



Integrating Ireland

OBSERVATIONS IN RESPONSE TO

**THE DEPARTMENT OF JUSTICE, EQUALITY &
LAW REFORM**

**On the Scheme of the Immigration, Residence and
Protection Bill 2006**

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Integrating Ireland¹ welcomes the opportunity to submit comments and observations to the Department of Justice, Equality and Law Reform in relation to the Scheme of the Immigration, Residence and Protection Bill. Our initial observations in this regard are set out below and we will issue further comments on the Bill once it has been published.

Part One: Preliminary

Integrating Ireland comment on Head 1 Preamble

Integrating Ireland welcomes the reference made to Ireland's international legal obligations in Head 1 of the Preamble. However, the reference to maintaining, "consistency" with Ireland's "international legal obligations (including obligations under the Geneva Convention) with respect to refugees" and, "to uphold is humanitarian traditions with respect to the displaced and the persecuted" must reflect our obligations more clearly and definitively.

We therefore regret the absence of an explicit reference to uphold the fundamental principle of non-refoulement, which includes essential safeguards to prevent the refoulement of individuals in breach of our obligations under international law and to the absolute prohibition under international human rights law of returning an individual to face human rights violations, including torture, or inhuman or degrading treatment. The absolute character of the prohibition of return to face torture, inhuman or degrading treatment, which is part of customary international law², thus has major policy and legal implications and this should be clearly and unequivocally stated in the preamble. Moreover, the right to seek protection must be fully respected and all applicants for protection must have access to a fair determination procedure. Accordingly, a much clearer and more positive statement of the State's obligations under the Geneva Convention (Art 33), as well as references to the State's obligations under EU Directives, the Convention Against Torture (Article 3), the European Convention on Human Rights (Article 3), and (Article 7) of the The International Covenant on Civil and Political Rights is required.

Specific wording such as that in Article 3 of the UN Convention Against Torture, Article 3 of the ECHR or Article 19 (2) of the proposed Charter of Fundamental Rights of the European Union, which explicitly establishes that "no one may be removed, expelled or extradited to a state where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment", should therefore be considered.

¹ Integrating Ireland is the national network of refugee, asylum seeker and immigrant support groups.

² . See for example ExCom Conclusion No 55 'General Conclusion on International Protection' (1989), para (d); and "Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees" UN Doc. HCR/MMSP/2001/09, Dec, 13, 2001, in which the States parties acknowledged "the principle of refoulement, whose applicability is embedded in customary international law".

The articulation of this explicit reference to uphold the fundamental principle of non-refoulement is also important in relation to protection applications, where all forms of international protection grounds are examined in a single procedure. Integrating Ireland submits that in order to uphold the fundamental principle of non-refoulement that an assessment of subsidiary protection grounds in a single procedure, should be understood as not only an assessment of those grounds under the Qualification Directive, as transposed by S.I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations, but also include assessment of subsidiary protection grounds under Article 3 ECHR, Article 7 ICCPR and Article 3 CAT.³

Head 1 Subhead (1) (e) & (f)

We are disappointed that despite the intention to create a comprehensive immigration policy, the scheme of the Bill is silent on a number of critical issues, including family reunification, integration and the situation of victims of trafficking and the protection of their rights.

As highlighted in our original discussion document⁴, we believe that integration is an inseparable element of a sustainable and comprehensive immigration policy. We cannot realise the full benefits of immigration without integration. Paragraph 4(f) of the preamble states that one of the objectives of the Heads is to facilitate promotion of, “the successful integration of permanent residents into the State, while recognizing that integration involves mutual obligations for new immigrants and Irish society”. While we note the objectives to be achieved in facilitating integration, we regret that this objective relates to permanent residents only. In the absence of a national integration strategy or policy, the Government should endeavour to avoid imposing or introducing legislative provisions that will have a negative impact on integration, or that mitigate against the full integration of all those legally resident in the State, including applicants for protection.

Furthermore, while the preamble under subhead (1) (e), makes reference to facilitating the reunion in the State of Irish citizens and permanent residents with their close relatives abroad, Integrating Ireland notes with regret, that provisions for family reunification are articulated only in relation to holders of protection residence permits and that apart from the preamble there is no mention of family reunification for Irish nationals and residents. The Department of Justice, Equality and Law Reform, in its original discussion document highlighted that family reunification provisions should be set out in an accessible and transparent fashion and acknowledged that a family reunification policy should be

³ See also The Convention relating to the Status of Stateless Persons (1954); The Convention on the Reduction of Statelessness (1961); The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); The International Covenant on Civil and Political Rights (1966); The International Covenant on Economic, Social and Cultural Rights (1966); The International Convention on the Elimination of All Forms of Racial Discrimination (1965); The Convention on the Elimination of all Forms of Discrimination Against Women (1979); The Convention on the Rights of the Child (1989).

⁴ For further details: Integrating Ireland submission in response to the outline proposals for an Immigration & Residence Bill in Ireland. July 2005

developed within the framework of an overall immigration policy. The discussion document also acknowledges that any family reunification policy would need to consider the provisions of the Constitution and of relevant international conventions, so as to ensure conformity with state obligations and international best practice. We therefore reiterate our concern that the document remains silent on the issue of family reunification and that it will not be addressed in primary legislation.

In addition to our concerns and comments on family reunification and integration, we regret that the document makes no reference, to the situation of victims of trafficking, or protection of their rights. While the publication of the Criminal Justice (Trafficking in Persons and Sexual Offences) Bill 2006 is to be welcomed, it addresses the criminal aspect of trafficking and does not provide any safeguards, supports or protections for the victims of trafficking. Treaty bodies such as CEDAW and the Committee on the Convention on the Rights of the Child have encouraged the protection of trafficking victims and special measures to protect those who testify in prosecutions of offenders.⁵ In 2005, the CEDAW Committee expressed concern about the trafficking of women into Ireland, the lack of information on the extent of the problem, and the lack of a comprehensive strategy to combat it. The UN Special Rapporteur on the Human Rights of Migrants on Trafficking in Persons and the Special Rapporteur on the Human Rights of Migrants have also articulated that States should prevent smuggled persons and victims of trafficking from, “being persecuted, detained or punished for illegal entry or entry in the country, or for the activities they are involved in as a consequence of their situation as trafficked persons”⁶ Integrating Ireland therefore endorses the submissions made by the Stop Sex Trafficking Cork Campaign and Ruhama on the Criminal Justice (Trafficking and Sexual Offences) Bill 2006, and refer you to those documents in relation to the rights and protections of victims of trafficking.⁷

Integrating Ireland further recommends and highlights the importance that the final text of the Bill, addresses the issue of internal inconsistency and clarity in relation to provisions relating to protection concerns and those relating to general provisions on immigration. The non-applicability of certain provisions contained in these Heads relating to those seeking protection needs to be expressly clarified in the Bill in order to avoid inadvertent application of overarching provisions relating to immigration to those seeking protection. Unless the text of the Bill clarifies this issue, we are concerned that provisions contained, for example relating to entry to the state, will not properly reflect or ensure respect for our obligations to uphold the fundamental principle of non-refoulement.

⁵ For example see France, CEDAW. A/58/38 part II (2003) 116 at paras 273-276 (urging the State party to provide trafficking victims with, “the support they need, including through witness protection and social reintegration measures” and recommending that the State party “consider issuing resident permits to victims of trafficking whether or not they testify against their traffickers, and whether or not the perpetrators are punished”)

⁶ Report of the Special Rapporteur on the Human Rights of Migrants, Ms Gabriela Rodriguez Pizarro, E/CN.4/2003/85 at para 75 (b)

⁷ Ruhama Submission on the Criminal Justice (Trafficking and Sexual Offences) Bill, 2006. See also Stop Sex Trafficking Cork Campaign submission on the Criminal Justice (Trafficking and Sexual Offences) Bill, 2006 [tp://www.sexualviolence.ie/trafficking/campaignresources/TraffickingSubmission.doc](http://www.sexualviolence.ie/trafficking/campaignresources/TraffickingSubmission.doc)

We also highlight that in general, the Government must not treat the inviolable and inalienable rights of individuals protected by international human rights law as principles to be conformed in preambles and offended against in the provisions contained in the text. Furthermore, as highlighted in our original submission, all measures must not only state that they are human rights compliant but must in fact be human rights compliant and uphold our international obligations to those rights.

Part 2: General Principles

Integrating Ireland comment on Head 4 General principles applicable to (presence of foreign nationals in the State) (Immigration to the State)

Head 4

As highlighted in the preamble, Integrating Ireland notes with concern issues regarding internal inconsistency under this Head. Head 4 provides no clarity on the position of protection applicants and does not properly reflect and ensure respect for our obligations under international refugee and human rights law. This head should therefore contain specific references to, and affirmation of the absolute respect of the right to seek asylum and to reiterate that, Ireland's international obligations are engaged as soon as an asylum applicant arrives at our border or is on the territory of the State⁸. This Head also needs to uphold the fundamental principle of non-refoulement, which includes essential safeguards to prevent the refoulement of individuals in breach of state obligations under international law. In order to clarify the particular situation of those seeking protection, Head 4 should therefore be amended.

Integrating Ireland comment on Head 5 Immigration Policy Statements

Integrating Ireland welcomes the fact that immigration policy statements and administrative guidelines informing decision-making processes will be published. Accountability and transparency are critical components of an effective immigration system and the Government must ensure that guidelines to govern how decisions are reached are exercised in compliance with the relevant human rights standards and do not lead to a potential misuse of that power.

However while a more streamlined procedure of immigration statements is to be tentatively welcomed, the fact remains that a large part of how the system will work will stem from the Immigration Policy Statements, which are not yet disclosed and yet to be defined. It is therefore difficult to comment further without seeing more information

⁸ See Application No. 23366/94 *Nsona v Netherlands* (28 November 1996) which confirmed that Member States' obligations under the ECHR arise as soon as an individual seeks admission to its territory, provided he/she is within the State's jurisdiction.

about what will be contained in the Immigration Policy Statements. To respect the principle of legal certainty, the rights and entitlements of migrants and the duties and functions of state authorities should be laid out in legislation insofar as possible.

Head 5 (3)

We draw attention under Head 5, to the dominance and exercise of Ministerial Discretion to make any decision more or less irrespective of the text of the Heads. The power in Head 5(3) where the Minister may make a decision as an exception to an immigration policy statement, “in the public interest” is extremely wide, and if it is intended to be exercised frequently by the Minister will effectively negate the positive benefits of having immigration policy statements in the first place. There is no definition in the Heads of “public interest” and this provides a wide discretion on the Minister to act in any particular case and claim that it is in the public interest. Furthermore Head 6(2) allows a decision, which otherwise would be inconsistent with an immigration policy statement, to be adopted if it affects, “public security, public policy and public health”. We argue that clear guidelines and principles should be required to govern the exercise and extent of such ministerial discretion to ensure that it is exercised in compliance with the relevant human rights standards and exercised in accordance with the principles of legitimacy and proportionality.

Part 3: Visas

Integrating Ireland comment on Head 11 Application for Visa

Head 11 (3) (a)

Under Head 11 (3) (a), while it is accepted that a fee may be charged for visas, it is submitted that the fee system should not be in excess of administrative costs and in particular should not be charged on an overtly profit making basis. In particular charging of fees in excess of administrative levels would result in hardship for vulnerable groups and therefore have an unintended discriminatory impact.

Furthermore, the visa conditions laid out under subhead (6) are onerous. These include, providing a bond or undertaking of an Irish citizen or long term resident, guaranteeing the presence of the visa holder in the State will not create a burden on the State, and that the holder will adhere to conditions of the visa, to pay a sum of money (refundable) on satisfactory evidence of departure, and compliance with the visa conditions, to enter into a contract for the payment of money to the Exchequer in the event of non compliance by the visa applicant with a condition of a permission to enter or be in the State including a condition that the visa applicant leave the state after a certain period or by a certain date.

Integrating Ireland comment on Head 12 Consideration of visa applications

Head 12 outlines the grounds on which the Minister may refuse a visa application, including grounds under which the applicants’ entry into, or presence in, the State could pose a threat to public security, public health or be contrary to public policy. Visa

applications can also be refused if there are any other reasons relevant to the circumstances of the case that in the opinion of the Minister justifies a refusal.

These grounds for refusal are open to wide interpretation and have the potential for extremely broad application. Clear guidelines, especially with regard to Ministerial discretion, should be outlined and guide decisions under this Head. Please refer to comments on ministerial discretion under Head 5. In addition, under Head 13 (1) (b), a visa may be revoked if it is in the opinions of the Minister that it would not be conducive to the common good.

Integrating Ireland comment on Head 14 Review of a determination to refuse or revoke a visa

Head 14 (1) (a) & (b)

Head 14 (1) (a) and (b), permit that no appeal or review of a determination of a visa application, or refusal or revocation of a visa, shall be permitted where the visa application is one of a category of visa applications, (listed in an immigration policy statement) where no review will be considered and where the visa refusal was made by the Minister personally.

We are concerned that provisions under this Head remove the possibility of an appeal from a large category of visa applicants. Administrative appeals not only protect the rights of each person to receive justice, but also to promote good administration by public officials by subjecting their decisions to independent scrutiny and therefore this Head should be amended.

Part 4: Entry into the State

Integrating Ireland comment on Head 16 Approved Port

Head 16 provides no clarity on the position of protection applicants in relation to provisions outlined under this Head. This Head should therefore contain specific references to, and affirmation of the absolute respect of the right to seek protection and to reiterate that the peremptory norm of non refoulement secures admission to the State.”⁹ Additionally, UNHCR has clarified that a state presented with an asylum request at its borders or on its territory has and retains the immediate refugee protection responsibilities relating to admission. Head 16 should therefore be amended to reflect this circumstance.

⁹ Goodwin-Gill, ‘The refugee in International Law,’ at 202,

Head 16 (4)

Head 16(4) states that a foreign national who enters that state in contravention of this Head shall be guilty of an offence. Head 16 does not take into account Article 31 of the Geneva Convention, which provides that a person seeking protection cannot be found guilty of an offence for irregular entry and accordingly, Head 16 (4) must be amended to take this into account.

Article 31 provides that “... Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.

Integrating Ireland comment on Head 17 Requirement to present and power to inspect on arrival
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Head 17 (1) (iii)

The requirement in Head 17(1) (ii) to produce a valid passport or other equivalent document which establishes identity and nationality does not provide safeguards for applicants for protection who, for legitimate reasons, may have lost, destroyed or altered their passports or identity papers. In addition, many may have destroyed or disposed of an identity or travel document because they have been forced to do so by smugglers who wish to reduce the risk of detection. As identified under Head 16 (4), it is recognized by Article 31 (1) of the 1951 Convention that applicants may not be able to provide documentation on all matters, due to the circumstances of their flight, and outlines that states must not punish those asylum seekers who have no choice but to present at the State’s border on an unauthorized basis.

Head 17(3) (a)

Head 17(3) (a) permits an immigration officer or member of the Garda Siochana to examine a foreign national arriving in the State for the purpose of determining whether he or she should be given permission to enter the State. We query the parameters of the word “examine” in Head 17(3) (a) and later in Head 17 4(c) “examine and search”. Clarity on the specific remit and exercise of the word “examine” is required. We would also like to highlight that any examination should be undertaken in a gender-, age- and culturally-sensitive manner.

