

Irish Refugee Council

Comments on the Immigration, Residence and Protection Bill
2010



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Executive Summary

The Irish Refugee Council's submission on the Immigration, Residence and Protection Bill 2010 focuses on four main areas of concern:

1. A fair and accessible procedure for protection applicants.
2. Appeals and remedies.
3. Summary deportation.
4. The needs of vulnerable groups, including unaccompanied separated children.

1. A fair and accessible procedure

The IRC is concerned that the implementation of the IRP Bill, as written, may result in the denial of basic procedural guarantees and unjust penalisation for persons seeking protection in Ireland. For example, the Section 26 requirement for travel documents to be presented at points of entry to the State may result in persons fleeing persecution being **detained** indefinitely, despite the fact that the authorities in that individual's country of origin may be unable or unwilling to issue such documents for reasons directly related to the protection applicant's decision to flee.¹ Similarly, the imprecision of terms such as 'reasonable efforts' and 'reasonable cause' in Section 79 (Detention) of the Bill provides ample scope for misunderstanding between protection applicants and the Irish authorities.² IRC consider that provisions for the detention of asylum seekers under Sections 119 and 120 of the Bill (safe third country and Council Regulation country transfers respectively) contravene Article 18 of the European Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (hereafter the Procedures Directive).³

¹ See main report, p. 12. This is contrary to Article 31 of the Refugee Convention, which requires contracting States to refrain from imposing penalties on those fleeing threats to their life or freedom, who have entered that State's territory without authorization.

² See main report, p. 12. Another group needlessly penalised at first instance is, surprisingly, **EU nationals**, who are excluded from the definition of 'refugee', despite the fact that the 1951 Geneva Convention applies to any person who meets the definition of refugee under that instrument, regardless of their nationality. See report.

³ See main report, p. 22.

There is presently a worrying **lack of transparency** within the Irish protection application system, unfortunately, the IRP Bill looks set to continue this regime of obfuscation. Section 61 of the Bill restricts, without qualification, the application of the Freedom of Information Acts to the record relating to a protection application.⁴ This appears to run contrary to Articles 14 and 16 of the Procedures Directive, which require Member States to ensure timely access to such information for both the protection applicant and their legal advisers.⁵

With regard to **the officers** charged with processing and deciding an application for detention, the provisions of the IRP Bill fall significantly short of the minimal standards required of the State, for example under the Procedures Directive. Section 70 of the Bill does not require officers to have any standard level of knowledge in the field of asylum and refugee law, while under Section 101, members of the new Protection Review Tribunal are not required to have **any** experience of protection matters.⁶ We also note the non-technical skills required, for example, by interviewers, under Article 13 of the Procedures Directive skills such as cultural sensitivity and an ability to manage the inevitable vulnerabilities of many interviewees. There is no provision for such competencies or training under Section 83 of the Bill (investigation of protection applications).⁷

The IRC notes that **the Minister's power to appoint** officials to the Protection Review Tribunal under Section 100 of the Bill is incompatible with Article 8 of the Procedures Directive, which requires that protection applications be examined and decided "objectively and impartially."⁸

It is regrettable that Section 84 of the Bill (the burden of proof) contains no reference to the benefit of the doubt, given that cases in which an applicant can provide documentary proof of all his statements are a rare exception^{9, 10} Another example of an unreasonable demand

⁴ See main report, p.13.

⁵ Similarly, the imprecise wording of Section 94(2) of the bill [withholding of information] appears to exceed the scope for permissible refusal to disclose pertinent information to the protection applicant, as set out in Article 16 of the Procedures Directive. See p. 13 of the main report.

⁶ See main report, p.24 .

⁷ See main report, p.18.

⁸ See main report, p.24.

⁹ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, p 32: 196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have

placed on applicants is the 3 working-day period afforded to those who miss their appointment for a substantive interview with government officials, lest their claim be deemed abandoned, regardless of linguistic or health issues etc. which may have led to this, and which would logically make it unlikely that the individual concerned would be able to reply within such a tight deadline.¹¹

With regard to **subsequent protection claims**, the IRC notes its concern that the requirements set-out in Section 97 of the Bill are too complex for an unrepresented applicant, and affirms that access to a fresh claim is a vital part of any fair determination process.¹²

The provisions of Section 82 on inadmissible protection applications raises worrying implications for the observation of **non-refoulement** by the State, even if a person has been recognised as a refugee in a third country [82(1)(b)], it is by no means certain in all cases that they would continue to enjoy that protection, having travelled to Ireland to seek protection here.¹³ In this context, the IRC also raises its concern with a blanket reliance on the concept of 'safe countries of origin' under Section 117 of the Bill.¹⁴

2. Appeals and Remedies

The IRC is gravely concerned by Section 92 of the Bill, which may deny protection applicants attempting to **appeal against decisions which raise a right contained in the European Convention on Human Rights** an effective remedy as set out in Article 13 ECHR.¹⁵

The IRC is concerned that the IRP Bill fails to transpose Article 39 of the Procedures Directive, which provides that **a decision by a Member State to find a protection application**

arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

¹⁰ The principle of the benefit of the doubt is referred to directly in the proposed 're-cast' of the Procedures Directive (Article 4).

¹¹ See main report, p.17.

¹² See main report.

¹³ See main report.

¹⁴ See main report.

¹⁵ See main report. This is not least due to the fact that ECHR ground can only be raised during judicial review proceedings at the High Court under the proposed legislation.

inadmissible can be appealed before a court or tribunal. The absence of such a guarantee again raises concerns in relation to the possible refoulement of persons rejected at first instance by the authorities without proper consideration of their individual circumstances.¹⁶ Indeed, by restricting grounds for appeal to persons not recognised as refugees and those requiring subsidiary protection, Section 92 of the Bill omits Article 39 guarantees on a number of decisions, as outlined in the report.¹⁷

The IRC is concerned that the proposed legislation attempts to curb the resort to **judicial review** of protection decisions by awarding costs against an applicant's legal representatives for taking 'frivolous or vexatious' claims, without defining the grounds on which such a finding might be made.¹⁸ The IRC maintains that the burden on the courts can only be effectively lifted through the establishment of a frontloaded, transparent and impartial protection application process.

