevent child trafficking and to protect the victim. However, the IRP Bill refers to trafficking of only 'foreign nationals' whereas the Council of Europe Convention on Actions to Combat Human Trafficking implies all victims be they national or otherwise. As a result all EU / EEA nationals are excluded from trafficking provisions despite being guaranteed protection by the Convention. Ireland is not yet a signatory of this Convention but the IRP Bill will facilitate the ratification of it. The exclusion of EU/EEA children from protection in the IRP Bill is significant given the scale of immigration into Ireland by people from these countries and as a result the traffickers can go undetected at ports and airports.

Section 124 of the bill deals with trafficking but no specific mention is made of children and no services are referenced. A period of 45 days for reflection has been introduced to allow the victim make an informed decision on whether to assist the Gardaí in the investigation and/or prosecution of the trafficking offence. However, this time span is too short and unrealistic as in many cases children may be too young or too traumatised to be of any assistance to the investigation and/or prosecution especially given the scale of affects of trafficking on children. These can include physical injury and emotional scars such as fear of adults, a sense of shame, afraid of not being listened to or understood, terrified that authorities would reunite them with the trafficker and fearful of the impact on own family living here or back in their country of origin. The medical and counselling treatment to heal these scars will take longer than 45 days, although such treatment is not always readily available to these victims. In fact psychological and psychiatric services are already inadequate for children in general as they frequently experience delays accessing diagnosis and treatment so access for this group of acutely vulnerable children is by no means guaranteed.

A permit for six months temporary leave to remain is obtainable only if the victim agrees to assist the investigation and/or prosecution and has severed all ties with their alleged trafficker but this can be revoked at any time at ministerial discretion including not co-operating with the Gardaí or the termination of a Garda inquiry/ investigation. This strategy will not assist the victim in building up trust with the authorities and is not in the best interests of the child. Likewise contact with a trafficker as a criterion for permission to be revoked is unrealistic considering the particular nature of child trafficking and the use of emotional grooming including voodoo practices, conflicting emotions for the young person and the real and genuine fear of physical, sexual and emotional abuse if the escape is discovered.

All individuals granted a reflection period permit or temporary 6 month residency permit should be entitled to adequate accommodation, appropriate medical treatment and available information on their rights and entitlements.

The Bill should include additional protections for children who have been trafficked, including the possibility to grant temporary residency on humanitarian grounds whether or not the victim is in a position to assist the authorities. Other protections should include the establishment of a helpline specifically for victims of trafficking, a public awareness campaign targeted at informing the general public of the occurrence and affects of human trafficking and an awareness campaign directed at victims to encourage them to seek assistance.

There is currently no provision in the Bill to make sure that the suspected trafficked victim understands their rights and entitlements as well as the procedures, which affect them. Amendments should be made guaranteeing that victims would be informed in a language they understand about their status – the reflection and recovery period, temporary residency, access to services such as legal aid and the asylum process.

### **Points of Entry**

One of the key challenges for authorities is identifying victims of trafficking – children may be travelling under false passports, they may be accompanied or claimed by people who say they are relatives and are taking responsibility for these children but who may not be authorized to take such responsibility. It is vital that the first responders i.e. authorities who the children are likely to meet first receive training in victim identification and that children entering the state are properly registered.

The Bill currently states that “immigration officers shall inform HSE as soon as practicable” where it appears that a foreign national is under the age of 18. Barnardos would seek that notification should happen immediately to ensure that child protection measures are put in place. Furthermore, as recommended by the Committee on the Rights of the Child and campaigned for by Barnardos, the Irish government should develop a 24-hour social services system.

Under the current draft, children could be arrested and detained for the purposes of removing them from the State. While there is a general exclusion from arrest and detention of children in Section 58 of the Bill, this protection will cease as soon as parents do not comply with obligations regarding the child’s dwelling place, reporting requirements etc. This possibility of being detained is in contravention of the UN Convention on the Rights of the Child. Linked to this is the question of what happens to a child if their parents are detained.

### **Age Assessment**

It is not appropriate for immigration officers or members of the Garda Síochána to be solely responsible for assessing the age of a foreign national as currently proposed in the Bill. It is too subjective. The Bill should outline that when an individual’s stated age is disputed, age should be assessed by an independent panel of experts including a social worker, a general practitioner and a psychologist, who have expertise in child and adolescent behaviour and development and who have been trained in child-friendly interview techniques.

The margin of error for each age assessment test should be considered and the individual should be given the benefit of the doubt in disputed cases. A guardian should be appointed before the testing and agree with the proposed process. When age is disputed, the individual concerned should be placed in special accommodation during the testing period and for the duration of any appeal process<sup>2</sup>

### ***Guardian ad Litem***

The Bill must comply with the Government's own commitment outlined in the National Children's Strategy 2000 that: *Unaccompanied children seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and Guardian-Ad-Litem (GAL).* Under the current draft child victims of trafficking and child protection seekers cannot make an application for recovery or protection residence permits in their own right. However, if a GAL was allocated to all separated children and child victims of trafficking they could in accordance with UNCRC Article 12 have their own voice heard and apply for it themselves.

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