Head 17(3) (b) (iii)

Integrating Ireland regrets that the overall Scheme has not been adequately “child-proofed” to ensure that the Bill will accord with domestic and international obligations regarding children’s rights and protections.

In relation to children seeking protection, a minor arriving in the State is the bearer of rights, not just generally, but also by virtue of being a minor, as well as the full rights of refugees, which implies that "the best interests of the child" should inform all policy and procedures affecting the child. According to UNHCR¹⁰, any decision and action affecting the child, including, among others, identification and registration, family tracing, the determination of the most appropriate temporary care arrangement, the appointment of a guardian, monitoring of temporary care arrangements, refugee status determination procedures, family reunification, etc. must be undertaken with considerations for the best interests of the child. Such decisions and actions cannot be taken unless an assessment is made on what option is in the best interests of the child.¹¹ In relation to unaccompanied and separated children outside their country of origin, the UN Committee on the Rights of the Child has clarified that in order to pay due respect to Article 3 of the UN Convention on the Rights of the Child, a determination on the best interests of a child must be "documented in preparation of any decision fundamentally impacting on the child's life"¹² Therefore in order for a best interests determination to take place, a child must be permitted entry into the State.

Moreover, the Bill should outline specific procedural guarantees for unaccompanied minors/separated children on account of their vulnerability. Guidance on how to ensure that the most appropriate decision is taken when dealing with unaccompanied and separated children is included in a number of documents, which should be used as guidance.¹³ In this context and as outlined, the best interests of the child should be a primary consideration

Head 17 3 b (iii) also makes reference to the HSE appointing a responsible adult other than an immigration officer. We submit that in any provisions relating to children that the person appointed must have proper training and expertise in order to undertake their role. The person should have an understanding of child welfare and rights, have expertise in child protection, knowledge of our international protection obligations, and of child specific forms of persecution.¹⁴ In addition to receiving training, they should be given continuing professional support and undergo police checks¹⁵ Their primary role should be to ensure that decisions relating to the child are conducted in the child's best interests.

¹⁰ UNHCR Guidelines on Formal Determination of the Best Interests of the Child: Provisional Release, May 2006

¹¹ Ibid Pg 18

¹² Committee on the Rights of the Child, General Comment No. 6, at IV c)

¹³ Inter-Agency Guiding Principles on Unaccompanied and Separated Children, (UNHCR, UNICEF, ICRC, IRC, Save the Children (UK), World Vision International, Geneva, January 2004) Refugee Children: Guidelines on Protection and Care (UNHCR, Geneva, 1994) Working with Unaccompanied Children: A Community-based Approach (UNHCR, Geneva, revised May 1996) Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, (UNHCR, Geneva, 1997) The Separated Children in Europe Programme: Statement of Good Practice, (UNHCR and International Save the Children Alliance, Brussels, third edition, October 2004) Working with separated children, Field Guide. Training Manual and Training Exercises, (Save the Children UK, London, 1999).

¹⁴ See Separated Children in Work Programme, Third Edition, 2004, p.16.

¹⁵ Separated Children in Work Programme, Third Edition, 2004,

The role of the HSE in relation to separated/unaccompanied minors therefore needs to be clarified further under these heads.

Furthermore, UNHCR guidelines advocate that a guardian to an unaccompanied minor/separated child should be appointed as soon as possible after their arrival. Guardians should be able to instruct a legal representative, exercise parental responsibility and be responsible for assessing and making recommendations on the best interests of a separated child/unaccompanied minor with regard to his/her protection and care. An independent body should be set up to provide a legal guardian to every separated child/unaccompanied minor, in order to represent their best interests in all decisions that affect them for the time that the child is in the country and until a durable solution is reached.

Head 17 (3) (c)

If an immigration officer or Garda Síochána has reasonable grounds for believing that the person is under the age of 18, the provisions of Head 17 shall apply as if he or she had attained the age of 18.

Integrating Ireland notes with concern that the responsibility for undertaking an age determination is subject to an arbitrary and subjective assessment by an immigration officer or Garda Síochána on whether the person is under 18. Immigration Officers and Garda Síochána should not make age assessments and are not qualified to do so. As per the guidelines of the Separated Children in Europe programme, age assessments should be carried out by an independent medical paediatrician and take into account the child's physical appearance and psychological maturity as well as cultural variation in these factors. It should always be borne in mind that such assessments are subject to a wide margin of error.¹⁶ Therefore persons claiming to be children should be provisionally treated as such, until a proper age determination carried out by a person qualified to do so has taken place. In light of the impact that an incorrect determination is made and that a minor shall be subjected to provision related to adults, this subhead should be revised.

Head 17 (4)

The CERD committee has recommended that States ensure, “ that immigration policies do not have the effect of discrimination against persons on the basis of race, colour, descent or national or ethnic origin, ”¹⁷ and in its concluding observations on Ireland's first periodic report, the committee highlighted instances of discriminatory behaviour by the police towards members of minority groups.

Integrating Ireland would therefore like to underline the importance and need for rigorous, comprehensive and ongoing training for any officer undertaking immigration duties, strict guidelines, and minimum criteria for the recruitment and training of officials and effective safeguards setting out the requirements of human rights law and standards.

¹⁶Separated Children in Work Programme, Third Edition, 2004, also see ECRE Position on Refugee Children, November 1996, Paragraph 30.

¹⁷ CERD, General Recommendation 30, HRI/GEN/1/Rev.7/Add.1 at para 9 (May 4, 2005)

It is also important that officials are trained to recognise applications for protection and to understand that for many applicants contact with immigration officials may be psychologically difficult, in particular for vulnerable or traumatized applicants, who have left their country of origin either because state officials were persecuting them or were unwilling to protect them. Guidelines and specific provisions that address the special needs of vulnerable persons, including survivors of violence, in particular sexual violence and torture, and traumatized asylum-seekers should be introduced. An immigration officer undertaking any form of interview under subhead 17 (4) (A) (i)-(xi) should also have training on interviewing and dealing with vulnerable and traumatized individuals and working with interpreters. Interviews should be conducted in a child and gender sensitive manner.

Furthermore, given the wide powers of Immigration Officers under these Heads it is important to note that every organ of the state should perform its functions in a manner compatible with our obligations under the ECHR.

Head 17 (5) (a) (iii)

Allows that an application for protection shall not be made on behalf of an unaccompanied minor/foreign national under the age of 18 by the HSE, unless it is satisfied that it is not in the best interests of the child or that the child concerned is a person who is entitled to protection in accordance with these Heads.

We would like to reiterate that if the HSE appointed person is to undertake a formal best interests determination, that this determination must be “documented in preparation of any decision fundamentally impacting on the child’s life”¹⁸ As noted previously, guidance on how to ensure that the most appropriate decision is taken when dealing with unaccompanied and separated children is included in a number of documents.¹⁹ In addition, it is critical that the person undertaking this assessment should be carefully selected, trained and supported in their work. Their primary role should be to ensure that decisions on status determination are conducted in the child’s best interests.

We would also like to point out that the HSE has no role in determining whether a child is a person who is entitled to protection in accordance with these Heads and procedures must ensure that all children are entitled to seek asylum in their own right and are entitled to an individual determination of their application.

¹⁸ Committee on the Rights of the Child, General Comment No. 6, at IV c).

¹⁹ Inter-Agency Guiding Principles on Unaccompanied and Separated Children, (UNHCR, UNICEF, ICRC, IRC, Save the Children (UK), World Vision International, Geneva, January 2004) Refugee Children: Guidelines on Protection and Care (UNHCR, Geneva, 1994) Working with Unaccompanied Children: A Community-based Approach (UNHCR, Geneva, revised May 1996) Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, (UNHCR, Geneva, 1997) The Separated Children in Europe Programme: Statement of Good Practice, (UNHCR and International Save the Children Alliance, Brussels, third edition, October 2004) Working with separated children, Field Guide. Training Manual and Training Exercises, (Save the Children UK, London, 1999).

Head 17(5) (b)

Head 17(5) (b) provides that the immigration officer or member of the Garda Síochána shall inform a protection applicant; where possible, in a language that the person understands that they are entitled to consult a solicitor and the High Commissioner. We submit that it is absolutely critical that the applicant is informed about the procedures to be followed in a language applicants are known for sure to understand.

We would also like to point out that in relation to language provisions and the use of interpreters under these heads, (including: Head 17(5)(b), Head 17 (5) (c), Head 17(6)(c), Head 26(14)(a), Head 30(1)(a), Head 32(1)(a)(i), Head 32(4)(a), Head 44(5)(f), Head 44(7), Head 45(2)(b), Head 58(11)(e)) we note that there are multiple and conflicting references to language in the Scheme, using such phrases as “where possible”, “where necessary and possible” and “where necessary and practicable”. None of these phrases are mandatory, and they provide wide discretion to officers not to provide the language service or interpreter because they consider it is not “possible”, or “practicable”. Even at appeal stage, during the hearing at the Protection Appeal Tribunal, the Tribunal is only mandated to use its “utmost endeavours” to provide the assistance of an interpreter at the hearing.

Additionally, in relation to protection applicants where so much depends on the testimony of an individual, facilitating effective communication is an essential prerequisite for a fair and effective determination procedure. UNHCR considers it necessary to provide information to every asylum-seeker in a language that he or she actually understands and it would be expected that particularly with respect to interviews and advising applications for protection about the procedure, that provision for language interpretation would be a basic minimum to be provided.

Assumptions that an asylum-seeker speaks or understands the official language of his or her country of origin may be incorrect. UNHCR further states that while such communication need not necessarily take place in the language preferred by the applicant, it should be in a language which is understood by the applicant, and in which he or she is able to communicate, rather than one which he or she ‘may reasonably be supposed to understand’. Therefore protection applicants should be informed in a language that they understand, not in a language with they may reasonably be supposed to understand.

In relation to the provision of interpretation services, it is not sufficient to just supply interpretation services of themselves; interpreters should be professionally qualified, trained and impartial. The quality of those services must be checked and interpreters must be trained for the specific aspects of the role. Many applicants complain about the unsatisfactory services of interpreters. Their concerns include issues of impartiality, trust and competence. Insensitivity to feelings of shame during interviews (with particular reference to discussion of sexual assault or persecution on grounds of sexuality or gender) and insufficient technical knowledge are also commonly reported problems. In addition, the role of the interpreter is critical in an interview where no legal representative is present and therefore authorities should ensure that the asylum seeker understands the

interpreter's role and does not mistake it for that of either an advocate or a decision-maker.

Training programmes for interpreters, and for those employing them, should specifically address these points. In addition, interpreters dealing with children and traumatized or vulnerable people should be specifically trained to undertake this task.

Further to comments above, we would also like to highlight that where there is a need to provide accessible information to those who cannot read, the use of interpreters is essential.

Integrating Ireland comment on Head 18 Permission to enter the State

Head 18 (2)

Integrating Ireland submits that head 18 (2), should be strengthened, from the assertion that a person, "who has made an application for protection" to "who has indicated that they are seeking protection". In addition, the application for protection should state that a request for international protection is one for protection against return to where an applicant fears persecution or serious harm.²⁰

Head 18 (4) (b) (i) & (ii)

Heads 18 (4) (b) (i), contains the restriction that an immigration officer "where practicable" shall issue to the foreign national a protection temporary residence permit. This restriction should be removed and replaced with 'immediately'. Head 18 (4)(b)(ii) highlights that where it is not practicable for an immigration officer to issue a protection temporary residence permit the officer may detain or require the foreign national to remain in a specified place. This Head therefore envisages detention purely for the purpose of administrative convenience, and we submit that detention should only be a matter of last resort and used in a number of limited circumstances. The UN Special Rapporteur on the Human Rights of Migrants has highlighted that, "governments should consider the possibility of progressively abolishing all forms of administrative detention."²¹ Although this Head speaks to detaining or requiring a foreign national to remain in a specified place in order to facilitate the issuance of a PTRP, it does not prescribe standards that would limit the use of detention and does not outline a time limit to this detention, which ensure that we comply with our existing obligations under international law, particularly with regard to Article 5 ECHR and ECHR case law which states that deprivation of liberty should not be prolonged excessively.²²

²⁰ UNHCR provisional comments on the proposal for a Council Directive on Minimum Standards on procedures in member states for granting and withdrawing refugee status (Council Document 14203/04, Asile 64 of 9 November 2004) pg 3

²¹ Report of the Special Rapporteur on the Human Rights of Migrants, Ms Gabriela Rodriguez Pizarro, E/CN.4/2003/85 at para 74

²² *Amur v France* – 19776/92 [1996] ECHR 25 (25 June 1996), para. 43.

Furthermore, in relation to the administrative detention of migrants in general, the UN Special Rapporteur on the Human Rights of Migrants has recommended that the Body of Principles for the Protection of All persons under any Form of Detention and Imprisonment be applied to all migrants under administrative detention²³. States should also apply the Standard Minimum Rules for the treatment of Prisoners to migrants under administrative detention, including: “providing for the separation of administrative detainees from criminal detainees...” Detention of, “migrants with psychological problems, as well as those belonging to vulnerable categories and in need of special assistance, should only be allowed as a measure of last resort, and they should be provided with adequate medical and psychological assistance.”²⁴ In addition states should, “keep official statistics on migrants, “deprived of their liberty out of the total number subject to administrative detention.”²⁵

The Rapporteur also recommended that states should provide training to authorities regarding conditions of detention including, “...the psychological aspects relating to detention, cultural sensitivity and human rights procedures, and ensuring regular public supervision to ensure the application of international and national human rights law.”²⁶

Integrating Ireland comment on Head 19 Refusal of Permission to Enter the State

While we understand that many of the provisions under this Head are similar to those outlined under the Immigration Act 2004, we are concerned that the scope of the list of reasons for refusal of permission to enter the State are extensive and could potentially lead to arbitrary and discriminatory decisions. We also hope that the final text of the Bill underlines the non-applicability of certain provisions under this Head in relation to protection applicants.

Head 19(1) (c)

Provides that an immigration officer may refuse entry to the State “if the officer is satisfied” that the person suffers from a condition (set out in a list to be defined in the Schedule entitled “List of Diseases”). We await sight of the list of diseases and the policy as to inclusion of various conditions and diseases on this list. Permission to enter should not be denied on the basis of general diseases, disability or drug addiction, unless there is as serious and definable threat and such a refusal would be fair and proportionate response. The wording of this Head also makes no provision to safeguard the personal dignity of migrants entering Ireland when undergoing medical screening.

²³ Report of the Special Rapporteur on the Human Rights of Migrants, Ms Gabriela Rodriguez Pizarro, E/CN.4/2003/85 at para 75 (k)

²⁴ Ibid at para 75 (M)

²⁶ Ibid at para. 75J

Head 19 (1) (f) (iv)

States that a foreign national who is the subject of a determination by the Minister that it is conducive to the public good that he or she remain outside the state shall be refused permission to enter the State. Again we highlight our concerns regarding the use of Ministerial Discretion without clear criteria or guidelines and the potential broad use and wide interpretation of use of the grounds, ‘public good’ as grounds for refusal.