3. Deportation without notice

The IRC is concerned that Section 24(1) of the IRP Bill requires foreign nationals to enter the State via an '**approved port**', without recognising that persons fleeing persecution may, through perceived necessity or the design of third party agents, enter the State through illegal channels and therefore be considered guilty of an offence under the proposed legislation.¹⁹ Similarly, there is a failure to consider the special circumstances of individuals seeking protection in Section 26(1) of the Bill (requirement for **travel document** at State frontier).²⁰

Sections 6(5), 59(1) and 60(1) of the Bill provide for the **summary deportation** of foreign nationals without access to due procedure, in violation of Article 13 of the International Covenant on Civil and Political Rights.²¹ These IRP Bill provisions effectively abrogate the requirement under existing legislation that an unsuccessful refugee applicant be served a notice of deportation, and given 15 working days to contest that notice. Furthermore, immigration officers and members of the Garda Síochána are invested with extraordinary

¹⁶ See main report, p 21.

¹⁷ See main report, p.23.

¹⁸ See main report, p 24.

¹⁹ See main report, p.11.

²⁰ See main report, p.12.

²¹ See main report, p.26.

powers to arrest and detain persons without warrant on the mere suspicion that, for example, the individual concerned intends to avoid removal. The IRC maintains that these provisions constitute a flagrant denial of fundamental principles of justice and human rights.

4. Vulnerable Groups

The IRC is concerned that the Bill provides no clarity as to the validity of certain foreign marital arrangements (e.g. Muslim, traditional African) for the purposes of **family reunification**,²² given the difficulties encountered by persons seeking to be joined by their spouse under the existing legislative and administrative framework. Furthermore, it appears that the Bill makes no provision for reunification with (unmarried) partners with whom the applicant had been in a long term, stable relationship- as required under the Qualification Directive.²³

It is objectionable that a child of a sponsor for reunification is defined in Section 116(7) as someone who is under the age of 18 and *not married*, a condition omitted from the latest draft of the proposed 're-cast' Qualification Directive (Art.2(j)).²⁴

With regard to **protection applications made on behalf of dependents** (Section 81(12) of the Bill), the IRC is concerned that there is no scope for a dependant child's case to be considered separately to that of their parent.²⁵ Conversely, the Bill does not provide for the consideration of a dependant spouse's application under the *same* terms as their partner, in contravention of Article 6(3) of the Procedures Directive.

The IRC has a number of concerns with how **minors** are legislated for by the current draft of the Bill. Apart from the fact that no precise statutory definition of a separated child is provided in the first place²⁶, there is no requirement (contrary to Article 17(4)(a),(b) of the Procedures Directive) that officials with the necessary knowledge of the needs of minors

²² See main report, p.28.

²³ 2004/83/EC Article 2 (h) «family members» means, insofar as the family already existed in the country of origin, the following members of the family of the beneficiary of refugee or subsidiary protection status who are present in the same Member State in relation to the application for international protection: the spouse of the beneficiary of refugee or subsidiary protection status or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens,

²⁴ See main report, p 29.

²⁵ See main report, p 30.

²⁶ See main report, p 28.

conduct the substantive interview and prepare the decision of the Minister/PRT. The IRP Bill does not follow a specific line of the best interests of the child, and provides for an unsuitably high degree of discretion, not least with regard to the clearance of persons purporting to take responsibility for the care of unaccompanied minors in the protection application system.²⁷

5. *Beyond minimal standards: Cost-effective best practice for the Irish protection system.*

The following report makes a number of references to the shortcomings of the IRP Bill in terms of the transposition of the Procedures and Qualification Directives into Irish law, as well as a failure to consider the implications of certain measures in the light of the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and other instruments. At the very least, the Irish government is obliged to transpose the Procedures and Qualifications Directives. Where relevant, this transposition should not be taken as an opportunity to lower protection standards already in place.²⁸ On the contrary, the government should consider adopting the improved provisions of the proposed 're-cast' forms of these directives, as well as best practice demonstrated by our neighbours in Europe which has been shown to provide improved outcomes for all stakeholders in the asylum applications process at no extra cost to the State.²⁹

²⁷ See main report, p 31.

²⁸ Council Directive 2004/83/EC Recital 8: It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who request international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is either a refugee within the meaning of Article 1(A) of the Geneva Convention, or a person who otherwise needs international protection.

²⁹ See in particular the report on "The Single Protection Procedure: A Chance for Change", by Brian Barrington BL, pp.23-31 ('Frontloading').

1. A Fair and Accessible Procedure

Section 24(1): Entry into State by way of approved port

24.—(1) A person (other than an Irish citizen) arriving from outside the State by air or sea shall not enter or attempt to enter the State elsewhere than at an approved port, unless

(a) the Minister has consented to such entry, with or without conditions, which may include conditions requiring the person to—

(i) present himself or herself to an immigration officer on arrival in the State, and

(ii) provide such information to the immigration officer as the immigration officer may require for the purposes of this Act, or

(b) the person is—

(i) a person who arrives in the course of employment as a member of a crew,

(ii) a person who enters or attempts to enter the State elsewhere than at an approved port as a result of an emergency affecting an aircraft or vessel, a medical or other emergency, or circumstances beyond the person's control, or

(iii) a national of the United Kingdom of Great Britain and Northern Ireland who has travelled directly from Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

1. This provision requires that foreign nationals coming to the State (with the exception of British nationals who have travelled directly from Great Britain, Northern Ireland, the Channel Islands and the Isle of Man) by sea or air enter through 'an approved port' and that a person not doing so is guilty of an offence. The Section does not state what an approved port is.
2. This Section does not take into consideration individuals in dire situations, such as victims of trafficking and those fleeing persecution, who may enter the State unofficially and illegally and therefore not necessarily through 'an approved port.'
3. IRC consider this Section incompatible with Article 31 of the 1951 Convention relating to the Status of Refugees (hereafter the Refugee Convention) which states that contracting States shall not impose penalties, on account of their illegal entry on refugees who, coming directly from a territory where their life or freedom was threatened, 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.

