

# Durable Solutions for Separated Children in Europe

## National Report: Ireland



Samantha Arnold  
Muireann Ní Raghallaigh  
Morgane Conaty  
Eilís O’Keeffe & Nancy Roe



Published in 2015 by  
Irish Refugee Council  
37 Dame St, Dublin 2, Ireland

Tel +353 1 764 5854  
[www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie)

Designed by Eamon Cassidy  
[epcass9@gmail.com](mailto:epcass9@gmail.com)

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#### Disclaimer

This report was carried out thanks to funding from the European Commission's Pilot Project on Unaccompanied Minors. The contents of this report are the sole responsibility of the author and do not reflect necessarily the views of the European Commission. Any errors or omissions in the reports and guidance materials are ours alone.



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## **Acknowledgements**

I would like to thank Muireann Ní Raghallaigh and the School of Social Policy, Social Work and Social Justice at University College Dublin and Thomas Dunning and the Social Work Team for Separated Children of the Child and Family Agency (Tusla) for their input and guidance. I would also like to thank the advisory panel: Shirley Martin (Applied Social Studies, UCC), Rhona McGlynn (ISPCC), Susan McGonagle (UNHCR Ireland), Paraic O'Carroll (ORAC), Karla Charles (EPIC), Jessica Farnan (CDET B Separated Children's Service), Hannaleena Ahonen (Tusla) and Berni Smyth (UNESCO Child and Family Research Centre, NUI Galway). Thanks to Enda O'Neill (UNHCR Ireland), Jyothi Kanics (Universitat Luzern) and Nadine Finch (Garden Court Chambers) for their comments and feedback.

I would also like to thank Cyndi Njoki and Rita Mirembe (EYMF) for facilitating the focus group with young people.

Lastly, thank you to Aoife Coleman and Diego Castillo Goncalves for their edits and contributions to other aspects of the project.

## Part I

### 1. Introduction

Children are at an increased risk of being separated from their families or customary caregivers during the chaos of conflict, flight and displacement. A separated child is a child under 18 years of age who has been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives. Separated children may be accompanied by additional adult family members or others, potentially including traffickers or smugglers.<sup>1</sup>

Separated children, like adults, flee their countries for a number of reasons. Some travel to join family who have previously migrated, others are escaping female genital mutilation, child marriage or conscription into formal or informal armed forces. Separated children also travel to escape a difficult family environment, for example sexual or physical maltreatment or the prospect of forced marriage, while others are fleeing war, civil unrest, natural disaster or persecution.<sup>2</sup> On top of this, some are also sent by their parents to pursue a better life, both for the child, in the short term, and their family, in the long term.<sup>3</sup>

Over recent years, a significant body of research has also emerged around the specific vulnerability of separated children post-migration. Separated children, once in the country of arrival, are often referred to as particularly vulnerable because they lack essential adult care and the traditional support systems of parents and family.<sup>4</sup> The literature suggests that separation from family and carers can be traumatic for children as it increases their vulnerability.<sup>5</sup> It contends that separated children run a higher risk of experiencing sexual exploitation and abuse; which encompasses early or forced marriage, human trafficking, military recruitment, child labour including forced domestic labour, detention, discrimination, neglect and violence.<sup>6</sup>

However, research also points to the resilience of separated children as many demonstrate the capacity to overcome difficult experiences, to not only integrate, but thrive in their new communities.<sup>7</sup> Indeed, research has also highlighted the strength of separated children in overcoming both past traumas, and current ordeals incurred while seeking protection on their own.<sup>8</sup> Abunimah and Blower, for example, note that not all separated children who experience adversity or harm will experience traumatisation, 'since we know that

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1. See: UN Committee on the Rights of the Child General Comment No. 6 on Treatment of Unaccompanied and Separated Children Outside their Country of Origin, Committee on the Rights of the Child, Committee on the Rights of the Child, 2005 (CRC/GC/2005/6).

2. See, generally: UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> [accessed 9 March 2015] & Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> [accessed 9 March 2015].

3. European Migration Network, Unaccompanied Minors – an EU comparative study (2010) at 22. Available at: [http://emm.si/files/publikacije/00\\_emn\\_synthesis\\_report\\_unaccompanied\\_minors.pdf](http://emm.si/files/publikacije/00_emn_synthesis_report_unaccompanied_minors.pdf) [Date accessed: 7th August 2014].

4. See, generally: Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> [accessed 9 March 2015].

5. See, for example: Russell, S. (1999) Unaccompanied Refugee Children in the United Kingdom. *International Journal of Refugee Law* 11(1), Bhabha, J. and Young, W. (1999) Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines. *International Journal of Refugee Law* 11(1) and Bhabha, J. (2004) Demography and rights: women, children and access to asylum. *International Journal of Refugee Law* 16(2).