Head 19(1) (j)

A foreign national can be refused entry into the state where his/her presence in the State could pose a threat to public security or be contrary to public policy. Without clear guidelines or criteria by which to make an assessment of a threat to public security or public policy the potential for refusals are again extremely broad and open to wide interpretation.

Integrating Ireland comment on Head 20 Liability of carriers in relation to entry to the state of foreign nationals
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The provisions to penalize carriers, under Head 20, whose passengers arrive in Ireland without adequate documentation or visas must not have the effect of preventing those seeking protection obtaining access to the state. Although similar to the Immigration Act 2003, such carrier sanctions may have the effect of breaching the international law of non-refoulement by ignoring the specific protection needs of applicants. The situation has been summed up by the Parliamentary Assembly of the Council of Europe, as follows:

“Some countries have imposed airline sanctions which undermine the basic principles of refugee protection and the right of refugees to claim asylum while placing a considerable legal, administrative and financial burden upon carriers, and moving the responsibility away from Immigration Officers.”²⁷

We suggest providing a saver on the liability with regard to documentation where a person carried claims protection at the port of destination. Furthermore, on disembarkation there needs to be a positive duty on the immigration officer in relation to this Head to ascertain if any of the passengers are seeking protection.

PART 5: Residence Permits and Registration Requirements

Part Five again raises concerns with regard to internal inconsistency and clarity. It is unclear if every reference to “residence permit” applies to all types of residence permits, most notably Protection Residence Permits, Protection (Temporary) Residence Permits. This needs to be expressly clarified in the Bill to avoid inadvertent application of

²⁷ Recommendation 1163 (1991) of the Parliamentary Assembly of the Council of Europe on the arrival of asylum seekers at European Airports, 43rd Ordinary Session 1991 paragraph 10.

overarching provisions to specific provisions relating only to Protection Residence Permits, and Protection (Temporary) Residence Certificates.

Integrating Ireland comment on Head 23 Renewal of Residence Permit

Subhead 23(1) (a) (i) & (ii)

Integrating Ireland notes with concern the restriction of appeal rights regarding renewals of residence permits. Administrative appeals not only protect the rights of each person to receive justice, but also to promote good administration by public officials by subjecting their decisions to independent scrutiny. This Head should therefore be amended

Integrating Ireland comment on Head 25 Long Term Residence Permit

It is noteworthy that in the Preamble, that Head 1 (4) (e) and (f) refer to “permanent residents”. However it is apparent that at most the Scheme provides for “long term” residence, which is 5 year’s duration, and renewable. We submit that there are cases where a longer term of residence, including a form of permanent residence, is suitable. There are people who wish to remain in Ireland in the long term, contribute to Irish society in a meaningful way, but who do not aim to become Irish citizens. For these people, the prospect of renewing residence every five years is unsatisfactory and insecure.

Subhead 25 (1)

Under Subhead 25 (1) a Long Term Residence Permit, valid for a period of 5 years, may be issued to a person who fulfils the “standard eligibility requirements” or other eligibility requirements set out in immigration policy statements. Clearly the latter are yet to be defined. With regard to the proposed “standard” eligibility requirements, which are set out in Head 25(2) (a), the concept of “good character” is highly subjective. Also the criterion of being able to support oneself and dependents financially is subjective, as it does not provide any parameters of such support. For example, would the minima relate to social welfare levels of income?

As regards the catchall provisions in paragraph (iv), it is noted that suggestions have been made as to what may fall within this paragraph. As regards tax compliance, it depends on what is meant by tax compliant. The mere fact that a person is not tax compliant should not be taken on its own and there needs to be flexibility in the test to ensure that a person is not refused a long term residence permit on trivial and inequitable grounds. With regard to language competence, any requirement as to language competence must be matched by a drive by the State to ensure availability of language training for migrants otherwise it risks being discriminatory. In addition, there is also mention of the suggestion that “a reasonable effort to integrate into Irish society” would be a criterion. However, we assert that this criterion would only make sense if there is a generally agreed definition and understanding of integration backed up by a Government commitment to a national integration strategy.

We also draw specific attention to the Minister's comments (quoted in the Department's press release of 6 September, 2006) that at the Government meeting on the day of publication of the framework Bill, "it was agreed that the Bill should stipulate that one of the conditions of residence in Ireland will be an undertaking to keep the peace and be of good behaviour and comply generally with the law of the land, in particular, a number of specified laws such as those related to drugs, road traffic etc. Breach of these conditions will lead to a summary process of revocation."

This agreement by the cabinet is not expressed in the Heads, and we seek clarity as to whether they are to be read in conjunction with the Heads as published.

Integrating Ireland comment on Head 26 Protection Temporary Residence Permit

Subhead 26 (2)

There is a distinct danger here that if the Protection Temporary Residence Permit expires that a person will be deemed unlawful in the State, and thus the person will be obliged to remove himself or herself. Integrating Ireland notes with concern that if the state is to uphold its international obligations to non-refoulement that this section must be altered to take into account the fact that persons cannot be under an obligation to remove themselves or be liable to be removed if they have a right to protection from refoulement.

Therefore, unless the State adopts an assessment of all subsidiary protection grounds under a single procedure, the provision under subhead two could increase the risk of refoulement contrary to our international obligations. Therefore, as stated previously an assessment of subsidiary protection grounds would be understood as not only an assessment of those grounds under the Qualification Directive but also include obligations not to refoule individuals under ECHR, UNCAT and ICCPR.

Paragraph 26 (2) (c)

Please refer to HEAD 46 in relation to our concerns and observations regarding applications that are withdrawn or deemed to be withdrawn.

Subhead 26 (3)

Under subhead (3), we request further information regarding different periods of validity for a Protection Temporary Residence Permit for different classes of application for protection and submit that the same procedural safeguards must apply to all protection applicants.

Subhead 26 (5) (1)

We question Subhead 5, (1) requiring a protection applicant to reside or remain in particular districts or places and request elaboration on this, particularly as it is an offence not to comply.

Subhead 26 (8) (a)-(g)

Integrating Ireland notes with concern the number of grounds that protection applicants can be detained. This subhead raises serious concerns regarding the basis for detention of protection applicants in relation to the extensive provisions outlined based on the subjective assessment of Immigration Officers and Garda Siochana to enforce these provisions. The use of detention should be circumscribed in line with the relevant conclusions of UNHCR's Executive Committee, as well as international human rights law.²⁸ As UNHCR highlights, consistent with international and regional human rights law, detention of asylum-seekers is exceptional and should only be resorted to where provided for by law and where necessary to achieve a legitimate purpose, proportionate to the objectives to be achieved and applied in a non-discriminatory manner, for a minimal period. Procedural safeguards in relation to any detention should be outlined. Please refer to our additional comments on administrative detention under Head 18 (4) (b) (ii).

We question whether detention of protection applicants as laid in this subhead is permissible under the ECHR, which speaks to pre-deportation detention under Article 5 (1) (f). This Head should be amended in order to comply with international standards in relation to detention.

Paragraph 26 (8) (a)

UNHCR's EXCOM conclusion No. 44 speaks to the limited grounds upon which an asylum seeker can be detained. It mentions that an asylum seeker can be detained, to protect national security and public order where there is evidence to show that the asylum seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security. We are concerned that as drafted under this Head, that the grounds of posing a threat to public security or public order, as a basis for detention not clearly defined in line with ExCom Conclusion No 44, and could therefore be applied unduly broadly.

Subhead 26 (8) (d)

Please refer to our comments on Head 61 Safe Countries.

Subhead 26 (8) (g) (ii)

Regarding subsequent applications and detention, we question the criteria used to make a determination that a subsequent application has been made for the purpose of delaying removal from the state. In particular, this provision is extremely concerning if the determination is made by an Immigration Officer or member of the Garda Siochana who 'suspects' that this is the case. This provision needs to be removed as an Immigration Officer or member of the Garda Siochana cannot make this assessment.

²⁸ These include in particular Article 9 of the International Covenant on Civil and Political Rights (ICCPR), Article 5 of the Convention on the Rights of the Child (CRC) and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

Subhead 26 (11) (b)

We again raise our objections to the fact that a minor may be detained under the provisions of subhead 8, subject to an arbitrary and subjective assessment by an immigration officer or Garda Siochana as to whether the person is under 18. Immigration Officers and Garda Siochana should not make age assessments and are not qualified to do so. In light of the impact that an incorrect determination is made and that minor shall be subjected to detention it is important that this subhead is revised. Therefore persons claiming to be children should be provisionally treated as such, until a proper age determination carried out by a person qualified to do so has taken place. Please refer to our comments on age assessments under Head 17 (3) (c)

Subhead 26 (13) (a)

We are extremely concerned regarding Subhead 13 paragraph (a), that a protection applicant may be detained by order of a district court on a rolling basis (21 days) if one or more of the paragraphs of subhead (8) applies, until their protection application is determined. Subhead 13 does not outline the maximum period of detention allowed. Furthermore, we assert that a detention that is initially lawful will become arbitrary if it is prolonged beyond the period the authorities can justify taking account of the individual circumstances of the case. In addition the ICCPR has held that, “in order to avoid a characterisation of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification.”²⁹

Subhead 26 (14)

Where a protection applicant has been arrested and detained under Head 26(8) or has his detention extended under Head 26 13(a), he or she must be informed of various rights in a language he or she understands “where possible”. The Immigration Officer or Garda Siochana will explain to the applicant that if he or she does not exercise one of these rights, (including the entitlement to consult a solicitor with the assistance of an interpreter, and also the assistance of an interpreter for the purpose of any appearance before a court under Head 26,) he or she will not be precluded from doing so later. Please refer to our comments on language and interpreters under Head 17 (5) (b) &(c)

Subhead 26 (14) (d)

We are concerned that the provisions under Subhead 14(d), pertaining to applicants detained under subhead 26 (8) and 13(a), that these cases will be dealt with as soon as may be, and, if necessary, before any other application for declaration of a person not detained. Given the wide ranging grounds for detention we are concerned that that these applicants, regardless of the circumstances of detention must be afforded the same procedural safeguards and guarantees in relation to the examination of their protection application; otherwise there is a risk of breaching non-refoulement obligations.

²⁹ C.v. Australia, CCPR/c/76/d/900/1999, at para 8.2 (20020)

Integrating Ireland comment on Head 27 Protection Residence Permits (PRP)

Subhead 27 (1) (b) (i)

Article 1F of the Geneva Convention allows for the exclusion of persons having committed crimes against peace or humanity, those committing a serious non-political crime outside the country of refuge, and those guilty of acts contrary to the purposes of the United Nations. Article 33 (2) further provides that, “ A refugee may lose the protection of the Geneva Convention if there are reasonable grounds for regarding him/her as a danger to the security of the country in which he or she is convicted of a particularly serious crime and constitutes a danger to the community.”

However the protection accorded by Article 3 of the ECHR is not limited in this way and protection is absolute where Article 3 is engaged. This has been asserted in the jurisprudence of the ECHR in *Soering v. the United Kingdom*, *Ahmed v. Austria* and in *Vilvarajah*, which found that it was, “... unable to accept the Governments submission that Article 3 of the Convention may have implied limitations entitling the State to expel a person because of the requirements of national security.”³⁰ It stated further that, “The prohibition provided by Article 3 against ill-treatment is equally absolute in expulsion cases. Thus whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the contracting State to safeguard him or her against such treatment is engaged in the event of expulsion...In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration.”³¹

Subhead 27 (2) (a)

Under subheads 2a, Integrating Ireland argues that a protection residence permit should not be issued, ‘as soon as possible’ but rather immediately. A protection residence permit is essentially only an identity document establishing that an individual has been recognised as a refugee or as a beneficiary of subsidiary protection, and any attached rights should accrue from the decision to grant the status rather than be dependent on the issuing of a residence permit. However we have concern that unless residence permits are issued immediately that it is quite conceivable that many refugees and those granted subsidiary protection could effectively be prevented from enjoying their rights as a result of administrative failings or backlogs leading to a significant delay in the issuing of a protection residence permit.

Subhead 27 (2) (a) (ii)

Subhead (2) (a) (ii), outlines that a protection residence permit will be valid for three years. We submit that granting those in need of protection a secure legal status and durable residence permit is essential to gain the stability and predictability required in order to proceed with their lives and contribute fully to the social, political, and economic life of the state. If granting protection residence permits for three years, we ask the

³⁰ *Vilvarajah*, at p.34, para 108, quoted in, ‘Council of Europe Human Rights Files No 9, Asylum and the European Convention on Human Rights’ by Nuala Mole, Aire Centre United Kingdom

³¹ *Ibid* at Pg.21

Government to monitor the impact that this has on integration and the impact it has on access to full time education, employment contracts and access to housing etc. While Ireland has no national integration policy as yet, provisions that have the potential to negatively impact on long-term integration should not be introduced

Subhead 27 (2) (b)

Under subhead 2 (b), with reference to granting long-term residence permits and the required eligibility requirements, please refer to our comments under Head 25 that due regard must be given to the specific and particular situation and position of refugees and persons granted subsidiary protection. We believe that greater efforts are required to create a level playing field for those with protection status who face distinct barriers as they endeavour to integrate and that the aim should always be to find a durable solution for the person.

Subhead 27 (3) (b) & (c)

Under subhead 3 (b), please refer to our comments under Head 46 and Head 48 regarding applications withdrawn or deemed to be withdrawn.

Subhead 27 (4) (c)

Regarding making someone unlawful in the state without having full consideration and determination of whether they can be removed, places the state in potential breach of its non-refoulement obligations. In particular placing an obligation on the person to remove oneself, that they are liable to be removed without notice and that they may be detained could be considered as infringing upon non-refoulement obligations.

We again highlight that in order for the State not breach its international obligations not to refoule, that all subsidiary protection grounds, including those under ECHR, CAT and ICCPR etc must be included in an assessment under a single protection procedure as an assessment of those persons in need of protection.

Integrating Ireland comment on Head 29 Revocation or refusal to renew a residence permit

We stress that in relation to this Head 29 (3) & (4), that any decision to not renew or revoke a Protection Residence Permit will require a full assessment of protection needs and should be carried out by the relevant bodies tasked with this determination. Thus the decision to revoke or renew should be as formal as the process for the grant of status, given the stake for the individual.³² Furthermore any decision to not renew or revoke status should always be taken under a procedure in which the applicant has the right to argue the Government's contention.

³² Refugee protection in International Law – UNHCR's Global Consultations on International Protection 2003

Subhead 29 (3) (d)

We are concerned that revocation of status may be allowed where the permit holder constitutes a serious threat to public policy or public security or there are reasonable grounds for regarding the permit holder as a danger to the security of the State. Please refer to our comments on obligations where Article 3 ECHR is engaged under Head 27 (1) (b) (i)

Subhead 29 (4)

The question of whether status has ceased should always be determined in a procedure in which the person concerned has an opportunity to bring forward any considerations and reasons to refute the applicability of the cessation clauses. The burden of proof that the criteria of the cessation provisions have been fully met lies with the country of asylum.³³ As highlighted previously, any decision to withdraw or revoke status should always be taken under a procedure in which the applicant has the right to ague the Governments contention that status should be withdrawn.