Section 26: Requirement for travel document at the frontier of the State

26.—(1) A person (other than a national of the United Kingdom of Great Britain and Northern Ireland who has travelled directly from Great Britain, Northern Ireland, the Channel Islands or the Isle of Man or an Irish citizen) arriving or attempting to arrive from outside the State or entering or attempting to enter the State shall be in possession of a valid travel document.

4. The IRC has grave concerns that this Section, in essence repeating Section 12 of the Immigration Act 2004, will have the practical effect of imprisonment of persons fleeing persecution, simply because they may have never been issued with a passport in their country of origin. In situations where, because the person may come from a state, such as Somalia and Afghanistan, which may not have functioning authorities capable of issuing a person with such a document, that the person may be detained indefinitely at considerable expense to the taxpayer.
5. The IRC also submit that in certain cases, the very act of seeking to apply for a passport may pose danger to the applicant in question, in that it may notify the authorities of the refugee's country of origin, of the applicant's whereabouts.
6. This Section is incompatible with Article 31 of the Refugee Convention which states 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.

Section 67: Definition of a refugee

67. – (1) “ refugee” means a person— (a) who, without prejudice to the Protocol on Asylum for nationals of Member States of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, is not a national of a Member State

7. The IRC is concerned that S.67 of the IRP Bill excludes EU nationals from access to the protection procedure by excluding them from the definition of refugee, despite the fact that the 1951 Geneva Convention applies to any person who meets the definition of refugee under that instrument, regardless of their nationality.

Section 68: Freedom of information for persons seeking international protection

68.—(1) The Freedom of Information Acts 1997 and 2003 do not apply to a record relating to a protection application, including its investigation or determination under this Part.

8. The IRC is concerned as to why the principle of freedom of information is not applicable to a person seeking to be recognised as a refugee, or a person acting on his or her behalf. The IRC is aware of examples in other jurisdictions where an application for a person's file under a freedom of information act has revealed findings made by the decision maker that are not contained in the decision served on the applicant.
9. The IRC is also concerned that this Section does not comply with both Article 14(2) and Article 16 of the Procedures Directive. Article 14(2) of the Procedures Directive states that "*Member States shall ensure that applicants have timely access to the report of the personal interview,*" while Article 16 states that "*Member States shall ensure that a legal adviser representing an applicant shall enjoy access to information in the applicant's file which is liable to be examined by the authorities.*" The IRC therefore recommends removal of this Section from the Bill.

Section 70 and Section 101(2)(b): Assessment of facts and circumstances

70.—(1) The following matters, insofar as they are known, shall be taken into account by the Minister or the Tribunal, as the case may be, for the purposes of determining a protection application under section 88 or deciding an appeal under section 96:

- (a) all relevant facts as they relate to the country of origin at the time of making the determination or, as the case may be, the decision, including laws and regulations of the country of origin and the manner in which they are applied;
- (b) the relevant statements and documentation presented by the protection applicant including information on whether he or she has been or may be subject to persecution or serious harm;
- (c) the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the protection applicant's personal circumstances, the acts to which the protection applicant has been or could be exposed would amount to persecution or serious harm;
- (d) whether the protection applicant's activities since leaving his or her country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for protection so as to assess whether these activities will expose the protection applicant to persecution or serious harm if returned to that country;
- (e) whether the protection applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

Section 101 Membership of the Protection Review Tribunal

(1) The Tribunal shall consist of the following members:

- (a) a chairperson, who shall be appointed in a whole-time capacity; and
- (b) such number of other members, appointed either in a whole-time or a part-time capacity, as the Minister, with the consent of the Minister for Finance, considers necessary for the expeditious performance of the functions of the Tribunal, each of whom shall have had before his or her appointment the appropriate experience specified in subsection (2).

(2) The experience referred to in subsection (1) is—

- (a) in relation to the chairperson, not less than 5 years' experience as a practising barrister or practising solicitor, and
- (b) in relation to members other than the chairperson, not less than 5 years' experience—
 - (i) as a practising barrister or practising solicitor,
 - (ii) that is such experience relating to protection matters as may be prescribed, or
 - (iii) that is a combination of the experience referred to in paragraphs (i) and (ii).

10. The IRC is concerned that S.70 of the Bill does not contain a requirement that personnel examining asylum applications have knowledge with respect to relevant standards applicable in the field of asylum and refugee law. This is required under Article 8(2)(c) Asylum Procedures Directive. In addition, Section 101 (2) (b) of the Bill, does not contain any provision that members of the Protection Review Tribunal are required to have knowledge of protection issues or refugee law.

11. The IRC is further concerned that, pursuant to Article 8(2)(b) of the Asylum Procedures Directive, there is no provision in Section 70 of the Bill that precise and up-to-date information be obtained from a variety of sources by the authorities as to the general situation prevailing in the country of origin of the applicant for asylum, and, where necessary, in countries through which they have transited.

Section 74: Cessation of refugee status

74.—(1) A person shall cease to be a refugee if he or she—

- (a) has voluntarily re-availed himself or herself of the protection of his or her country of nationality,
- (b) having lost his or her nationality, has voluntarily reacquired it,
- (c) has—
 - (i) been granted a certificate of naturalisation under the 10 Irish Nationality and Citizenship Acts 1956 to 2004, or
 - (ii) acquired a new nationality, and enjoys the protection of the country of his or her new nationality,
- (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,
- (e) subject to subsection (2), can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of his or her country of nationality, or
- (f) subject to subsection (2), being a stateless person, is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to his or her country of former habitual residence.

12. Article 38 of the Procedures Directive states that Member States shall ensure, in considering cessation of refugee status, that the refugee shall be informed as to the reasoning for such consideration and given an opportunity to submit representations. Member States should also ensure that the decision maker is able to access up to date information on the country concerned and that such information is not obtained from the actor of persecution. The Procedures Directive also states that the decision to cease refugee status should be in writing and that the applicant should have an opportunity to appeal against it. The Bill does not contain any of these provisions and therefore does not comply with the Procedures Directive.