6. See, generally: Bhabha, J. (2014) *Child Migration and Human Rights in a Global Age*. Princeton, Princeton University Press. & See, for example: Communication from the Commission to the European Parliament and the Council - Action Plan on Unaccompanied Minors (2010 – 2014) SEC(2010)534 /\* COM/2010/0213 final and Bhabha, J. and Young, W. (1999) Not Adults in Miniature: Unaccompanied Child Asylum Seekers and the New U.S. Guidelines. *International Journal of Refugee Law* 11(1).

7. See, for example: M. Ni Raghallaigh & R. Gilligan (2010) Active survival in the lives of unaccompanied minors: coping strategies, resilience, and the relevance of religion *Child and Family Social Work* 15:2, 226-237.

8. See, for example: M. A. Muecke (1992) New Paradigms for Refugee Health Problems *Social Science and Medicine* 35, 515-523; R. Kohli (2006) The comfort of strangers: social work practice with unaccompanied asylum seeking children and young people in the UK *Child and Family Social Work* 11, 1-10 & M. Ni Raghallaigh & R. Gilligan (2010) Active survival in the lives of unaccompanied minors: coping strategies, resilience, and the relevance of religion *Child and Family Social Work* 15:2, 226-237.

not all children respond to the same risks in the same way'.<sup>9</sup> Kohli also found that social workers working with separated children in the UK also perceived separated children as 'interesting and elastic in their capacity to survive and do well at times of great vicissitude'.<sup>10</sup> Thus although separated children can be considered vulnerable due to separation from family and home and past experiences, they can also be considered resilient due to their ability to forge new paths.

Research also highlights how a return to normality is critical in aiding recovery from trauma<sup>11</sup> and assisting the process of integration or re-integration. One way to ensure that children are provided with such an avenue to 'normality' is to provide them with a long-term plan, often referred to as a *durable solution*.

The European Commission, in their Mid-term report on the implementation of the Action Plan on Unaccompanied Minors, identified 'prevention, reception and identification of a durable solution' as one of the main strands to focus on in respect of promoting a European-wide approach to the care of separated children – reiterating the need for European harmonisation.<sup>12</sup> In order to harmonise the aforementioned strands across Europe, there must be an understanding of the key principles and terminology at play.

This report outlines current practice to illustrate the concept 'durable solutions for separated children' and explore what is meant by it within the Irish context through a review of existing research and interviews with service providers and young people.

### 1.1 Separated Children in Ireland

In line with international trends, separated children reportedly come to Ireland in order to join family members who have previously migrated, to claim asylum, to seek medical attention, to pursue an improved standard of living and quality of life<sup>13</sup> and/or undertake an education in Ireland.<sup>14</sup> The decision to migrate or to flee could have been made by their family or themselves. Additionally, separated children may have been victims of human trafficking and brought to Ireland for the purposes of exploitation.<sup>15</sup>

Similar to separated children in other countries, some of the problems and challenges faced by separated children in Ireland include: loss of loved ones, social isolation, language barriers, mental health problems, discrimination and racism.<sup>16</sup> A number have been subjected to abuse and exploitation in transit.<sup>17</sup> Many separated children have witnessed violence or been the victim of physical or sexual violence themselves, which, as Abunimah and Blower found, places them at a higher risk of developing psychological problems in the future.<sup>18</sup>

9. A. Abunimah & S. Blower (2010) The circumstances and needs of separated children seeking asylum in Ireland *Child Care in Practice* 16:2, 129, p. 130.

10. R. Kohli (2006) The comfort of strangers: social work practice with unaccompanied asylum seeking children and young people in the UK *Child and Family Social Work* 11, 1 p. 7 in M. Ní Raghallaigh (2011) 'Social work with separated children seeking asylum' *Irish Social Worker Autumn*.

11. Summerfield, D. (1999) A critique of seven assumptions regarding psychological trauma programmes in war-affected areas. *Social Science and Medicine* 48, 1449-1462 & Bracken P. (2002) *Trauma, Culture, Meaning and Philosophy*. London, Whurr Publishers in L. Robbins & J. Rylands (2004) *The Experience of Unaccompanied Minor Mothers in Ireland* The Social Work Team for Separated Children and the Psychology Service for Refugees and Asylum Seekers. Available at: <http://www.lenus.ie/hse/bitstream/10147/85782/1/Robins%26Rylands.pdf> (last accessed 30 September 2015) p 97.