Under UNHCR guidelines on cessation,³⁴ for cessation clauses to apply, the changes need to be of a fundamental nature, such that the refugee “can no longer continue to refuse to avail himself of the protection of the country of his nationality” (Article 1C (5)) or, if he has no nationality, is “able to return to the country of his former habitual residence” (Article 1C (6)). Cessation based on “ceased circumstances” therefore only comes into play when changes have taken place, which address the causes of displacement, which led to the recognition of refugee status.

In determining whether circumstances have changed as to justify cessation under Article 1C (5) or (6), another crucial question is whether the person can effectively re-avail him- or herself of the protection of his or her own country. Such protection must therefore be effective and available. It requires more than mere physical security or safety. It needs to include the existence of a functioning government and basic administrative structures, as evidenced for instance through a functioning system of law and justice, as well as the existence of adequate infrastructure to enable residents to exercise their rights, including their right to a basic livelihood. It is also important that recognition is given to the fact that “... it is recognized that compelling reasons may for certain individuals, support the continuation of refugee status...”³⁵

³³ UNHCR provisional comments on the proposal for a Council Directive on Minimum Standards on procedures in member states for granting and withdrawing refugee status (Council Document 14203/04, Asile 64 of 9 November 2004)

³⁴ UNHCR GUIDELINES ON INTERNATIONAL PROTECTION Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (The “Ceased Circumstances” Clauses)

³⁵ UN Doc A,AC.96,783, Oct 21 1991 Pg 6 . See also A v SSHD (2005) EWCA Civ 1438 (Eng Ca, Dec 1 2005)

Integrating Ireland comment on Head 30 Notification of proposal to revoke or refuse to renew a residence permit

As stated above, decisions on revocation or non-renewal in relation to protection residence permits must be made by the established determination system, with rights of appeal.

Head 30 (1) (a) & (b)

A proposal by the Minister to revoke or refuse to renew a residence permit shall be notified in writing to the person concerned and “where necessary and possible” a copy of the notification shall be provided in a language he or she understands. Given the importance that a decision to revoke or a refusal to renew will have, it is implicit that the copy must be in a language the person understands, without limitation, and this needs to be clarified expressly in the Bill. Please refer further comments on languages and interpreters under Head 17 (5) (b) & (c).

Integrating Ireland comment on Head 37 Member of family of a holder of a protection residence permit

Integrating Ireland notes with concern that provisions for family reunification are articulated only in relation to holders of protection residence permits and that apart from the Preamble there is no mention of family reunification for Irish nationals and residents. The Department in its original discussion document highlighted that family reunification provisions should be set out in an accessible and transparent fashion and acknowledged that a family reunification policy should be developed within the framework of an overall immigration policy. The discussion document also acknowledged that any family reunification policy would need to consider the provisions of the Constitution and of relevant international conventions so as to ensure conformity with state obligations and international best practice. We therefore reiterate our concern that the document remains silent on the issue of family reunification and that it will not be addressed in primary legislation.

As highlighted in our original submission³⁶, family unity should be the central focus in the formulation of any policy as it constitutes a universally recognized right of the family to protection by society and the state and is critical for social stability and integration. The Universal Declaration of Human Rights defines family as "the natural and fundamental group unit of society...entitled to protection by society and the State".³⁷ A number of other international³⁸ and European

³⁶ See Integrating Ireland original submission in response to the Department of Justice, Equality and Law Reform: Outline Proposals for an Immigration & Residence Bill in Ireland. July 2005

³⁷ Art. 16, (3), Universal Declaration of Human Rights. Further, Art.12 states that "no one shall be subjected to arbitrary interference with his privacy, family, home..."

³⁸ Arts. 17 and 23, (1), International Covenant on Civil and Political Rights, Article 10, (1), of the

legal instruments³⁹ similarly uphold family unity and protection. The protection of the family is equally recognised by the European Convention on Human Rights and further emphasised in the jurisprudence of the European Court of Human Rights. The Convention on the Rights of the Child, in particular Article 10, states that, "applications by a child or his or her parents to enter or leave a State for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner."

We believe that it is of utmost importance that the principle of family unity is upheld in a way that is meaningful for those who are affected by it, and that a broad definition of family is retained so that relatives are kept together and reunited wherever possible.

Subhead 37 (4) (a)

The government should adopt and implement procedures for the fair and efficient processing of family reunification applications. Family reunification should take place with the least possible delay and within a period of six months from the time an application is made. Psychologically, the detrimental impact of long separations from family members is severe and the prolonged separation combined with the sense of powerlessness, causes acute emotional distress to those seeking family reunification.

In particular, in relation to protection cases, where there is an immediate risk to a family member not in the state, family reunification should be carried out as soon as possible. Applications from or regarding separated/unaccompanied children should be prioritised in view of the potential harm caused by long periods of separation and all decisions should be taken in the best interests of the child.

Subhead 37(4) (b) (i)

The definition contained in this subhead in relation to a family member makes respect for family unity conditional on the family being established prior to flight from the country of origin. Although this is drawn from the Qualification Directive, as transposed by S.I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006 this restriction will have negative repercussions for people who form relationships during the time that they are seeking protection and should therefore not be introduced. We remind the Government that the Qualification Directive lays down minimum standards and the Government can introduce more favourable standards.

Subhead 37 (4) & (5)

Under Subhead (4) & (5), recognition must be given to the situation of women in relation to domestic violence. In situations such as familial breakdown or domestic violence, as highlighted in our original submission, consideration should be given to granting of an autonomous residence permit and independent legal status, rather than derived rights from the main permit holder. Moreover, the CEDAW has encouraged states to take into

International Covenant on Economic, Social and Cultural Rights, Arts. 9-10, UN Convention on the Rights of the Child.

³⁹ Art. 8, European Convention for the Protection of Human Rights and Fundamental Freedoms. Also, Art.16, European Social Charter (the right of the family to social, legal and economic protection).

account the effect on foreign married women when setting requirements for residency permits where such requirements might force women to remain in situations of domestic violence in order to retain their residence permits.

Subhead 37 (4) (b) (ii) & (iii)

This subhead outlines the requirement that a dependent child must be unmarried in order to fulfil the requirements to join or remain with the parent who has been granted status. This unfairly penalises some children, including those who have been left behind in their country of origin and have been forced into marriage as a means of survival. It also needs qualification concerning minor married children's level of emotional and other dependency on the parents.⁴⁰

Subhead 37 (5) (b)

As highlighted in our original submission, consideration of a broad concept and definition of the family unit needs to be adopted to include extended or de facto family members.⁴¹ The definition of a family unit should be flexible and culturally sensitive, and not limited to the nuclear family. ECRE's position on family reunification extends the definition of nuclear family and should be considered in terms of definitions.⁴²

Subhead 37 (6)

We question a decision made on the basis on public security, public policy or public health to deny family reunion under this Head. Again no clear criteria or guidelines govern the use of these terms, which have broad application, and are open to wide and varied interpretation.

⁴⁰ ECRE Information Note on the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

⁴¹ UNHCR asserts that "pragmatism and flexibility, in addition to cultural sensitivity, be brought to bear in the process of identifying the members of the refugee family", EXCOM Standing Committee Note on Family Protection Issues, EC/49/SC/CRP.14, June 1999. Further, para. 185 of the UNHCR Handbook states that "the principle of family unity operates in favour of dependents and not against them".

⁴² ECRE Position on Family Reunification 2000: "descendants of legally married partners who are less than 21 years of age or dependent on the principal applicant; dependent relatives in the ascending line of legally married partners; partners in a durable form of cohabitation who are not legally married or can not legally marry and the children under the age of 21 descending from them; children who are de facto members of a household through adoption, fostering or other forms of care arrangements, although not descending from a marriage or a relationship pertaining to that household; same-sex partners in a durable form of cohabitation; all dependent relatives in the ascending or descending line of cohabiting partners; dependent siblings when humanitarian reasons are invoked; and relatives on whom the principal applicant is dependent due to health, age, disability or other reasons."

PART 6: Removal from the State

Integrating Ireland comment on Head 38 Definition of Refoulement

We draw attention to the absolute nature of non-refoulement and the protection from refoulement, which is part of customary international law.⁴³ The *absolute* character of the prohibition of return to face torture, inhuman or degrading treatment thus has major policy and legal implications, which the government must consider.

Although the State is in a position to define refoulement in the domestic context, we are concerned that provisions under this Head do not properly reflect or ensure respect for our obligations not to refoule individuals and do not include essential safeguards to prevent the refoulement of individuals in breach of our obligations under international law.

We wish to reiterate our comments in the introduction regretting the absence of explicit reference to the absolute prohibition under international human rights law of returning an individual to face human rights violations, including torture, or inhuman or degrading treatment. We also recommend that Head 38 (1) should be amended to make explicit reference to these obligations including Article 3 ECHR, Article 7 ICCPR, and Article 3 CAT. In addition, consideration should be given to Article 19 (2) of the proposed Charter of fundamental Rights of the European Union, which explicitly establishes that “no one may be removed, expelled or extradited to a state where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”.

Subhead 38 (3)

Subhead 3, refers to the situation where a person, “has acquiesced in the choice of destination’ which is therefore not presumed to be a refoulement. A clear understanding of what the word ‘acquiesce’ means needs to be articulated. This Head also needs to take into account the specific vulnerabilities of people facing return, particularly in relation to language issues.

Subhead 38 (4)

Regarding our concerns and observations regarding Safe third countries please refer to Head 61 and in particular our comments on non-refoulement.

⁴³ See for example ExCom Conclusion No 55 ‘*General Conclusion on International Protection*’ (1989), para (d); and “*Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*” UN Doc. HCR/MMSP/2001/09, Dec, 13, 2001, in which the States parties acknowledged “the principle of refoulement, whose applicability is embedded in customary international law”.

Subhead 38 (5)

Subhead 38 (5) states that the sending of a person who is being removed from the State to a destination where the person was the holder of a protection temporary residence permit which has expired and the person's application for protection was founded on an expression of fear related to that destination is not considered a refoulement.

The provisions under this head should be revised, in particular with regard to the absolute nature of non-refoulement. In particular with regard to concerns regarding the lapsing of a temporary protection residence permit and the danger of refoulement, in this instance it absolutely cannot be considered not to be a refoulement if an application for protection was founded on an expression of fear related to that destination. This section needs to be removed as if enacted it potentially places the State in breach of its non-refoulement obligations.

Additionally, this head states that any representation made by, or on behalf of, that person that removal would be a refoulement should be dealt with as a further applications for protection. Again we are opposed to this in light of our concerns regarding Head 59 and subsequent applications for protection, in that further applications are at the discretion of the Minister.

Subhead 38 (6)

Head 38 (6) outlines that nothing in these heads shall be construed as preventing the extradition of a person in accordance with the provisions of the extradition acts 1965 to 2001 and the European arrest warrant Act 2003 as amended by the Criminal Justice (Terrorist Offences) Act 2005.

We are concerned that this Head does not contain adequate safeguards to ensure that prosecution or extradition procedures are in line with international refugee and human rights law. In particular, legislation should ensure that any extradition does not directly or indirectly contribute to the refoulement of an asylum-seeker, contrary to Article 33 (1) of the 1951 Convention. A person should not be extradited before a final decision has been taken on a protection application, if a person claims to be at risk of persecution or serious harm in the state requesting extradition. In particular, consideration whether the extradition request is related to the persecution or serious harm claimed by the protection applicant needs to be taken into account.

Integrating Ireland comment on Head 39 Removal from the State
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Any deportation or removal process should be carried out in accordance with international human rights standards and obligations and should include independent review and monitoring of the deportation or removal process. Please refer to our original submission for further comments on the removals process. Codes of conduct to reinforce standards of treatment should be established in order to undertake effective monitoring of forced returns.

Subhead 39 (2) (d) & (e)

Integrating Ireland has particular concerns regarding this subhead, specifically with regard to the provision relating to sending back to any country to which the person is guaranteed entry. We require further clarification on how this subhead will be implemented in practice.

Subhead 39 (3)

Although subhead three states that a person shall not be removed to a destination where to do so would be a refoulement this needs to be inserted in Subhead 39(1) in order to qualify and clarify other provisions, in particular those under subhead (1) as stands.

Subhead 39 (4)

Under Subhead 4, we question the methods used to facilitate removal from a state, in particular to obtain a travel document, ticket or other such documents, or to sign a document in connection with removal. This provision has the potential to amount to coercion or threat of sanction, specifically, as it is an offence not to do so. We also question if this applies to persons who do not have suspensive effect of legal remedy and persons whose temporary protection residence permits have lapsed, and in particular we note that if these persons still have outstanding protection issues regarding refoulement. This subhead cannot be maintained in relation to such persons, if it involves contact with state authorities from the Country of Origin where they have a fear of being returned to face torture, inhuman or degrading treatment.

Subhead 39 (5) (b)

Under subhead 5 (b), we question the wide powers of arrest without warrant of any person who the officer suspects of having committed an offence under this Head.

Integrating Ireland comment on Head 40 Arrest and Detention of foreign nationals for the purposes of removal from the state
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Head 40 lays out the provisions in relation to the powers of Garda Síochána and Immigration Officers and the detention of foreign nationals for the purposes of removal from the State.

Further to comments on Head 17, specifically in relation to administrative detention, we call on the government to avoid the use of detention and custodial measures and ask the Government to properly consider alternatives to detention, in addition to “providing for such measures in law and ensuring that the prescribed conditions are not discriminatory against non nationals.”⁴⁴ Measures regarding detention should only be taken as a last resort, in exceptional cases and where non-custodial measures have been proven on individual grounds not to achieve the stated, lawful and legitimate purpose.⁴⁵ It should

⁴⁴ Report of the Special Rapporteur on the Human Rights of Migrants, Ms Gabriela Rodríguez Pizarro, E/CN.4/2003/85 at para 75 (f)

⁴⁵ ECRE *Position on the Detention of Asylum Seekers*, April 1996. See also UNHCR EXCOM Conclusions No. 44 (1986) and No. 85 (1998).

provide, as stated, for a reasonable time limit and be subject to effective judicial review in a manner compatible with Article 5 of the European Convention on Human Rights and other provisions under international law. The ICCPR has recommended that State parties resort to means other than detention when dealing with immigration also stated that in, “order to avoid a characterisation of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification.”⁴⁶

Integrating Ireland further recommends that independent monitoring of detention should be permitted. Under any form of detention, the Government needs to ensure a minimum standard of basic rights for people being detained, concerning the right to be properly informed, the right to be visited, the right to health care, etc. Persons detained should have proper access to legal advice and language interpreters. The right to legal assistance and representation is an essential procedural safeguard.

Subhead 40(1) (e) & (f)

Persons about to be deported may be arrested and detained for a period of up to eight weeks under Head 40(1) (e). Any procedure such as an appeal, which might have the effect of further prolonging the period before deportation, can be added to the 8 weeks. The courts may order a person’s release but must have regard to whether such an individual would be ‘likely’ to obey the law if so released (Head 40(3) (b)). Integrating Ireland strongly objects to provisions under this Head.