Section 75: Protection application entry permission

75.—(1) A protection applicant shall be granted, by or on behalf of the Minister, a protection application entry permission.

(2) A protection application entry permission operates to allow a protection applicant to enter or, as the case may be, to remain in the State for the sole purpose of having his or her protection application investigated.

13. The IRC note that a protection application entry permission is granted to persons who have made an application for refugee status or subsidiary protection but not someone who has made an application stating that removal would breach their human rights, leaving them without status and therefore unable to present documentation to rebut the charge that they are illegally residing in the State as per Section 59 of the Bill. IRC urge the inclusion of such a Section, providing for entry permission to a person who has made a claim that removal would breach a right under the ECHR.

Section 79: Detention

79. – (1) An immigration officer or a member of the Garda Síochána may arrest a protection applicant and detain him or her in a prescribed place, (in this section referred to as a “place of detention”), being a prison or other place in the charge of a governor, an immigration officer or a member of the Garda Síochána, where that officer or member, with reasonable cause, suspects that the protection applicant -

(c) has not made reasonable efforts to establish his or her identity,

(f) without reasonable cause-

(i) has destroyed his or her identity or travel document,

14. The IRC is concerned as to the imprecision of references to ‘reasonable efforts’ and ‘reasonable cause’ in S.79(1)(c) and (f)(i) respectively. There is ample scope for misunderstanding between applicants and the Irish authorities, for example where an applicant has of necessity used false documents to reach the State in order to claim asylum, only to destroy them from fear that being found in possession of such documents would prejudice the Irish authorities against them.

15. Without clear and comprehensive definition of what constitutes ‘reasonable efforts’ or ‘reasonable cause’, the Bill fails to ensure that *“Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum”*, as set out in Article 18 of the Procedures Directive.

Section 82: Inadmissible protection applications

82.—(1) The Minister shall determine a protection application to be inadmissible if any of the following circumstances applies:

- (a) another Member State has granted refugee status or subsidiary protection status to the protection applicant;
- (b) a country other than a Member State is, in accordance with subsection (2), a first country of asylum for the protection applicant;
- (c) the application is made by the holder of a residence permission granted or deemed to have been granted under 35 this Act that is subject to conditions that are the same, or equivalent to, those that apply to a protection declaration under section 109(4);
- (d) the application is made by the holder of an entry permission or a residence permission that allows him or her 40 to enter or, as the case may be, be present in the State pending consideration by the Minister of whether he or she will be granted a residence permission referred to in paragraph (c).

16. The IRC is concerned that allowing a protection application to be deemed inadmissible because an alternative status has been granted undermines the 1951 Refugee Convention and the unique protection it provides: non-refoulement. IRC note that this provision, while present under Article 25 the Procedures Directive has been removed in the proposed 're-cast' Procedures Directive.
17. In Section 82 (2), the Bill states that a person's first country of asylum is one in which he or she has been recognised as a refugee, can still avail himself or herself of that protection, or otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement and will be re-admitted to that country. Given the grave circumstances in which asylum applicants present in, the IRC is concerned that the Bill does not provide any assurance as to how these apparent safeguards will be ensured. The IRC therefore recommends the deletion of Section 82(1).
18. The IRC also note that Article 39 of the Procedures Directive states that a Member State shall ensure that an applicant whose claim is deemed inadmissible will have the right to an effective remedy before a court or tribunal. Such a provision is absent from the Bill and therefore does not comply with the Procedures Directive.
19. The IRC also note that Article 30 of the proposed 're-cast' Procedures Directive directs Member States to allow applicants to respond in interview prior to a final decision on inadmissibility being made. IRC recommend the insertion of this provision to the Bill.

Section 83: Minister's investigation of protection applications

83.—(1) (a) Subject to sections 82, 119 and 120, the Minister shall investigate each protection application for the purpose of determining whether—

(i) the protection applicant is entitled to protection in the State, or (ii) notwithstanding that the protection applicant is not so entitled, he or she will be granted a residence permission in accordance with section 89.

(b) Nothing in paragraph (a) shall be construed as conferring any entitlement on a protection applicant who is not entitled to protection in the State to be granted a residence permission in accordance with section 89.

(2) As part of an investigation under subsection (1), the Minister shall cause the protection applicant to be interviewed at such time and place that the Minister may fix.

(3) An interviewer conducting an interview under subsection (2) may, where he or she considers it necessary to do so, interview any dependants of the protection applicant being so interviewed.

(4) An interview under subsection (2) or (3) shall, where necessary, be conducted with the assistance of an interpreter who is able to ensure appropriate communication between the person being interviewed and the interviewer.

(5) The requirement in subsection (4) shall be regarded as complied with if interpretation is provided in a language that the person being interviewed may reasonably be supposed to understand and in which he or she is able to communicate.

20. The IRC is concerned that the Bill does not contain statutory criteria to ensure the competence of those officials who conduct the substantive interview with asylum applicants. The IRC notes that Article 13(3)(a) of the Procedures Directive states that a Member State shall ensure that a person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability.

21. The IRC is concerned that the Bill does not make any specific reference to a requirement of sensitivity skills or training on the part of interviewers, which could potentially lead to a re-traumatisation of the applicant and/or possible cultural misunderstandings and lead to an adverse finding on the applicant's credibility where none objectively exists.

Section 84: The burden of proof

84.—(1) Subject to section 70(8), at all times during the consideration of a protection application, including an appeal under section 92, the onus shall lie on a protection applicant to establish that he or she is entitled to protection in the State.

(2) The Minister shall, in co-operation with the protection applicant, assess the relevant elements of the protection application and all other aspects of the claim to remain in the State.

(3) The Tribunal shall, for the purpose of an appeal, in co-operation with the protection applicant, assess the relevant elements of the protection application.

22. The IRC acknowledge that placing the burden of proof upon the applicant is an accepted element of refugee law but urge consideration of UNHCR's comments in the Handbook on Procedures and Criteria for Determining Refugee Status. This states that an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.
23. UNHCR note that in most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently without personal documents. UNHCR conclude that while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner.
24. The IRC has been informed of numerous instances where asylum seekers have not been given the benefit of the doubt and due regard has not been given to the circumstances under which they entered the country and to their state of mind upon leaving their country of origin.