12. European Commission, Report from the Commission to the Council and the European Parliament. Brussels 28.9.2012 COM(2012) 554 final.

13. European Migration Network, *Unaccompanied Minors – an EU comparative study* (2010) at 22. Available at: [http://emm.si/files/publikacije/00\\_emn\\_synthesis\\_report\\_unaccompanied\\_minors.pdf](http://emm.si/files/publikacije/00_emn_synthesis_report_unaccompanied_minors.pdf) (Date accessed: 7th August 2014).

14. C. Joyce & E. Quinn, *European Migration Network: Policies on Unaccompanied Minors in Ireland* (Dublin: The Economic and Social Research Institute, 2009) at xii.

15. C. Joyce & E. Quinn p xii.

16. <http://www.tusla.ie/services/alternative-care/separated-children/> (Date accessed: 7th August 2014).

17. M. Ní Raghallaigh (2013) *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland: The views of young people, carers and stakeholders* (Dublin: Barnados and the Health Service Executive) p 10. Available at: <http://www.barnados.ie/assets/files/Advocacy/2013SeparatedChildren/Report%20into%20separated%20children%20in%20foster%20care.pdf> (Date accessed 7th August 2014).

18. A. Abunimah & S. Blower, "The Circumstances and Needs of Separated Children Seeking Asylum in Ireland" (2010) 16 *Child Care in Practice* 129 p 130.

There is also the burden of the anxiety that arises from the uncertainty of their future in Ireland and the stress of the asylum system. Separated children who arrive in Ireland are faced with a different culture, sometimes including a different language and majority religion. They have to learn to navigate a different education system while forming an entirely new social network in addition to the normal trials and tribulations of adolescence.<sup>19</sup>

Furthermore, separated children in Ireland, like those in other jurisdictions, can face difficulties in vindicating their rights, including their right to: education, adequate standard of living, non-discrimination, housing, play and health care.<sup>20</sup>

## 1.2 Demographic Information

Between January 2014 and May 2015, approximately<sup>21</sup> 131 separated children were referred to the TSCSA Child and Family Agency (Tusla).<sup>22</sup> The top countries of origin during that time were Albania, Zimbabwe and the Democratic Republic of Congo.<sup>23</sup>

## 1.3 Project Methodology

The project involved a two stage methodological approach involving primary and secondary research. Desk research was undertaken to create a framework for conceptualising the term 'durable solution' in caring for separated children in Ireland.<sup>24</sup> This was done by reviewing existing research on separated children relating to durable solution planning. Primary research involved qualitative interviews with 11 service providers with experience working with separated children, including care professionals, legal professionals and other service providers.<sup>25</sup> A questionnaire was used, See Appendix 3.

Young people were also consulted through a focus group. This approach was designed to be child-centred. Children were provided with the opportunity to learn about international children's rights and then encouraged to talk about the durable solution concept in a general way, not focussing on personal experiences. This approach was adopted to ensure that the children learned and took something away from the consultation and were able to contribute to the discussions without unearthing any trauma or hardship they might have experienced relating to their own durable solutions process.

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19. Ibid

20. U. Kilkelly (2007) Barriers to the Realisation of Children's Rights in Ireland Dublin: Ombudsman for Children's Office p 31. Available at: [http://www.oco.ie/wp-content/uploads/2014/03/Barrierstorealisationofchildren\\_x0027\\_srights.pdf](http://www.oco.ie/wp-content/uploads/2014/03/Barrierstorealisationofchildren_x0027_srights.pdf) (Accessed 1 October 2015).

21. Statistics from March 2014 missing.

22. See Appendix 4.

23. Source: TSCSA.s

24. The Irish Refugee Council led on this project. The School of Social Policy, Social Work and Social Justice at University College Dublin and the Social Work Team for Separated Children of the Child and Family Agency (Tusla) in Ireland both acted as consultants to the project and fed into its development and interim evaluation. Both also sat on the steering committee. The Separated Children in Europe Programme was also consulted and members provided feedback into the outline for the research. All three parties attended a meeting in London where all national partners reviewed national findings, discussed the best way to present findings and highlight best practice and also contributed to the development of the 'Guide'. Lead Partner & National Stakeholders: Irish Refugee Council (Ireland), School of Social Policy, Social Work and Social Justice University College Dublin (Ireland), Social Work Team for Separated Children of the Child and Family Agency (Ireland), Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Germany), Defence for Children – ECPAT (The Netherlands), Greek Council for Refugees (Greek), Hope for Children UNCRC Policy Centre (Cyprus), Human Rights League (Slovakia), Service Droit de Jeunes (Belgium), The Children's Society (England), The People for Change Foundation (Malta) and in cooperation with the Separated Children in Europe Programme. The international report is a synthesis report, which provides a framework for conceptualising the 'durable solution' in caring for separated children in Europe. Additionally, and appended to the international report, a Best Practice Guide for the Identification, Implementation and Review of Durable Solutions for Separated Children in Europe was produced. This Guide provides a template including a checklist for those responsible for determining, implementing and reviewing the durable solution.