Subhead 40 (2) (b)

Integrating Ireland again highlights our concern that an age assessment will be undertaken by an immigration officer or member of the Garda Siochana who is not trained to undertake this assessment and in particular that if an incorrect age determination is undertaken that this may result in a minor being detained.

The UN Special Rapporteur on the Human Rights of Migrants on the Human Rights of Migrants has outlined that States should take measures to protect children in detention including, ‘ensuring that the legislation does not allow for the detention of unaccompanied children and that detention of children is permitted only as a measure of last resort and only when in the best interests of the child, for the shortest appropriate period of time and in conditions that ensure the realization of the rights enshrined in the convention on the rights of the child.’⁴⁷

Furthermore, “Children under administrative detention measures should be separated from adults unless they can be housed with relatives in separate settings. When migrant children are detained, the United Nations rules for the protection of juveniles deprived of their liberty and the United Nations standard minimum rules for the administration of juvenile justice should be strictly adhered to. Should the age of the migrant be in dispute,

⁴⁶ C.v. Australia, CCPR/c/76/d/900/1999, at para 8.2 (20020

⁴⁷ Report of the Special Rapporteur on the Human Rights of Migrants, Ms Gabriela Rodriguez Pizarro, E/CN.4/2003/85 at para 75(a)

the most favourable treatment should be accorded until it is determined whether he/she is a minor.”⁴⁸

Subhead 40 (2) (c)

Under subhead 2(c), we question the provisions laid down or procedure to be followed for a married child under the age of 18 in terms of detention and notification of the HSE and why this provision should differ from that of an unmarried child.

Integrating Ireland comment on Head 42 Liability for costs of removal

Integrating Ireland strongly objects to the provisions making a person subject to a removal liable to repay the costs and associated costs of the removal. Integrating Ireland strongly opposes such measures and questions the approach, and validity of this Head and how it will work in practice. In particular, we stress the right to seek protection and that protection applicants should never be charged for the cost of removal. In addition, given concerns regarding suspensive effect of appeals and the wide grounds that allow for detention, charging people for the costs of removal and indeed detention is inefficient, unworkable and inhumane. We ask the Department to outline on what basis; research or analysis was the inclusion of this Head made, and to what assessment regarding its workability and viability was made. In relation to an efficient, effective and humane returns or removal policy, Head 42 is not viable or tenable and should therefore be removed.

PART 7: Protection

Integrating Ireland comment on Head 43 Entitlement to protection in the state

It is in the states best interest in terms of efficiency and also to recognise and uphold obligations to those in need of international protection that all forms of international protection needs are examined in a single procedure with the same minimum guarantees, that are in line with international human rights law and standards.⁴⁹ A single protection procedure should determine whether an applicant would qualify for protection under the 1951 Geneva Convention or whether s/he may qualify for subsidiary protection. Integrating Ireland submits that in order to meet our international obligations to respect the absolute nature of prohibition of return to face torture, inhuman or degrading treatment, that an assessment of subsidiary protection grounds must be understood as not only an assessment of grounds under the Qualification Directive but also our obligations under Article 3 ECHR, Article 7 ICCPR and Article 3 CAT.

⁴⁸ Ibid at para 75(a)

⁴⁹ ECRE The Way Forward. Europe’s role in the global refugee protection system. Towards Fair and Efficient Asylum Systems in Europe Sept 2005

The grounds for protection, including the relevant standard of proof, should be interpreted in the light of existing and evolving jurisprudence of international human rights law and the European Court of Human Rights.

Head 43 (1) (b)

Head 43 (1) (b) states that a person who asserts any aspect of a protection claim shall be deemed to have sought protection in the state as a refugee. This subhead seems to be based on the Procedures Directive Article 2 (b) which clarifies further that an, ‘application for international protection is presumed to be an application for asylum unless the person concerned explicitly requests another kind of protection that can be applied for separately;’

Head 43 (2) (a)

While we understand that the definition of a refugee in these Heads is in line with the definition under the Qualification Directive, as transposed by S.I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006 in that, “...a refugee means a person, other than a national of a Member state,” we recommend that in order to ensure full compatibility with the 1951 Convention, use of a wider definition which refers to applications by any non-national and that advocated by UNHCR is retained. Restrictions of the refugee definition to third country nationals as in Head 43 (2) (a) should be amended.⁵⁰

Head 43 (3) (C)

With regard to the definition of serious harm, as outlined in the Qualification Directive as transposed by S.I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006, we would like to highlight concerns raised by UNHCR and others that that the notion of an ‘individual threat’ should not lead to the imposition of an additional threshold for those facing a serious threat to their life or person because of indiscriminate violence. If there is a serious threat it is, by definition, a threat to the individual, even if they are not specifically targeted.⁵¹ We also recommend that the Government ensure that Head 43 (3) (C) is interpreted broadly so that protection is provided to those who have fled serious threat to their life or person, including indiscriminate violence and gross human rights violations outside the context of ‘internal or international armed conflict’.

Head 43 (3) (a) (i-iv)

Integrating Ireland notes with concern that subhead (3) (a) (i-iv) outlines the grounds upon which people will be excluded from subsidiary protection. (3) (a) (v) allows exclusion on the basis of having committed any imprisonable offence, notwithstanding

⁵⁰ UNHCR comments on the proposal for a Council Directive on Minimum Standards on procedures in member states for granting and withdrawing refugee status (Council Document 14203/04, Asile 64 of 9 November 2004)

⁵¹ British Refugee Council response to the Home Office Consultation on the Qualification Directive 2006

considerations of seriousness. (3) (a) (iv) which speaks to exclusion based on a person constituting a danger to the community or to the security of the state is imprecise and has the potential for extremely broad application. We seek further clarification on what a ‘serious crime’ constitutes under (3) (a) (ii). According to UNHCR guidance, a serious crime is a capital or a very grave crime normally punished with long imprisonment and a “particularly serious crime” belongs to the gravest category.⁵² Any exclusion clauses should be restricted rather than extended.

Integrating Ireland comment on Head 44 Application for protection and information to be given to protection applicant re procedure

Subhead 44(1) (b)

Provides that when a protection applicant makes an application to the Minister for protection, he or she is informed of entitlement to consult a solicitor and the High Commissioner. The right to be informed immediately of his/her right to consult with a solicitor is well settled in international law.⁵³ This Head needs to be amended to make clear the applicants right to consult with a solicitor and to be informed of that right in a language that they understand.

Subhead 44 (2) (a)

The appearance that a child is under the age of 18 is not a sufficient safeguard for the immigration officer to the HSE, ‘as soon as is practicable’. We maintain that the HSE should be informed immediately in order to ensure that child protection issues are addressed and that the principle of the best interests of the child are upheld.

Subhead 44 (2) (b)

In relation to applications for protection and children, we draw attention to the difference in terminology used on the international level, where a distinction is made between ‘unaccompanied children’ and ‘separated children’. According to UNHCR, the term ‘unaccompanied children’ refers to children who are not accompanied by any adult, having been separated from both parents and other relatives or legal or customary guardians. The term ‘separated children’ includes children who may be accompanied by a relative or other adult, but where this person may not be able, suitable or willing to assume responsibility for the child’s long-term care. UNHCR guidelines and best practice therefore suggest referring to both separated and unaccompanied children.⁵⁴

⁵² UNHCR Comments (November 2004) *The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004*.

⁵³ Principle 5 of the Basic Principles on the Role of Lawyers, Principle 17(1) of the Body of Principles. United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 7 September 1990

⁵⁴ UNHCR, UNICEF, ICRC, IRC, Save the Children (UK), World Vision: *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, Geneva

Subhead 44 (2) (c)

Subhead (2) (c) makes reference to the HSE appointing a responsible adult other than an immigration officer. As outlined previously, we stress that in any provisions relating to children that the person appointed must have proper training and expertise in order to undertake their role. The person should have an understanding of child welfare and rights, have expertise in child protection and knowledge of child specific forms of persecution. The person must also have knowledge of our international protection obligations and their primary role should be to ensure that decisions relating to the child are conducted in the child's best interests.⁵⁵ Please refer to further comments under Head 17 (3) (b) (iii).

Subhead 44 (2) (d) (i)

In relation to what is already contained in this provision we would stress that in order for the HSE Officer or such other person as may be determined to make an application on behalf of the child, that the person needs to be fully trained not only in child protection issues but also refugee and international human rights law and take cognisance of the specific vulnerability of children arriving in the state. All children are entitled to seek asylum in their own right and are entitled to have an individual determination of their application. The views of the child must be given due weight in accordance with the age and maturity of the child.⁵⁶ Please refer to our comments under Head 17 on provisions relating to children and specific provisions in relation to unaccompanied minors seeking to enter the State or present in the State.

Subhead 44 (3) (a), (b) & (c)

These subheads allow 'dependents' to have applications submitted on their behalf and where the dependent is over the age of 18 that the dependent adult must give written consent to the application being made on their behalf. While we acknowledge that this provision is intended to deal with all protection claims of one family together, we stress that in some cases this may prevent victims of sexual violence, particularly women, from explaining and recounting their particular experiences, potentially jeopardising the assessment of their claims. As Head 45 2 (a) (ii), does not make it clear whether there is a requirement to interview dependent adults, we would like to highlight that all dependent adults should be entitled, if they so wish, to an interview, which should take place without the presence of family members. In order to ensure access to the procedure they should be informed in private of their right to make an individual application for asylum at any stage⁵⁷.

Subhead 44 (5) (f)

We question the inclusion in the interview of establishing the legal basis for entry into or presence in the State of a protection applicant. The legal basis is that the applicant is seeking protection. This provision should be removed. In addition this subhead states that

⁵⁵ See Separated Children in Work Programme, Third Edition, 2004, p.16

⁵⁶ Article 12 of the Convention on the Rights of the Child

⁵⁷ ECRE *Guidelines on Fair and Efficient Procedures for Determining Refugee Status* – September 1999, Recommendation 23.

when a protection applicant is being interviewed as part of the application for protection the interview must be conducted with the assistance of an interpreter “where necessary and possible”. Please refer to our comments on languages and interpreters under Head 17 (5) (b) & (c) and in particular to comments on protection applicants.

Subhead 44 (7)

After a protection applicant has applied for protection, the Minister will provide the applicant with a written statement, specifying various procedures, entitlements, duties, obligations and consequences. This will be provided in a language the person understands, “where possible”. One of the entitlements is to consult a solicitor and, “where necessary and practicable”, to be provided with an interpreter. Integrating Ireland feels that it is absolutely critical that in a fair determination system that the applicant is informed about procedures to be followed in a language that he/she understands. The right to be informed is a basic requirement for any fair asylum procedure, and is unjustifiably restricted under this subhead. Instead, information should be given in a language applicants are known for sure to understand. In addition, there is a need to provide accessible information to those who cannot read and in these cases the use of interpreters is essential. In particular in relation to subhead 7 (f) & (g) the consequences of an applicant not understanding these provisions are severe.

Subhead 44 (7) (b)

Subhead 44 (7) (b), states that the protection applicant shall be notified of the entitlement to consult a solicitor and where necessary and practicable, to be provided with an interpreter. Where necessary and practicable is not a sufficient standard. Again this should be changed to where necessary provided with an interpreter. Please refer to our comments on languages and interpreters under Head 17 (5) (b) & (c).

Subhead 44 (7) (f)

We are concerned that under subhead 7 (f), the possible consequences of non compliance with provisions under Head 26 may result in a protection application being deemed to be withdrawn, the consequences of which are that the Minister may refuse to give the applicant protection in the State, the applicant will be unlawful in the state and will be required to remove him/herself, or be removed without further notice or process.

We draw attention to our previous comments on Head 26, and strongly object that an application may be withdrawn with subsequent serious consequences merely on the basis of failure to fulfil formal obligations such as failure to report a change of address. We feel that certain provisions under Head 26 place over burdensome and arbitrary obligations on applicants. The proposal in 7(f) is potentially at variance with the 1951 Convention, which defines a refugee as a person with a well-founded fear of persecution on Convention grounds – regardless, of whether he/she disregarded formal obligations, such as reporting a change of address. If the consequences of not complying with the provisions under Head 26 mean that an application is withdrawn and the person is unlawfully in the state without a full substantive examination of the protection application, the State risks breaching its non-refoulement obligations. No limitations on the substantive consideration of asylum applications should be allowed.

Integrating Ireland comment on Head 45 Ministers investigation of protection applications

Subhead 45 (1) (b)

Under subhead 1b we request further information and clarification on the non-protection criteria framework and the procedure to be applied. We welcome the fact that examination of any other factors, in particular any compelling humanitarian reasons, which may preclude removal, will be retained. However we question the utility of including this under Head 45, investigation of protection applications.

Subhead 45 (2) (a) (ii)

Head 45 2 (a) (ii) makes it clear that there is no requirement to interview dependents. We would therefore like to highlight that all dependents, including dependent adults should be entitled, if they so wish, to an interview, which should take place without the presence of family members. Moreover, information may emerge during an interview with dependants indicating that they themselves have a valid fear of persecution or serious harm. In such cases, they should be offered the opportunity to have their claims considered separately. In order to ensure access to the procedure they should be informed in private of their right to make an individual application for asylum at any stage.⁵⁸

Head 45(2) (b)

As part of the Minister's investigation of the protection applicant, a protection status officer will interview the applicant. This interview is to be conducted with the assistance of an interpreter "where necessary and possible". Again please refer to our comments on languages and interpreters under Head 17(5) (b) & (c)

Subhead 45 (4) (d)

States that the Minister may use information within his or her knowledge relating to an applicant whether or not it has been furnished to him or her, or by the applicants to whom the information relates. We seek clarity on this provision. Any information provided that assists in the determination of a protection application should also be made available to legal representatives.

Subhead 45 (6)

Subhead 6 states that the procedures to be followed in investigations under this head may be prescribed and different procedures may be prescribed for different classes of applicant. We strongly argue that the same procedural safeguards should apply to all applicants for protection and seek clarification in relation to different procedures prescribed for different classes of applicant. We find this provision, as it stands unacceptable, as the examination of protection grounds should be the same procedure for all categories of applicants, to which all procedural safeguards and guarantees apply

⁵⁸ ECRE *Guidelines on Fair and Efficient Procedures for Determining Refugee Status* – September 1999, Recommendation 23.

Integrating Ireland comment on Head 46 Withdrawal of protection application

The assessment under this Head regarding withdrawal of an application is problematic, as the variety of reasons for withdrawal of an application may not necessarily be related to a lack of need for protection.⁵⁹ In particular while we understand that certain provisions already stand under the Refugee Act 1996, we feel that the conditions and circumstances under which a protection claim can be deemed to be withdrawn and further rejected, carries the risk that existing protection needs are not examined and recognized fully.

Subhead 46 (2)

Further to comments above on the assessment of a withdrawal of an application, a three-day rigid time limit is too short a time frame in terms of furnishing the Minister with an explanation for non-attendance at interview. 15 working days should be provided for in order for individual applicants or legal representatives to respond.

We are also concerned that Ministerial Discretion shall apply with regards to an assessment of whether an explanation for non-attendance is reasonable – this is not sufficient procedural safeguard for protection applicants in view of an application being withdrawn.