Section 90(2): The timescale for deeming a claim to be abandoned

90.—(1) A protection applicant may withdraw his or her protection application by sending notice of withdrawal to the Minister.

(2) Where a protection applicant does not attend for an interview under section 83 on the date and at the time fixed for such interview 40 then, unless he or she, not later than 3 working days from that date, furnishes the Minister with an explanation for the non-attendance which in the opinion of the Minister is reasonable in the circumstances, his or her protection application shall be deemed to be withdrawn.

25. The IRC note that Article 20 (1a) of the Procedures Directive states that a Member State may treat a claim as abandoned if the applicant has not responded to requests for information or has not appeared for a personal interview within a 'reasonable timescale'. 3 days is an unreasonably short period of time for a person to indicate why they did not attend the interview. Refugees may not understand English, limiting their ability to read and respond to letters inviting them for interview, and may also be suffering from trauma from experiences in their country of origin that may restrict their ability to react quickly to requirements placed on them by the State. The consequences of not responding within the allocated time are grave as the application will be deemed withdrawn or abandoned.
26. IRC recommend that the Procedures Directive's 'reasonable timescale' be interpreted with the vulnerability of applicants in mind and the Bill be amended to include a time scale of at least 10 working days.

Section 90 (7 iii): Abandonment and a future claim

90. - (7) Where a protection application is withdrawn or deemed to be withdrawn under this Part—
(a) any investigation of the protection application shall be terminated,
(b) the report referred to in section 88(1) shall not be prepared but another report shall be prepared in writing, which shall –
(i) state that the application has been withdrawn or deemed to have been withdrawn, as the case may be,
(ii) state the reasons for the withdrawal or deemed withdrawal, and
(iii) include a determination that the protection applicant concerned is not entitled to protection in the State

27. Section 90 (7 iii) of the Bill is more restrictive than Article 20 of the Procedures Directive in stating that if an applicant is deemed to have withdrawn the claim, the State gives a determination that the applicant is not entitled to protection.
28. IRC recommend the removal of this provision: the applicant may still be a refugee but has failed to persuade the Irish State to recognise him/her as one. In addition, without any such clarification in the Bill, the determination that the applicant is not entitled to protection in the State may negatively prejudice any further protection application.

Section 94(2): Withholding of information

94. – (2)(a) where the Minister has withheld information from a protection applicant under section 144(3) he or she may also withhold such information from the Tribunal for the reasons stated in that section
(b) where the Minister furnishes the Tribunal with information which has been withheld from the protection applicant under section 144(3), The Tribunal shall not disclose that information to the applicant.
(c) where the Minister furnishes the Tribunal with information to which Section 144(4) relates, the Tribunal shall not disclose that information otherwise than in accordance with that subsection.

29. S.94(2) provides a number of grounds for withholding information (pursuant to S.144), for example where information which would be prejudicial to national security should not be disclosed. However, the wording for exceptions under S.144 is not in line with Article 16(1) of the Procedures Directive, which allows Member States to make a number of *limited exceptions* on specified security grounds or where the investigative interests relating to the examination of applications for asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised. It is not clear what ‘public security’, ‘public order’ or

‘public policy’ (ordre public) as referred to in S.144(3) means in practice. The imprecise wording of this sub-section may thus be deemed to exceed the scope for permissible refusal of disclosure of pertinent information as set out in Article 16(1) of the Procedures Directive.

Section 97: Subsequent protection applications

97.—(1) A person may not make a subsequent protection application without the consent of the Minister, given under this section.

(2) An application for the consent referred to in subsection (1) shall be accompanied by—

(a) a written statement of the reasons why the person concerned considers that the Minister should consent to a subsequent protection application being made,

(b) where the previous protection application or appeal was withdrawn or deemed to be withdrawn, a written explanation of the circumstances giving rise to the withdrawal or deemed withdrawal of the application or appeal, (c) all relevant information being relied upon by the person concerned to demonstrate that he or she is entitled to protection in the State, and

(d) a written statement drawing to the Minister’s attention any new elements or findings relating to the examination of whether he or she is entitled to protection in the State which have arisen since his or her protection

30. The IRC consider that access to a fresh protection claim is an integral part of fair refugee determination procedure because of possible flaws in the original decision and the possibility of the applicant obtaining fresh material evidence. The IRC is concerned that the requirements of S.97 are too complex and that an applicant, particularly one without good legal representation, would not be able to fulfil the requirements of Section 97.

31. IRC urge a simple definition of what constitutes a fresh or subsequent protection procedure. Article 32 of the Procedures Directive states that if after a preliminary examination “new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee by virtue of [the Qualification Directive]”, the application is to be examined as if it was an original one. The IRC submits that this should be provided for in the Bill, in line with the minimum standards set out in the Procedures Directive.

Section 119(2) and 120 (2): Detention

119. – (2) Without prejudice to the generality of subsection (1), regulations under this subsection may—

(a) specify the circumstances in which—

(i) a protection application shall—

(I) be investigated in the State,

(II) be transferred pursuant to any agreement of the kind referred to in section 118, and

(ii) a protection application made in a safe third country shall be accepted for examination in the State pursuant to any agreement of the kind referred to in section 118,

(j) provide for the temporary detention (for a period not exceeding 48 hours) until a decision on the matters referred to in paragraph (a) has been made, of a person who, having arrived in the State directly from a safe third country, makes a protection application.

120. – (2) Without prejudice to the generality of subsection (1), regulations under that subsection may -

(e) provide for the temporary detention (for a period not exceeding 48 hours) of a protection applicant who has arrived in the State directly from a Council Regulation country until a determination has been made as to whether he or she will be transferred.

32. Article 18 of the Procedures Directive states that *“Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.”* IRC consider that provisions for detention of asylum seekers under S.119(2)(j) and S.120(2)(e) of the Bill therefore contravenes the Procedures Directive in that these sections allow an applicant to be detained simply on the basis of he/she being an asylum applicant. IRC recommend the removal of these provisions from the Bill.