Subhead 46 (3) (b)

Subhead (3) (b) lays out the reasons under which the Government may deem an application for protection to be withdrawn. Notice in writing shall be sent to the applicant inviting him/her to indicate in writing within 10 working days that they wish to continue with his/her protection application.

Integrating Ireland understands that these provisions already stand under the Refugee Act 1996, however we draw attention to our previous comments on Head 26 and Head 44 (7) (f), and strongly object that an application may be withdrawn with subsequent serious consequences merely on the basis of failure to fulfil formal obligations such as staying in a specified place, reporting requirements, notification of a change of address, regardless of the ten day time limit in which to indicate that he/she wishes to continue with the application. As outlined previously the provisions under Head 26 place over burdensome and arbitrary obligations on applicants, which have serious consequences under Head 46. If the consequences of not complying with the provisions under Head 26 mean that an application is withdrawn and the person is unlawfully in the state, without a full substantive examination of the protection application, the State risks breaching its non-refoulement obligations. No limitations on the substantive consideration of asylum applications should be allowed.

Subhead 46 (4)

Further to comments above, Integrating Ireland believes that there is no legal basis or practical need to reject applications deemed to be withdrawn under subhead 3 (b) and that

⁵⁹ In UNHCR's view, a claim may be explicitly or implicitly withdrawn for a variety of reasons, which are not necessarily related to a lack of protection needs.

under subhead 4 (b) by determining that a deemed to be withdrawn application shall include a determination that the applicant concerned is not entitled to protection in the State, this makes the person unlawfully in state without a full examination of their protection application and subject to removal without further notice or process. We submit that applications should not be rejected, and the possibility should be provided for re-opening the procedure if the application has not been examined substantively. Additionally, under Subhead 46 (4) (c), access to appeal rights are essential in order to uphold non-refoulement obligations.

Integrating Ireland comment on Head 47 Burden of proof

Subhead 47 (1)

According to the UNHCR Handbook,⁶⁰ while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts should be considered a joint responsibility of the applicant and the examiner. This also applies generally, including in cases where there are inconsistencies or contradictions, where an applicant's story appears unlikely, or insufficiently substantiated. An attempt should be made to resolve inconsistencies and contradictions, although minor inconsistencies or contradictions on issues irrelevant to the substance of the claim should not affect the credibility of the applicant.⁶¹

In addition under the Qualification Directive as transposed⁶² there is a duty to assess, in cooperation with the applicant, all relevant elements of the application (article 4(1)), and take into account all relevant country of origin information, statements and documentation presented by the applicant, and the individual position and circumstances of the applicant (Article 4(3)), as well as whether the applicant has already been subject to persecution or serious harm (Article 4(4)). Subhead (1) therefore needs to be amended in order to take these requirements into account.

Subhead 47 (2) and (3) (c)

Under Head 47 (2) & (3) please refer to comments on Head 61 Safe Countries.

Subhead 47 (4)

Under Subhead 4, where a protection application has been rejected or deemed rejected and seeks to challenge a removal from the state on the basis of information, or a matter that was not available to the decision maker before the rejection of deemed rejection, this information will not defer or prevent removal from the state.

⁶⁰ UNHCR 'Handbook on Procedures and Criteria for Determining Refugees Status', Geneva 1979, reedited January 1992.

⁶¹ Ibid at (paragraph 196),

⁶² S.I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006,

If Ireland is to comply with non –refoulement obligations and international law provisions relating to the right to an effective remedy⁶³ it is important that all applicants should be allowed to remain until such time as appeal rights have been exhausted, regardless of whether the appeal is on the basis of new information being made available that was not available during examination of the protection application. Appeals should have suspensive effect and limiting that requirement of applicants represents a risk of refoulement contrary to our international obligations.⁶⁴ We have concerns that this provision if implemented lacks the necessary safeguards to ensure that applicants are not sent back to a country where they may face persecution, including death, torture and inhuman or degrading treatment. In addition, considering the wide grounds on which an application may be deemed rejected it is essential that appeals have suspensive effect. This right to remain is also essential for judicial supervision to be effective. Curtailing or eliminating necessary procedural and legal safeguards only serves to undermine effective decision-making and a right of effective remedy becomes meaningless if a person has already been sent to the country where they may face persecution, torture, or inhuman or degrading treatment⁶⁵.

Indeed in *Jabari v. Turkey*, the ECHR held that “the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned.”⁶⁶

Integrating Ireland comment on Head 48 Credibility

We are concerned by the provisions under Head 48 and in particular the negative formulation of credibility assessments.

In general we would like to highlight that by their nature, asylum laws and procedures affect individuals who tend not to be well-versed in refugee law, and who are, due to their past traumatic experiences, often particularly distrustful of persons in authority⁶⁷ and may thus face particular practical difficulties in complying with their duty to establish the facts and present their personal history.⁶⁸

⁶³ The right to an effective remedy is embodied in EC law, article 47 of the Charter of Fundamental Rights of the EU, and in Article 13 of the European Convention on Human Rights.

⁶⁴ See *Conka vs. Belgium*, Judgement 05/002/2002, stating as regard the deportation of asylum seekers: “it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention.

⁶⁵ ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee Status

⁶⁶ *Jabari v Turkey* Application No. 40035/98, Decision of 11 November 2000, Para. 50.

⁶⁷ See Para 190 of the UNHCR Handbook, which states: “It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. [S/] He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his [her] case to the authorities of a foreign country, often in a language not his [her] own”.

⁶⁸ ECRE *The way Forward: Europe role in the global refugee protection system. Towards Fair and Efficient Asylum Systems in Europe* Sept 2005

Most asylum seekers are therefore not aware of the intricacies of the procedure and issues of burden of proof. They might not be aware that they have to give a complete account of their history, failing which they are usually considered not credible and statements made afterwards will mostly be considered to be false and concocted⁶⁹. They may omit matters, which they do not realise, are important. Applicants may not trust officials or interpreters from their own country, and if tortured or abused, may find those experiences difficult to recount. In addition, the asylum seeker's ability to present his/her personal account can in many cases be undermined by an existing endemic 'culture of disbelief', whereby most asylum seekers are presumed to be abusing the system.⁷⁰

Indeed in the case of *MIMA v. SLGB* the Court outlined that, "Many factors may explain why applicants present with the appearance of poor credibility. These include mistrust of authority; defects in perception and memory; cultural differences; the effects of fear; the effects of physical and psychological trauma; communication and translation deficiencies; poor experience elsewhere with government officials; and a belief that the interests of the applicants or their children may be advanced by saying what they believe officials want to hear...The process is one of arriving at the best possible understanding of the facts in an inherently imperfect environment. It is not to punish or disadvantage vulnerable people because they have made false or inconsistent statements, or are believed to have done so."⁷¹

In addition, in *Saidou Dia v. Attorney General*, it was highlighted that, "...It is obvious that one who escapes persecution in his or her own land will rarely be in position to bring documentary evidence or other kinds of corroboration to support a subsequent claim for asylum. It is equally obvious that one who flees torture at home will rarely have the foresight or means to do so in a manner that will enhance the chance of prevailing in a subsequent court battle in a foreign land. Common sense establishes that it is escape, not litigation and corroboration that is foremost in the mind of an alien who comes to these shores fleeing detention, torture and persecution. Accordingly, corroboration is not required to establish credibility."⁷²

While we understand that credibility assessments are by their nature complex, as with any assessment of a protection claim, it will depend in large part on the decision makers' ability to test the credibility of applicants in an appropriate manner. In relation to assessments of credibility we would like to draw attention to evidence from the UNHCR's UK Quality Initiative Project which highlighted severe deficiencies in many asylum caseworkers' skills and identified severe shortcomings in the ability of UK case workers to reach appropriate decisions on asylum claims. In its October 2005 report, UNHCR stated:

"UNHCR has observed a large number of cases where one statement deemed by the caseworker to be untrue, often on weak grounds, is relied upon to dismiss the

⁶⁹ Ibid at pg.44

⁷⁰ Ibid at pg. 45

⁷¹ *MIMA v. SLGB* 2004 HCA 32 (Aus HC, June 17, 2004, per Kirby J)

⁷² *Saidou Dia v. Attorney General*, 353 F. 3d 228 (USCA3, Dec 22, 2003)

credibility of the entire claim. UNHCR has seen instances where this has resulted in important aspects of a claim being prematurely discarded when they should have been taken into account in considering the ultimate question of whether the applicant has a well-founded fear of future persecution for a Convention reason.⁷³

At this point we would like to highlight that the skills and training of those undertaking protection assessments is critical, and that there is a danger that if decision makers who are not adequately trained, or are inexperienced in dealing with complicated matters arising in protection applications, that this could potentially represent a serious risk of flawed decisions and non-compliance with the requirements in EU asylum provisions, especially in relation to the Qualification Directive as transposed. Under the Qualification Directive, decision makers have the duty to assess, in cooperation with the applicant, all relevant elements of the application (article 4(1)), and take into account all relevant country of origin information, statements and documentation presented by the applicant, and the individual position and circumstances of the applicant (Article 4(3)), as well as whether the applicant has already been subject to persecution or serious harm (Article 4(4)). In line with other commentators such as ECRE, we argue that this can only be done by personnel who are properly trained on protection issues, and who have expertise in dealing with traumatised people.⁷⁴

We argue that in terms of efficiency, and in order to make sure that international protection needs are identified as soon as possible, that all staff dealing with assessment of protection issues should be specialized and receive ongoing, appropriate and high quality training in all related areas⁷⁵. Flaws in earlier stages of the procedure, which may be the result of a lack of training or unspecialised staff⁷⁶, will lead to longer and less efficient procedures to the detriment of the State and applicant. We draw attention to the number of refugees who have a negative decision at ORAC overturned at appeal by the Refugee Appeals Tribunal. On this point, ECRE has advocated that in order to help improve the quality of decision making a common EU training programme should be developed covering elements such as interview technique, working with vulnerable and traumatized applicants, researching and assessing country of origin information, and assessing credibility etc.⁷⁷

⁷³ UNHCR Quality Initiative Project: Second report to the Minister.

<http://www.ind.homeoffice.gov.uk/aboutus/reports/unhcr>

⁷⁴ ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee Status

⁷⁵ See also UK Advisory panel on country of Origin Information. Members consist of 70% academics and representatives from UNHCR, IOM, British Refugee Council and other NGO's. The panel advise on the way in which country reports should be compiled and monitor the quality of COI. In addition, the Common COI Standards Initiative Pilot Project supported by UNHCR where independent experts are given access to a sample of status determinations in order to monitor and assess the quality of the COI used by decision makers

⁷⁶ In addition ECRE has also recommended that States should consider introducing psychological/personality tests for protection decision makers to avoid the recruitment of individuals with racist, xenophobic or other inappropriate views. (ECRE the Way Forward Europe's Role in the Global Refugee Protection System. September 2005.)

⁷⁷ ECRE The Way Forward: Europe's Role in the Global Refugee Protection System. September 2005

As highlighted previously, independent monitoring and quality assessment mechanisms such as that of the UK Quality Initiative Project developed by UNHCR⁷⁸ could be established and given access to randomly selected samples of files in order to assess the quality of decision-making, identify gaps in existing decision-making procedures and address the appropriate training and resources needed to fill these gaps. In this way issues and weaknesses could be identified and corrective advice provided and the publication of these reports would ensure transparency and accountability.⁷⁹

Subhead 48 (c) (i)

It is recognized by Article 31 (1) of the 1951 Convention that applicants may not be able to provide documentation on all matters, due to the circumstances of their flight and the situation where applicants may have been smuggled, had their identity documents destroyed or were forced to use false documents. Integrating Ireland therefore strongly opposes provisions designed to penalise applicants without documents by challenging their credibility. Absence of documents regarding identity should not lead to conclusions on the merits of the claim.

In addition, as advocated by ECRE⁸⁰, it is essential that there is a meaningful opportunity for an applicant to rebut presumptions about credibility arising from a lack of identity documents and that applicants should therefore:

- be informed of the relevance of the documents and/or other information concerning his/her identity, nationality or travel route,
- be given legal assistance and a preparation period prior to any substantial hearing on these aspects,
- be facilitated to obtain documents from the country of origin, where this is relevant and possible in safety,
- be given the possibility to rebut presumptions on his/her wilfully destroying or withholding information/documents,
- be informed if doubts regarding the travel route or identity may raise overall credibility issues.

Subhead 48 (c) (iii)

Further to comments above, vagueness and/or absence of information and documents regarding a full and true explanation of travel route, should not lead to conclusions on credibility⁸¹. All aspects of a person's statement must be considered in light of the overall substance of the claim and the individual circumstances of the claimant. As UNHCR points out, the lack of documentation or use of forged documents does not, in itself, render a claim fraudulent, or warrant negative conclusions about the genuineness of the claim. The fact that an applicant's claim is 'unlikely' does not necessarily mean that it is

⁷⁸ An existing example or model of such a mechanism would be the Quality Initiative project, developed by UNHCR in close collaboration with the UK Home Office. See UNHCR, *Quality Initiative Project. Key Observations. March 2004 – January 2005*.

⁷⁹ ECRE the Way Forward Europe's Role in the Global Refugee Protection System. September 2005.

⁸⁰ Ibid at pg 41

⁸¹ Ibid at 41

not true.⁸² This is recognized also by Article 31 (1) of the 1951 Convention, which explicitly exempts refugees from penalties for illegal entry or presence.⁸³

Subhead 48 (c) (iv)

In relation to Subhead (iv), Integrating Ireland reiterates that there may be circumstances where a person, despite ample opportunity to apply for asylum, has not done so for understandable reasons, such as trauma, lack of access to information about the means to apply etc. As such, the lateness of an application, even without ‘reasonable cause’ may not necessarily have any bearing on the merits of a protection claim, and should not be given undue weight.⁸⁴

Subhead 48 (c) (vi) (i)

The term, ‘minimal relevance’ is difficult to define and entails the risk of an overly broad application. This should be restricted to issues that are not relevant.

Subhead 48 (c) (vi) (iii)

With regard to references to “to inconsistent, contradictory, unlikely or insufficient statements”, we remind the Government of relevant UN Committee against Torture decisions in relations to victims of torture, in particular regarding recounting stories and the reasons for fearing persecution or serious harm and that stories may be inconsistent and may change⁸⁵. Indeed the UN Committee against Torture has indicated in its case law that it is not uncommon for torture survivors to delay giving information and that in practice the instances where an applicant can provide full documentation will usually be the exception rather than the rule.⁸⁶ As regards insufficiencies in submissions, there may be limits to what the asylum-seeker is able to submit, as highlighted previously, persons in need of international protection may frequently arrive without any documents. According to UNHCR, in such situations, examiners should use all the means at their disposal to search for the necessary evidence in support of the application. Each case should be determined individually, on its merits. In particular, they should take into account that trauma and mental illness, feelings of insecurity, or language problems may result in apparent contradictions or insufficient substantiation of claims.⁸⁷

⁸² See also Cohen, in ‘Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers, 2001) IJRL Vol. 13 No. 13, (1) p.293 at 308’ outlines that, “Current research on memory shows that stories can change for many reasons, and such changes do not necessarily indicate that the narrator is lying. ...Conversely those with certain discrepancies may be so because they have been genuinely reconstructed from autobiographical memories...”

⁸³ Article 31 provides that “... Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.

⁸⁴ See ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

⁸⁵ See *Hatami v. Sweden*, App No 32448/96, Judgement of 23rd April 1998

⁸⁶ See Communication No. 15/1994 *Tapir Houssain v Canada* (18 November 1994) para 12.3)

⁸⁷ UNHCR comments on the Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing refugee Status February 2005

Subhead 48 (c) (x)

Failing to comply with the conditions under Head 26, Protection Temporary Residence Permit, such as failure to notify of change of address etc should have absolutely no bearing on an applicant's credibility assessment or any assessment of protection.

Subhead 48 (c) (xi)

The last line in this subhead makes reference to, ' may have regard to other such matters as may seem reasonable to the Minister or the Tribunal as the case may be'. We seek further information and clarification as to what other matters, 'as seem reasonable' may be taken into consideration.

Integrating Ireland comment on Head 50 Prioritisation of applications
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Head 50 (1) (i-o)

Permits the use of prioritised procedures for applicants, while offering a list of grounds that would give rise to prioritisation, including: applications where false or misleading representations have been made, where applicants have not complied with duty to cooperate, whether applicants had or could have lodged prior applications in safe countries, applicants who do not file their application at the earliest opportunity after arrival in the state, and also due to considerations of public security and policy. Our concern is that the provisions under Head 50 provide extensive grounds to qualify for prioritisation of applications, such that prioritisation procedures risk becoming the norm rather than the exception.

We emphasize again that a full and individual examination of the substance of a claim subject to all the necessary legal safeguards needs to be maintained for all applicants under a single procedure and that prioritisation should not result in the limitation of procedural safeguards.

Subhead 50 (1) (i)

Under Subhead (1)(i), whether applications do not show on their face grounds for the contention that the applicant is in need of protection, we argue that this assessment should include an assessment of all subsidiary protection grounds and explicitly state this. This is especially relevant if such protection needs are considered in a single procedure.

Subhead 50 (1) (k)

Please refer to comments on Head 61 Safe Countries.

Subhead 50 (1) (j)

Subhead 50(1) (j) refers to whether applicants have made false or misleading representations in relation to their applications. This provision is broad and could be applied to all claims rejected at first instance and therefore lead to a reduction of procedural safeguards. Please also refer to comments on Head 48 (1) (vi) (iii).

Subhead 50 (1) (L)

Speaks to whether applications were made at the earliest opportunity after arrival in the State. Further to comments under Head 48 Subhead (iv), this subhead does not take into account among other issues, circumstances arising *sur place*, where the reasons for a fear of persecution or serious harm or a risk upon return become apparent only during the stay.

Integrating Ireland comment on Head 52 Notification of Determination of protection application at first instance

Subhead 52(1) (d) & (e)

Is unsatisfactory due to the limitations on the information accessible by the applicant's legal representative where this is deemed a risk to public security or public policy or whether a government of another state has implied that the information should be kept confidential.⁸⁸ It is fundamental to the fair examination of an asylum application for the legal representative (and the applicant) to have full access to the information upon which a decision is made. This is in the interests of transparency, and in order to ensure that decisions are based on assessment of facts that are up to date, accurate and relevant to the application. Any limitation on access to information in a file leaves applicants and decision makers in unequal positions and could potentially limit the applicants' possibility to challenge factual errors.

Subhead 52(3) (c)

If the state is to uphold its international obligations to non-refoulement this section must be altered to take into account the fact that persons cannot be under an obligation to remove themselves or be liable to be removed if they have a right to protection from refoulement. This highlights the importance in a single procedure of examining all subsidiary protection grounds, as not to do so exacerbates the risk of refoulement contrary to our international obligations.

Integrating Ireland comment on Head 53 Criteria for non protection aspects of protection application

We request clarity on Head 53 and its linkage to protection applications and assessments. The inclusion of non-protection related aspects in a protection application is confusing not only for applicants but also for decision makers. The assessment of other factors that would allow a person to remain in the state must be undertaken as a separate assessment.

⁸⁸ UNHCR recommends that information and its sources may be withheld only under clearly defined conditions, where disclosure of sources would seriously jeopardize national security or the security of the organizations or persons providing information.

Integrating Ireland comment on Head 54 Protection Review Tribunal

Subhead 54 (3) (a) (i) & (ii)

We welcome the assertion that the Protection Review Tribunal will be independent in the performance of its functions and inquisitorial in nature.

Integrating Ireland comment on Head 55 Membership of the Tribunal

Subhead 55 (1) (b)

We argue that this subhead needs to assert strongly that members should have experience, background and expertise in human rights and refugee law in addition to protection matters and not just solely experience in protection matters. This particularly applies to the Chairperson of the Tribunal.

Integrating Ireland comment on Head 58 Appeal to the Tribunal

Subhead 58 (8)

Is unnecessarily restrictive, and the time limit of 3 days needs to be extended, as the repercussions in terms of non compliance are high with respect to fair examination of an applicant's appeal in the event of non-compliance with this time limit.

Subhead 58 (9) (b)

We question the validity of inclusion of conditions under Head 26 (4) (5) Protection Temporary Residence Permits in the appeal to a Tribunal. The provisions under Head 26 (4) (5) have no bearing on the assessment of determining protection and this provision needs to be deleted. Please refer to further comments on Head 26.

Subhead 58 (11) (c)

Please refer to comments on restrictions of access to information in Subhead (1) (d) & (e). Furthermore there is the potential in cases where ECHR Article 3 is applicable, that failure to disclose information may in certain cases amount to a violation of article 13 ECHR on effective remedies.

Subhead 58 (11) (d)

We question the validity of having a protection status officer present at a tribunal hearing that in principle is inquisitorial in nature.

Subhead 58 (11) (e)

The Tribunal "shall, where necessary, use its utmost endeavours to procure the attendance of an interpreter to assist at the hearing". It is not sufficient that the Tribunal will use its utmost endeavours to procure the attendance of an interpreter to assist at a hearing. It is of vital importance that a competent, professionally qualified, trained and impartial interpreter is present and available for the protection applicant, if so requested.

Appropriate communication and assessment cannot be ensured without such services. Furthermore, given that poor quality interpretation can lead to misrepresentation of factual evidence or incorrect decision-making, it is important that interpreters are professionally qualified, trained and impartial.

Integrating Ireland comment on Head 59 Subsequent/Further applications for protection

We are concerned that this Head does not create an obligation or duty for the Government to examine subsequent applications, instead providing concern that an applicant may not make a further application for protection without the consent of the Minister.

Subhead 59 (1) (b) &(c)

We reiterate the view as per our comments above on cases that are deemed withdrawn under Head 46, that cases should not be rejected, and the possibility should be provided for re-opening the procedure if the application has not been examined substantively. In line with other commentators, such as UNHCR, we stress that it is not appropriate to treat claims as subsequent applications, if they are submitted following a ‘rejection’ based on a deemed withdrawal of an earlier claim that has not been substantively examined⁸⁹.

Subhead 59 (4)

Please revert to our comments under Head 47 Burden of Proof, that the duty to ascertain and evaluate all the relevant facts should be considered a joint responsibility of the applicant and the examiner.

Subhead 59 (5)

In relation to the requirement that whether the information ‘significantly adds’ to the claim should not be a determining requirement and therefore its relevance here is questioned. Any new information that comes to light regarding protection concerns should be assessed in a full protection determination process. The notion of new elements or findings should be interpreted in a protection-oriented manner. In UNHCR’s view, facts supporting the essence of a claim, which could contribute to a revision of an earlier decision, should generally be considered as new elements and that discretion to reopen a substantive examination is required in cases where, for example, trauma, language difficulties or age-, gender- or culture-related sensitivities may have delayed the substantiation of an earlier claim. Gross procedural errors should also lead to a reopening of the procedure.⁹⁰

In addition according to ECRE, there can be numerous legitimate reasons why an applicant might not fully disclose relevant facts and circumstances during an initial application, therefore requiring a subsequent application even if it does not raise ‘new’

⁸⁹ UNHCR comments on the Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing refugee Status February 2005

⁹⁰ Ibid pg 30

facts that had arisen since the original application.⁹¹ This is supported by studies on memory, and the particularly difficulties traumatised individuals or victims of rape or torture may have in recounting their experiences.⁹² In particular, we draw attention to ECHR⁹³ and UNCAT⁹⁴ findings, which underline the need for flexibility in dealing with ‘late submissions’ in cases of traumatised or tortured victims.⁹⁵ In addition, there are also cases where special circumstances may have delayed early substantiation of a claim, for example in the case of or age, gender or cultural related sensitivities.

It should also be taken into account that in relation to minors/children that they may not be able to substantiate their claim initially, and may only later develop sufficient maturity and confidence to report on their experiences. It is therefore important that appropriate safeguards ensure that the examination of subsequent applications, take such constraints and issues into account.⁹⁶

Integrating Ireland comment on Head 60 Protection of Identity of applicants

Subhead 60 (1)

In relation to the importance of keeping the identity of protection applicants confidential, we suggest that under this head, that the line, ‘shall take all practicable steps’ be changed to, ‘all necessary steps’. This Head should be amended in order to uphold the strict duty of confidentiality to applicants.

Integrating Ireland comment on Head 60a Access to Tribunal Decisions

We argue that rather than placing limitations on access to tribunal decisions, including making a relevant sample available, contained within this Head, that all decisions of the Tribunal in line with international best practice should be published. The assessment on what is legally relevant or otherwise is complex and therefore in order to maintain transparency and consistency in decision-making, access to all tribunal decisions must be afforded and decisions published.

⁹¹ ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee Status

⁹² Cohen, Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers, (2001) IJRL Vol. 13 No. 13, (1) p.293 at 308; European Union Foundation for Human Rights, Gender Guidelines for Asylum Determination, 1999; Asylum applicants - medical reports: guidelines for examining doctors.

⁹³ *Hatami v Sweden* Application No 32448/96 (23 April 1988) Para 106.

⁹⁴ See Communication No 15/1994 *Tahir Houssain Khan v Canada* (18 November 1994) para. 12.3 and Communication No 13/93 *Matumbo v Switzerland* (27 March 1994).

⁹⁵ Immigration law Practitioners Association ILPA analysis and critique of council directive on minimum standards on procedures in member states for granting and withdrawing refugee status (30 April 2004)

⁹⁶ UNHCR comments on the Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing refugee Status February 2005

Integrating Ireland comment on Head 61 Safe third countries

Subhead 61 (1) (a)

Integrating Ireland notes with concern the possibility under this Head to designate a part of a country of origin as safe. In principle, a country cannot be considered ‘safe’ if it is so only for part of its territory, and this provision should be deleted as it potentially exacerbates the risk of refoulement contrary to our international obligations. In addition, declaring countries as generally safe, or parts of countries safe without a proper examination of the individual circumstances of a claim is at odds and is inconsistent with the proper focus of international refugee law on individual circumstances and the protection needs of individuals.⁹⁷ Therefore the individual circumstances of an applicant must not be ignored in favour of a generalized determination of safety of a country of origin or part of that country.⁹⁸ Again the Qualification Directive, as transposed by S.I. No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006, underlines the concept that individual circumstances of the applicant must be considered. (Article 4(3)).

Subhead (1) (a) also requires that it can be shown, that in the country, concerned that, “...there is generally and consistently no persecution” after taking into account “observance of the rights and freedoms laid down in the European Convention for the Protection of Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture and where appropriate the ECHR”. However, we emphasise that even if it were possible to designate countries as generically and absolutely safe it must be borne in mind that human rights situations can change rapidly and that any process needs to be sufficiently receptive to the possibility of a deterioration of human rights standards in the country.⁹⁹

In line with ECRE, we argue that from a practical point of view, if countries are in fact safe, efficient protection determination processes will quickly address unfounded applications by nationals of those countries, and there should be no need for a safe country of origin list. Moreover, an efficient procedure will identify individuals whose particular circumstances are such that they have a valid claim, despite their country being designated as generally safe.¹⁰⁰

⁹⁷ ILPA analysis and Critique of Council Directive on minimum standards on procedures in member States for granting and withdrawing refugee status (30 April 2004)

⁹⁸ ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Pg 27

⁹⁹ ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Pg 26

¹⁰⁰ Ibid pg 27

Subhead 61 (3) (b) (ii)

Subhead 61 3 b (ii) relates to transfers to a safe third country. The European Court of Human Rights has clarified that the application of safe third country procedures does not absolve the country of asylum of responsibility under Article 3 ECHR¹⁰¹ and that under international law the primary responsibility to provide protection remains with the where the claim is lodged. This clearly illustrates that transfer to third countries, without sufficient safeguards are not compatible with the ECHR¹⁰². A transfer of responsibility should only be envisaged between States with comparable protection systems, on the basis of an agreement that clearly outlines their respective responsibilities. UNHCR has also stated that, “ an asylum seeker cannot be removed to a third country in order that he apply for asylum there, unless that county agrees to admit him to its territory as an asylum seeker and considers his request”¹⁰³

Another issue to be addressed in the transfer of applicants to safe third countries, is the potential danger that in applying the safe third country concept that a protection applicant in a process of “chain removal” may be removed from one country to the next and back to his/her country of origin without a substantive examination or re-examination of the claim. UNHCR has stated that:

” The policy whereby an asylum seeker arriving from a so called safe third country is returned to that country without a substantive claim having been considered, is based on the assumption that there is an international principle by virtue of which a person who has left his country in order to escape persecution must apply for recognition of refugee status and/or for asylum in the first safe country that he has been able to reach. Although the persistent repetition of this assumption has led to many to accept it uncritically, the reality is that no such an international principle exists, and that the claim which has been advocated to this effect, appears to be a product of a misreading of the principle of first country of asylum. As such, removals of asylum seekers to third countries carried out solely on the basis of this supposed principle risk running counter to accepted principles of refugee protection and may involve breaches of international obligations.”¹⁰⁴

Therefore, UNHCR defines a country of first asylum, as the country where the person has already found protection and maintains that the, “fact that the person could have sought protection in a country where he was previously present is irrelevant; “Legal protection

¹⁰¹ T.I. v UK *Application* no. 43844/98 (Admissibility) page 14.