Section 117: Safe Countries of Origin

117.—(1) The Minister may, by order made after consultation with the Minister for Foreign Affairs, designate a country as a safe country of origin

33. IRC consider that a country should never be presumed to be safe for all people at all times. A fair asylum procedure is the best mechanism for determining whether a person is at risk, rather referring to a generalised presumption of the Minister. IRC recommend the removal of this Section from the Bill.

2. Appeals and Remedies

Section 92: Grounds of appeal

92.—(1) A protection applicant may appeal, in accordance with 10 regulations under subsection (5) (if any), against a determination of the Minister under section 88(2), referred to in paragraph (b) or (c) of section 88(3), that the protection applicant— (a) is not entitled to protection in the State as a refugee, or (b) is not entitled to protection in the State either as a refugee¹⁵ or as a person eligible for subsidiary protection.

34. In limiting the right of appeal to persons not recognised as refugees and those requiring subsidiary protection, IRC has serious concerns that persons who wish to appeal against decisions which raise rights of the European Convention on Human Rights are being denied the effective remedy as set out in Article 13 of the ECHR (incorporated in to Irish law by the 2003 Human Rights Act). For example, an applicant who states that they would be subject to inhuman and degrading treatment in the State, (arguably a more expansive definition of ill-treatment than serious harm), or that their removal from the state would breach their right to have their private and family life respected, would not under current legislation, nor under the Bill, be able to raise these issues as grounds of appeal.
35. Further, under this section, the only opportunity for appeal against a decision on ECHR grounds is judicial review at the High Court. The IRC argues that this is not, considering the expense and timescales placed on *all* parties of the judicial review process, the effective remedy envisioned by Article 13 of the ECHR.
36. The IRC is also concerned that by limiting grounds of appeal to refugee status and subsidiary protection, the PRT will attract persons seeking to raise human rights within a refugee tribunal process thereby adding to further delays and inefficiencies.
37. In restricting the grounds of appeal to issues of refugee and subsidiary protection, this Section does not transpose Article 39 of the Procedures Directive which states that a Member State shall ensure applicants have the right to an effective remedy before a court or tribunal against a decision taken on their asylum application. This includes a decision that finds the application inadmissible, a decision taken at a border or in the transit zones of a Member State, a decision not to conduct an investigation pursuant to Article 36 [European Safe Third Countries], a refusal to reopen the examination of an application, a decision not to further examine subsequent

application, a decision refusing entry within the framework of the procedure provided for under Article 35 [Border Procedures] and a decision to withdraw refugee status.

38. The IRC urges Section 92 to be expanded to fully encompass the grounds of appeal outlines in Article 39 of the Procedures Directive.

Section 100(4): Appointment of members of the Tribunal

100. – (4) The Minister may appoint such and so many persons to be members of the staff of the Tribunal as he or she considers necessary to assist the Tribunal in the performance of its functions and such members of the staff of the Tribunal shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Finance, determine.

39. Article 8(2)(a) of the Procedures Directive provides that applications for protection be examined and decisions taken individually, objectively and impartially. The IRC is concerned that the provision in Section 100 (4) that the Minister appoints the Protection Review Tribunal members who determine appeals against first instance decisions would not constitute an impartial examination.
40. The IRC points out that S.100 of the Bill, which establishes the Protection Review Tribunal, may therefore be in violation of Article 14 of the International Covenant on Civil and Political Rights which entitles everyone to a fair and public hearing by a competent independent and impartial tribunal established by law.
41. The IRC recommends that the selection of PRT members be made by an independent commission, possibly similar to the Judicial Appointments Commission in the UK, which would maintain and strengthen judicial independence by removing this responsibility from the Minister and any subsequent accusation of impartiality of PRT members

Section 133(7): Judicial Review

S. 133 (7) Where, in the opinion of the High Court, the grounds put forward for contending that an act, decision or determination referred to in subsection (1) is invalid or ought to be quashed are frivolous or vexatious, the Court may, (whether on application or on its own motion) by its order, so declare and shall direct by whom and in what proportion the costs are to be borne, including whether the costs, or a part of the costs, of the proceedings shall be borne by the legal representative of the applicant. This section allows the High Court to award costs against an applicant's legal representative who has initiated judicial review proceedings deemed frivolous, vexatious or invalid.

42. IRC are concerned that there is no definition of what a 'frivolous' or 'vexatious' claim is. Further the IRC raises a concern that applicants raising novel points of law, previously undetermined by the Courts, will be discouraged from raising such points.
43. This Section illustrates the inherent difficulty in not having a remedy available to persons raising ECHR grounds of appeal. A fairer PRT that considered ECHR grounds of appeal would remove the need for this Section.

3. No notice deportation and removal

Sections 6(5), 59(1) and 60(1): Removal from State of foreign national unlawfully present

Section 6. – (5) A foreign national who does not comply with the obligation under subsection (4) [that a foreign national whose presence in the State is unlawful is under an immediate and continuing obligation to leave the State] may be removed from the State in accordance with the provisions of this Act.

Section 59. – (1) Where an immigration officer or member of the Garda Síochána is satisfied that a foreign national is unlawfully present in the State or at a frontier of the State, the officer or member may remove, or cause to be removed, the foreign national from the State.

Section 60. – (1) An immigration officer or a member of the Garda Síochána may, for the purposes of removing a foreign national from the State under section 59, arrest the foreign national without warrant where –

- (a) the foreign national has been refused an entry permission under section 29,
- (b) the officer or member, with reasonable cause, suspects that the foreign national –
 - (i) has failed to comply with any notification under this Act to the effect that he or she must leave the State by a specified date,
 - (ii) intends to leave the State and enter another State without lawful authority,
 - (iii) has destroyed his or her identity documents or is in possession of forged, altered or substituted identity documents, or
 - (iv) intends to avoid removal from the State, or
- (c) section 61(4), 62(2) or 64(5) applies to the foreign national.