¹⁰² Furthermore, in order to avoid possible conflict with obligations under ECHR they must allow for individual examination of a claim that the application of the safe third country provisions would not violate the particular applicant’s rights under Articles other than Article 3 ECHR. For example, the application of such provisions may violate the particular applicant’s right to a private and family life under Article 8 ECHR. (ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status at pg 25)

¹⁰³ The Safe Third Country policy in light of the international obligations of countries vis-à-vis refugees and asylum seekers, UNHCR, London July 1993, Paragraph 4.2.14

¹⁰⁴ Ibid at para 1.1 and 1.2, quoted in Council of Europe Human Rights Files No 9, Asylum and the European Convention on Human Rights” by Nuala Mole, Aire Centre United Kingdom

¹⁰⁴ Ibid at Pg.21

cannot be obtained by default or be implied. It has to be explicitly granted by the State.”¹⁰⁵

Subhead 61 (4) (a) & (b)

The question of whether asylum-seekers can be sent to a third country for determination of their claim must be answered on an individual basis with essential safeguards. As ECRE has highlighted, the criteria and requirements for the use of the safe country concept should be clearly defined, and include, as a minimum¹⁰⁶:

- a) Ratification and implementation of the 1951 Geneva Convention and other international human rights treaties, especially the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR), and the respective Optional Protocols etc
- b) Explicit consent of the third country to (re) admit the asylum seeker and to provide access to a fair and efficient determination procedure before any transfer may take place. It should also be interpreted to mean that transfer to a third country is not possible unless the applicant will have a guaranteed individual access to a refugee status determination and subsidiary protection procedure.
- c) Existence of a fair and efficient asylum procedure in place leading to the recognition of refugee status or subsidiary protection.
- d) Consideration of the capacity of third States to readmit applicants, examine their claims and grant effective protection and a durable solution.
- e) Close link or genuine connection of the applicant with the third country, such as family ties. Transit through a country does not constitute a meaningful link.
- f) Additionally, the reasons why the asylum applicant lodged the application in the receiving state should be taken into account as far as possible.
- g) Refutability of the presumption of safety, and an effective remedy against any decision to remove the applicant to a third country.

PART 8: General

Integrating Ireland comment on Head 62 Prohibition of false information and alteration of identity documents

The requirement in Head 62 in relation to prohibition of false information and alteration of identity documents does not, as outlined previously, provide safeguards for applicants for protection who, for legitimate reasons, may have lost, destroyed or altered their passports or identity papers. In addition, many may have destroyed or disposed of an identity or travel document because they have been forced to do so by smugglers who wish to reduce the risk of detection. It is recognized by Article 31 (1) of the 1951 Convention that applicants may not be able to provide documentation on all matters, due to the circumstances of their flight, and outlines that states must not punish those asylum

¹⁰⁵ Ibid. at para 4.1.1, 4.1.12

¹⁰⁶ ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

seekers who have no choice but to present at the State's border on an unauthorized basis.¹⁰⁷

Integrating Ireland comment on Head 63 Appointment of Officers

Integrating Ireland underlines the importance and need for rigorous and ongoing training for staff, strict guidelines, and minimum criteria for the recruitment and training of officials and effective safeguards setting out the requirements of human rights law and standards. Please revert to previous comments under Head 17 (4) on training standards.

Integrating Ireland comment on Head 64 Powers of Immigration Officers

Integrating Ireland notes the wide powers conferred on Immigration Officers conferred under this Head 64 (1)-(7) and the potential that they may be used in an arbitrary or discriminatory manner.

We also give comment in this section in relation to the extremely wide powers of arrest under the Heads that are granted to members of the Garda Síochána. As well as specific powers of arrest which appear in various Heads, Garda Síochána and Immigration Officers are granted a broad, all-encompassing power of arrest in Head 73(2)(b), namely to arrest without warrant any person who the officer "reasonably suspects" of having committed any offence under the Heads. This draconian power of arrest extends to any member of the Garda Síochána, regardless of the circumstances and whether they have received training in immigration matters or not. The power of general arrest is simply too wide, and will mean that Garda Síochána and officers, whether they have experience of immigration matters or not, may arrest people for a very long list of offences and in a very wide range of circumstances, and this may lead to racial profiling and discrimination in practice.

In addition to these comments, we are concerned that under Head 64 any searches or examination of persons should fully comply with Art 8 of the European Human Rights Convention. In UNHCR's view, searches should be provided for by law for a legitimate objective and be carried out in a way, which is necessary and proportional to the objective, including in cases where persons refuse to cooperate and further recommends that that any search be undertaken in a gender-, age- and culturally-sensitive manner.¹⁰⁸

¹⁰⁷ Article 31 provides that "... Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

¹⁰⁸ UNHCR comments on the Council Directive of Minimum Standards on Procedures in Member States for Granting and Withdrawing refugee Status February 2005

Integrating Ireland comment on Head 65 Exchange of Information

We are concerned that the provisions under Head 65 allow for the transfer of information and access of personal information to a number of information holders. This Head makes no mention of data protection rules or reference to the managing or oversight of the exchange of information as to who can access the information and for how long the information will be held. In particular as this Head also relates to the storing of biometric data between ‘information holders’, strong data protection and oversight rules should apply. Please see Head 68 for further information on biometrics.

Integrating Ireland comment on Head 67 Marriage of Foreign Nationals in the State

Head 67 provides substantial and unacceptable restrictions on persons marrying each other in the State.

The wide and discriminatory restrictions on marriage should be removed from the Heads, as it is not the purpose of immigration law to state whether a marriage is, or is not, genuine. Moreover, it is completely unacceptable for parties to have to seek what is effectively consent to marry from the Minister, and for parties (and others involved in or facilitating the ceremony) to be criminalised. Unless the Minister grants an exemption, applicants for protection and holders of non-renewable residence permits are not allowed to marry. The exemptions shall not be granted under Head 67 (4)(c)(I-iv) where it would not be in the interests of public security or public policy to do so, or where an exemption would be inconsistent with Government immigration policy. Integrating Ireland submits that it is completely unacceptable to bar applicants for protection and holders of non-renewable residence permits from marrying, solely on the ground of immigration status.

These restrictions are also objectionable by reason that they impinge on the right of an Irish citizen to freely contract marriage, as the other party of any marriage the subject of this section may involve an Irish citizen. The CERD Committee in its State Reports has frequently criticized states that maintain obstacles to marriage between nationals and non-nationals and encouraged their removal.

The right of persons to marry each other is a fundamental human right. Art.16 of the UN Universal Declaration of Human Rights provides that “(m) en and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution”. Art.12 ECHR provides that “(m) en and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right”.¹⁰⁹

A similar requirement to seek State approval for marriage was struck down as incompatible with the ECHR in the UK case of *Baiai v SSHD* [2006] EWCA Civ 823

¹⁰⁹ See also ICESCR Art 10 & ICCPR Art 23f

(Admin) where Silber J issued a declaration that the certificate of approval regime under ss.19-25 of the Asylum and Immigration (Treatment of Claimants) Act 2004 was incompatible with Arts 12 and 14 ECHR, being an unjustifiable interference with the right to marry (Art. 12) and discriminatory on the grounds of religion and nationality (Art.14). The success of an application for approval was solely linked to immigration status. There was no provision to take into account other factors like the nature and duration of the relationship, and other relevant circumstances.

Integrating Ireland comment on Head 68 Provision of biometric data by foreign nationals

While the collection of biometric data has become a part of the State's international and EU obligations, there are outstanding concerns arising from the very broad language used in the Scheme regarding biometrics and in particular in relation to who can seek biometric data, what type of biometric data is to be taken, when and from whom, and to the integrity of the data and who it can be shared with. We also draw attention to our original concerns regarding biometrics outlined in our original submission on the Immigration and Residence Bill in 2005.¹¹⁰

As there are important human rights implications¹¹¹ inherent in the collection, processing and distribution of a persons unique, physical identifiers, we highlight the fact that the introduction of the collection of biometric information will require additional oversight of the systems introduced, significant controls and a strong legal framework.¹¹² We also draw attention to concerns regarding data protection and data sharing of biometric information.

In particular, it is noted that in Head 68 (6), reference is made that the Garda Commissioner will arrange for maintenance of a record of biometric data. We request further information on how this record will be maintained, what safeguards are in place and how the data is to be kept secure. The proposals raise concern regarding increased data sharing by immigration officials in different jurisdictions without sufficient data protection safeguards at an international level. The exchange of biometric information in different jurisdictions highlights the question of which and whose data protection rules should apply and what safeguards are in place.

¹¹⁰ Integrating Ireland submission in response to the outline proposals for an Immigration & Residence Bill in Ireland. July 2005

¹¹¹ The collection of biometric data potentially challenges the right of bodily and information privacy and the right to process and distribute this information. Privacy is a fundamental human right upheld under ART 12 of the Universal Declaration of Human Rights, as well as ART 17 of the UN International Covenant on Civil and Political Rights and in as much applies to all people, regardless of nationality, immigration, status, age and sex. Also despite the fact that Ireland has not ratified it the UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW) provides both regular and irregular migrant workers with a right to privacy under ART 14.

¹¹² Thomas, Rebekah 'Biometrics, Migrants and Human rights' (Global Commission on International Migration) March 2005

If information is shared with other jurisdictions, there is the potential to seriously and prejudicially endanger individuals contrary to their human rights; it therefore needs clear safeguards in particular in relation to transfer of biometric data of protection applicants as outlined under subhead (8). No mention is made of the need to protect and respect the information rights of all persons through a common EU data protection framework that includes oversight of the storage, collection and transfer of personal data. Data protection principles are key to preventing the worst effects and weaknesses of collecting biometric information and therefore data protection and legal redress should assume a greater role in the Bill. However even when data protection mechanisms are in place, the question arises, whether existing protection is appropriate and sufficient to cover all the uncharted territory that accompanies biometrics.¹¹³

Subhead 68 (3) & (4)

There are substantial concerns regarding the taking of biometric data from minors in the Scheme (Heads 68(3) and (4)).

Head 68 states that it is necessary to have a parent, person acting *in loco parentis*, or a HSE-appointed “responsible adult” present when taking biometric data from a minor aged under 14, in addition to obtaining approval of the Minister. However a Garda Siochana or Immigration Officer can take biometric data from a minor child aged between 14 and 18 years without any parent, HSE representative present, and without seeking official approval. Furthermore, the officer only has to have “reasonable grounds” for believing that the minor child is 14 years or older.

The provisions under subhead (3) & (4), therefore maintain an arbitrary distinction between minor children who are under 14 and those who are between 14 and 18 years. This distinction must be removed, and the special safeguards outlined for under 14s must also apply to children aged between 14 and 18. We draw attention to the fact that in accordance with the Convention of the Rights of the Child (CRC), any person under the age of 18 should be considered a child, without differentiation in rights.

Integrating Ireland comment on Head 69 Exclusion Orders

This Head needs to include the line that the, ‘application of exclusion shall not in any manner affect obligations under international law,’ and in particular obligations not to refole individuals.

¹¹³ Un General Assembly has devised guidelines of ‘minimum guarantees’ for the use of personal computerized data, as have the Council of Europe and the Organization for Economic Cooperation and Development OECD. These instruments share four key principles: data must be obtained lawfully, it must be kept safely and securely, and it must be accurate and up to date and finally must only be used for the original purpose specified. In addition, data protection ideally includes some type of enforcement mechanism.

Integrating Ireland comment on Head 71 Registers

Subhead 71 (1) & (3)

We are concerned that this Head, which places a duty on owners of hotels, accommodation providers, business and educational premises, to keep registers of foreigners, “attending or staying in” the premises, and makes it an offence not to do so, as excessive. Subhead 71 (3) also enables Immigration Officers to procure these registers. However it is not stipulated for what purpose this information is required, or the duration this information will be kept. This raises serious issues regarding data protection and also oversight issues.

Integrating Ireland comment on Head 72 Judicial Review

The “Contents of the Scheme of the Bill” state that Head 72 builds on the existing provisions at Section 5 of the Illegal Immigrants (Trafficking) Act 2000, and that the intention is to prevent misuse of the judicial review process by a foreign national solely for the purpose of frustrating removal from the State. This statement pre-supposes that the decisions of the Minister to deport are perfect and not open to challenge and case law and experience shows that this is not always the case.

The 14-day period, while the same as the existing period in these cases, is very short, particularly in view of the additional restrictions in the present proposal to substantially limit the grounds for the Court to extend the 14-day period.

Subhead 72 (5) (a) & (b)

The provision to make legal advisors liable, at the Court’s instance, for all or some of the costs (where the Court finds that the grounds for the judicial review are frivolous or vexatious) is ill conceived and unreasonable. Shifting the burden to legal advisors in this way is likely to lead to Solicitors refusing to take genuine or borderline cases, as they are not prepared to take the risk of a court order for costs. Solicitors may also use the costs issues as an excuse not to take instructions in what are otherwise meritorious and genuine cases.

Subhead 72 (6) (a)

This right to remain if an application for leave to apply for judicial review against a transfer or removal is essential for judicial supervision to be effective.

Integrating Ireland comment on Head 73 Offences

Garda Síochána are granted extremely wide powers of arrest under the Heads. As well as specific powers of arrest which appear in various Heads, Garda Síochána and Immigration Officers are granted a broad, all-encompassing power of arrest in Head 73(2)(b), namely to arrest without warrant any person who the officer “reasonably suspects” of having committed any offence under the Heads. We question the

justification for granting the powers to arrest without warrant in such a broad and all encompassing manner and without judicial supervision. In our view the introduction of further criminal offences in this area is unnecessary and disproportionate.

This draconian power of arrest extends to any member of the Garda Siochana, regardless of the circumstances and whether they have received training in immigration matters or not. The power of general arrest is simply too wide, and will mean that Garda Siochana, whether they have experience of immigration matters or not, may arrest people for a very long list of offences and in a very wide range of circumstances, and this may lead to racial profiling and discrimination in practice. This broad power of arrest is also concerning given the findings of the human rights audit of the Garda Siochana which highlighted that racism was an issue among the service.

Also, with regard to Head 73(1), the criminalisation of all persons in the State without permission does not take into account those seeking protection. As highlighted previously, Article 31(1) of the Geneva Convention outlines that states must not punish those asylum seekers who have no choice but to present at the State's border on an unauthorized basis.

Integrating Ireland comment on Head 80 Repeals and Transitional Arrangements

This section requires further clarification regarding application and impact on existing applicants, in particular those who have applied to the Minister for humanitarian leave to remain.

Integrating Ireland comment on Head 81 Requirements as to documents of identity and supply of information

The requirements under Head 81 need to be amended to take into account the specific circumstances of those seeking protection. As it stands, Head 81 does not provide adequate safeguards for applicants for protection that, for legitimate reasons, may have lost, destroyed or altered their passports or identity papers.

It is not uncommon that those seeking protection have no realistic choice but to arrive at the borders of another State without proper documentation in order to reach safety. Please refer to comments under Head 73 (1).

Integrating Ireland comment on Head 82 Requirement as to production of documents

Head 82 requires foreign nationals to produce on demand, unless a satisfactory explanation is given, a valid passport, identity document or residence permits when requested by a Garda Siochana or Immigration Officer. Not to do so is considered an offence.

Although most of these provisions already exist in the Immigration Act 2004 they are expanded upon in Head 82. In particular, the requirement to submit to biometric information being taken in order to verify identity. Not only is the requirement to provide biometric information disproportionate it is also unworkable.

We also highlight the concern around the potential to use these powers in a discriminatory manner and draw attention to comments on concerns of racial profiling by members of the Garda Síochána as commented on by the ICERD committee in its concluding Observations on Ireland in its first periodic report.

Integrating Ireland comment on Head 83 Information from foreign authorities

Subhead 83(2)

We welcome the provision in Head 83 that prevents the Minister disclosing information regarding protection applicants to actors of persecution. However as the provisions speak to actors of persecution being directly informed of an application or directly disclosing information regarding individual applications, this does not reflect in total the strict duty of confidentiality that states have to applicants. Responsibility extends not only to direct but also to indirect disclosure to actors of persecution or serious harm and this Head should be amended in order to uphold the strict duty of confidentiality to applicants.

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