44. The IRC, along with many other organisations, consider that these sections of the Bill introduce a form of ‘summary deportation’ of foreign nationals, including persons who may be in need of protection, without providing access to due procedure.
45. Currently, Section 3 of the Immigration Act 1999 provides that a failed asylum seeker be served a deportation notice, and given 15 working days within which they can contest their deportation. Sections 6(5), 59(1) and 60(1) of the new Bill now abrogates this provision, and gives absolute power to the Minister for Justice and his officials – immigration officers and members of the Garda Síochána – to deport an individual without giving them an opportunity to establish before a competent jurisdiction why they should be allowed to remain in the State.
46. IRC consider that Section 59 is incompatible with the Supreme Court decision of *Oguekwe -v- Minister for Justice Equality and Law Reform* [2008] IESC 25 (01 May 2008) which found that the Minister must consider the Constitutional and ECHR rights of each applicant.
47. The section is also in breach of Article 13 of the International Covenant on Civil and Political Rights, which states that, ‘an alien ordered deported shall have the right to have the case reviewed, and be represented before, a competent authority.’ The concluding observations of the UN Human

Rights Committee on Ireland in July 2008 stated that the State party should amend the previous, 2008 version of the Bill, “to outlaw summary removal which is **incompatible with the Covenant** and ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection.” (emphasis added)

48. IRC note that no notice removal has been found to be unlawful in the UK. In the case of *Medical Justice, R (on the application of) v Secretary of State for the Home Department (Rev 1) [2010] EWHC 1925* (Admin) (26 July 2010) in a very important decision relevant to this issue, Justice Silber of the UK High Court found that the UK government’s policy of not giving adequate notice to certain categories of persons of their removal from the state (analogous to Section 59) was unlawful because it failed to preserve the right of access to a court. Silber J stated: “in practice in the limited time available between serving the removal directions and the actual removal, it is frequently almost impossible that somebody served with removal directions will be able to find a lawyer who would be ready, willing and able to provide legal advice within the time available prior to removal let alone in an appropriate case to challenge those removal directions. **There is a very high risk if not an inevitability that the right of access to justice is being and will be infringed.**” (emphasis added).
49. Section 60(1) (b) (iv) empowers an immigration officer or a member of the Garda Síochána to arrest a foreign national without warrant if he or she ‘suspects that the foreign national intends to avoid removal from the State.’ This provision could lead to serious human rights violations, in the form of arbitrary arrests and detention of foreign nationals, given that in many cases it might be difficult to establish or ascertain beyond reasonable doubt that an individual intends to avoid removal from the State.
50. It is important that the Bill explain how an immigration officer or member of the Garda Síochána can reach such certainty about an intention to avoid their removal, in order to avoid circumstances of abuse of power by state officials. IRC consider that the provisions lack fairness and transparency, will affect the vulnerable most and are an unlawful breach of the right of access to justice.

4. Vulnerable Groups: Children, Families and Victims of Trafficking

Section 2: Interpretation of marriage

“Marriage” means a marriage that is capable of being recognised in the State as a valid marriage pursuant to the law in force at the time that the marriage is being considered by the Minister under this Act, other than a marriage that has been deemed or determined by the Minister under section 138 to be a marriage of convenience;”

51. The IRC note that the IRP Bill does not make any specific reference to the validity under Irish law of marriages/partnerships convened in accordance with the law of the country of origin.
52. Presently, under the 1996 Refugee Act, the Refugee Applications Commissioner investigates an application for family reunification and following that, submits a report to the Minister setting out the relationship between the refugee and the person who is the subject of the application for Family Reunification. Under the IRP Bill this responsibility is designated to the Minister.
53. Due to the insistence upon a declaration of validity of the marriage under Irish law, in many cases where an applicant would appear to have a right to reunification with his or her spouse, it is not granted due to it being ‘unclear’ as to whether the applicants’ marriage partnership is valid under Irish law. This has occurred in cases relating to Muslim and Traditional African marriages in particular. The new Bill fails to clarify this area of the law specifically in relation to refugee family reunification by laying down more specific criteria upon which the validity of a foreign marriage should be determined.
54. The IRC further note that the Bill, in defining family members, does not recognise for family reunification such a partnership as is provided for under the Qualification Directive i.e. ‘his or her unmarried partner in a stable relationship’.
55. Further in the Family Reunification Directive, Article 4(3) it is stated that Member States ‘may ... authorise the entry and residence of ... the unmarried partner, being a 3rd country national, with whom the sponsor is in a duly attested stable long term relationship.’ This Bill does not transpose this provision.
56. The above issues should and could be clarified under the Bill by including a more comprehensive definition of a marriage or partnership that will qualify for family reunification at the outset.

Section 116 (7): Definition of a ‘Member of the Family’

116. – (7) “member of the family”, in relation to a sponsor, means –
where the sponsor is married, his or her spouse, provided that the marriage is subsisting on the date on which his or her protection application under section 81 is made,
where the sponsor is on the date of the application under subsection (1), under the age of 18 years and not married, either or both of his parents, or
a child of the sponsor who is, on the date of the application under subsection (1), under the age of 18 years and not married.

57. IRC note in Section 116 (7) that ‘member of the family’ is defined as ‘a child of the sponsor who is, on the date of the application under subsection (1), under the age of 18 and *not married*.’
58. While this is consistent with the Qualification Directive, it is inconsistent with the proposed ‘re-cast’ Qualification Directive, which states in Art. 2 (j) “family members means ... *the married minor children of the couples....*” In other EU States, individuals may marry under the age of 18 and the resulting married couple may live as part of the family unit in the family home, dependent upon the parent(s) of one of the partners. The IRC recommend that the cultural context from which applicants come from be taken into account in the Bill and adequately provided for in accordance with the minimum standards set down in the ‘re-cast’ Qualification Directive.
59. Further, the IRC note that a ‘spouse’ only qualifies as such if the marriage was already ‘*subsisting upon the date on which his or her protection application is made*.’ IRC is concerned that this does not provide for families which may be formed during flight or upon arrival in the State. As in Ireland, the process of granting protection can take years, it is reasonable to expect that families can form once a protection application is present in the State. Not providing for this type of family reunification under the Bill could amount to an interference with the right to respect for a private and family life under Article 8 of the ECHR.
60. The IRC therefore recommend that the current provision be extended to allow for this type of family reunification as respect for family unity should not be made conditional on whether the family was established before flight from the country of origin. This is in line with the UNHCR Executive Committee Conclusion No. 88 of 1999 to allow for “*the consideration of liberal criteria in identifying those family members who can be admitted, with a view to promoting a comprehensive reunification of the family.*”

Section 81(12): Application on behalf of dependants

82. – (12) A protection application made by a foreign national under subsection(1) shall be deemed to be made on behalf of all the dependent children of the foreign national who are present in the State and under the age of 18 years at the time of the making of the application, and the dependent children of the foreign national who are born in the State, or who, being under the age of 18 years at the time of their arrival, arrive in the State, after the foreign national has made the application but before the foreign national's protection application entry permission ceases to be valid under section 75(4), or the foreign national, following a determination that he or she is not entitled to protection in the State, leaves or is removed from the State.

61. The IRC is concerned that this provision, by deeming an application to be made on behalf of dependent children, denies the individual child's right to apply for asylum. In certain cases, circumstances may arise where an individual child could also face persecution if returned to their country of origin. In these cases, the child in question should also have the opportunity to exercise his/her right to apply for asylum.
62. Article 6(3) of the Procedures Directive states that Member States may provide that an application may be made on behalf of his/her dependants. The IRC suggest that the implication of this provision is that Member States should also provide an opportunity for a dependent to make his or her own application if appropriate.
63. Further, the IRC is concerned that there is no possibility for a dependent spouse to be considered under the same terms of the individual's application – in the Bill, only dependent minors are legislated for within a single application. Article 6(3) of the Procedures Directive also states that dependent adults shall have the opportunity to submit a separate application if so desired, but may be included within one applicant's claim. This should be provided for under the Bill.

Section 139 Victims of trafficking (recovery and reflection)

139. A foreign national may, by notice given to him or her in writing by the Minister, be permitted to be present in the State for a recovery and reflection period if the foreign national is a foreign national in respect of whom a member of the Garda Síochána not below the rank of Superintendent has provided a statement to the 30 Minister to the effect that that member considers that there are reasonable grounds for believing that that foreign national is a victim of trafficking.

64. The IRC note that this Section states that a foreign national *may* be permitted to be present in the State for a recovery and reflection period. The use of the phrase 'may' suggests that the decision to

grant the recovery and reflection period is at the discretion of the Minister. IRC recommend the replacement of 'may' with 'will'.

65. The IRC also recommend that the recovery and reflection period be formalised as an application process in which an applicant is made aware within what time a decision would be made, that reasons be given if a negative decision is made and that there is a right of appeal against a negative decision.

Section 28(1): Definition of a separated child³⁰
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66. IRC recommend that the definition of a separated child be brought in line with Separated Children in Europe and UNHCR definition as clarified by the UN CRC: "'separated child' means a child under the age of 18, who is outside his or her country of nationality or, if stateless, outside his or her country of habitual residence and who is separated from both parents, or from his or her previous legal or customary primary caregiver"

67. At a minimum, the Bill should transpose Article 2(h) of the Asylum Procedures Directive, or Council Directive 2005/85/EC as per 2008 committee commitments: *'unaccompanied minor' means a person below the age of 18 who arrives in the territory of the Member States unaccompanied by an adult responsible for him/her whether by law or by custom, and for as long as he/she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he/she has entered the territory of the Member States.*

Best interest of the child:

Sections 81(7)(b)&(c); 81(9); 83(8)(a); 93(7)(a); 93(9)(b); and 64 (Detention)
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68. IRC note that mention of the best interest of the child, present in Section 73(10); 74(8); and 85(9) of the 2008 Bill, has been *removed* from the 2010 Bill.

69. According to the UNHCR, best interest of the child needs to be examined on an individual basis. A best interest assessment should take place from the moment the child presents which will lead to a best interest determination that will identify durable solutions for the child- which includes deciding on temporary care arrangements and family/legal guardian reunification or separation.

70. In accordance with the Convention on the Rights of the Child³¹, the recommendations of the Committee on the Rights of the Child to Ireland³², the Qualification Directive³³ and the Procedures

³⁰ See separate IRC submission on separated children appended.

Directive³⁴, Ireland is obliged to ensure the best interest of the child is a primary consideration in all actions affecting children and as such should be integrated into all legislation affecting children-in particular, in consideration of the detention of a minor.³⁵

³¹ The Convention on the Rights of the Child:

The best interests of the child shall be a primary consideration in all actions affecting children (Article 3)

There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status (Article 6)

Each child has a fundamental right to life, survival and development to the maximum extent possible (Article 6)

Children should be assured the right to express their views freely and their views should be given “due weight” in accordance with the child’s age and level of maturity (Article 12)

³² UN Committee on the Rights of the Child, *Concluding Observations to Ireland*, September 2006: 23- The Committee recommends that the State party:

(a) Ensure that the general principle of the best interest of the child is a primary consideration without distinction and is fully integration into all legislation relevant to children; and

(b) (b) Ensure that this principle is also applied in all political, judicial and administrative decisions, as well as projects, programmes and services that have an impact on children.

31: (c) Ensure that the principle of the best interest of the child is always a primary consideration when making decisions involving children under any legal or administrative procedures.

³³ Council Directive 2004/83/EC, or the Qualification Directive: Article 20.5 The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this Chapter that involve minors. Preamble: Recital (12) The «best interests of the child» should be a primary consideration of Member States when implementing this Directive.

³⁴ Council Directive 2005/85/EC, or the Asylum Procedures Directive: Article 2: Definitions

(i) ‘representative’ means a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian, a person acting on behalf of a national organisation which is responsible for the care and well-being of minors, or any other appropriate representation appointed to ensure his/her best interests;

Article 17.6 The best interests of the child shall be a primary consideration for Member States when implementing this Article.

Preamble: Recital (14) In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.

³⁵ UN CRC Article 37(b) [...] The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time [...]. Asylum Procedures Directive Article 18 Detention 1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum. 2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

Return Directive, Article 17, Detention of minors and families 1. Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time. 5. The best interests of the child shall be a primary consideration in the context of the detention of minors pending removal.