25. See Appendix 2.

The 7 separated children, 10 aged out minors and 3 other interested young people<sup>26</sup> learned about the Convention on the Rights of the Child (CRC) and General Comment Number 6 on the treatment of unaccompanied and separated children outside their country of origin (Comment No 6) over a 4 day children's rights summer camp.<sup>27</sup> In a focus group, two aged-out minors who were trained on the theme of durable solutions as part of an activity through the Irish Refugee Council's youth group, the European Youth in Migration Forum, facilitated a discussion where the young people were asked:

1. What CRC rights are most important to you?
2. What do you think a durable solution is?
3. How do you determine a durable solution?
4. Why is it important to determine a durable solution?

Throughout the data collection phase attention was paid to key ethical principles such as ensuring informed consent and voluntary participation, and ensuring that no harm was done to participants. In addition, particular attention was paid to principles of anonymity and confidentiality.

### **1.3.1 Demographic Limitation**

Reception and care for separated children is provided by Tusla through social work teams. There are social work teams based in 17 local areas,<sup>28</sup> however, only a small number have reportedly provided services to separated children.<sup>29</sup> The Tusla Social Work Team for Separated Children Seeking Asylum (TSCSA) is the only specialised service for separated children arriving from outside the European Union. They receive referrals from, inter alia: the Office of the Refugee Applications Commissioner (ORAC), the Garda National Immigration Bureau (GNIB) and other social work teams. They are the only service with a specific mandate to provide specialised care for separated children in Ireland and they are the only service that keeps specific statistics in relation to this group of young people.<sup>30</sup> This report therefore only looks at practice and statistics stemming from the TSCSA.

### **1.3.2 Project Coordination & International Report**

The Irish Refugee Council led on this project, which was funded through the European Commission's Pilot Project on Unaccompanied Minors fund. The School of Social Policy, Social Work and Social Justice at University College Dublin and the Social Work Team for Separated Children of the Child and Family Agency (Tusla) in Ireland also partnered as leads. Both also sat on the advisory panel. The Separated Children in Europe Programme was also consulted and members provided feedback into the outline for the research. All three parties attended a meeting in London where all national partners reviewed their national findings, and discussed the best way to present findings and highlight best practice. The European partners were: Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Germany), Defence for Children – ECPAT (The Netherlands), Greek Council for Refugees (Greek), Hope for Children UNCRC Policy Centre (Cyprus), Human Rights League (Slovakia), Service Droit de Jeunes (Belgium), The Children's Society (England) and The People for Change Foundation (Malta). An international report was also produced, which provides a framework for conceptualising the 'durable solution' in caring for separated children in Europe based on best practice identified through research in the 9 countries. Additionally, and appended to the international report, a Best Practice in Determining and Implementing Durable Solutions for Separated Children in Europe was produced.

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26. Including: 2 young people seeking asylum in Ireland with their family and 1 interested Irish young person. All three were under 18.

27. <http://www.irishrefugeecouncil.ie/children-and-young-people/participation/irish-refugee-council-childrens-rights-summer-camp>.

28. <http://www.tusla.ie/get-in-touch/service-directors>.

29. C. Joyce & E. Quinn p 7.

30. C. Joyce & E. Quinn p xiii.

This Guide provides a template for those responsible for determining, implementing and reviewing the Durable solutions process.

## 2. Durable Solutions: towards a definition

### 2.1 International Guidance

Durable solutions typically refer to solutions involving local integration, voluntary repatriation or resettlement to a third country.<sup>31</sup> The term ‘durable solutions’, in the context of separated children, appears in a number of comments, reports and guidelines. It is generally understood to mean ‘overcoming the situation of being unaccompanied or separated’, placing the greatest weight on exploring options relating to family reunification, while considering the child’s protection needs.<sup>32</sup> The Life Projects argue that the solution must be ‘lasting’<sup>33</sup> for both Member States and the minors themselves, meeting the challenges arising out of the migration of separated children.<sup>34</sup> The Fundamental Rights Agency argues that it must also ensure that the child’s rights are secured into the future.<sup>35</sup>

#### 2.1.1 The Best Interests of the Child and International Guidance

The European Commission,<sup>36</sup> UNHCR,<sup>37</sup> SCEP,<sup>38</sup> the Committee on the Rights of the Child,<sup>39</sup> the Council of Europe’s Life Projects,<sup>40</sup> UNICEF’s Child Notices,<sup>41</sup> the Core Standards for Separated Children in Europe,<sup>42</sup> the Fundamental Rights Agency,<sup>43</sup> UNHCR’s and UNICEF’s Safe and Sound<sup>44</sup> report as well as European legislation<sup>45</sup>

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31. <http://www.unhcr.org/pages/49c3646cf8.html>.

32. UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> (Accessed 2 October 2015).

33. Life Projects 2011 p 9.

34. Ibid.

35. European Union: European Agency for Fundamental Rights, Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, June 2014, ISBN 978-92-9239-464-6, available at: <http://www.refworld.org/docid/53b14fd34.html> (hereinafter Handbook 2014) [accessed 30 September 2014], p 92-98.

36. Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors. Adopted by the Committee of Ministers on 12 July 2007 at the 10002nd meeting of the Ministers’ Deputies.

37. UN High Commissioner for Refugees (UNHCR), Field Handbook for the Implementation of UNHCR BID Guidelines, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html> [accessed 9 March 2015].

38. Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> [accessed 9 March 2015].

39. UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> [accessed 9 March 2015].

40. L. Drammeh (2010) Life Projects for Unaccompanied Migrant Minors : A handbook for front-line professionals. Council of Europe Publishing (hereinafter Life Projects 2010). Available at [http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects\\_GB.pdf](http://www.coe.int/t/dg3/migration/archives/Source/ID10053-Life%20projects_GB.pdf) [accessed 30 September 2014] (c).

41. See, for example, UN Children’s Fund (UNICEF), Child Notice Afghanistan 2013, January 2013, available at: <http://www.refworld.org/docid/5124c09e2.html> [accessed 9 March 2015].

42. See: <http://www.corestandardsforguardians.com/> [accessed 19 May 2015].

43. European Union: European Agency for Fundamental Rights, Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, June 2014, ISBN 978-92-9239-464-6, available at: <http://www.refworld.org/docid/53b14fd34.html> (hereinafter Handbook 2014) [accessed 30 September 2014], p 92-98.

44. UN High Commissioner for Refugees (UNHCR), Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October 2014, available at: <http://www.refworld.org/docid/5423da264.html> [accessed 9 March 2015].

45. European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 15 April 2011, 2011/36/EU, available at: <http://www.refworld.org/docid/50ec1e172.html> [accessed 30 September 2014]. Preamble: Recital 23 & Article 16(2).

all suggest that finding a durable solution that is in the best interests of the child is part of a robust system for safeguarding separated children.

UNHCR states that the child's identity must be considered when making a Best Interests Assessment (BIA).<sup>46</sup> European law and international standards provides that such a determination takes the child's nationality, upbringing, ethnic, cultural and linguistic background,<sup>47</sup> particular vulnerabilities and protection needs into account. It should also take the child's views in accordance with their age and maturity,<sup>48</sup> including when determining their accommodation arrangements.<sup>49</sup>

SCEP and the Core Standards argue that the best interests of the child must be determined in the short and long term through identifying a durable solution that addresses all their protection needs, considers their own views and, wherever possible, leads to overcoming the situation of being unaccompanied or separated.<sup>50</sup> This includes exploring the possibility of family reunification in the country of arrival, a third country or in their home country.<sup>51</sup>

### **2.1.2 The Need for Review**

The above named reports and guidelines argue that provision must be made for progress, monitoring and reviewing or revising the solution both routinely and in response to changes in the minor's situation.

### **2.1.3 The Role of Protection and 'Status'**

UNICEF and UNHCR emphasise the importance of considering child specific protection needs in the effort to determine durable solutions, in particular, one which includes providing international protection (refugee or subsidiary/complimentary protection).<sup>52</sup> UNHCR advises that a solution should be identified on a case-by-case basis and all aspects of the case should be duly weighed and considered in respect of the best interests of the child.<sup>53</sup>

### **2.1.4 Positive Development as a Goal**

The Council of Europe in Life Projects provides practical tools and advice for practitioners in designing and implementing life projects aimed at building the capacities of separated children. The purpose of the project is to

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46. UN High Commissioner for Refugees (UNHCR), UNHCR Guidelines on Determining the Best Interests of the Child, May 2008, available at: <http://www.refworld.org/docid/48480c342.html> (accessed 2 October 2015).

47. European Union: Council of the European Union, Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, L 180/96, available at: <http://www.refworld.org/docid/51d29db54.html> [accessed 30 September 2014].

48. Ibid & UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> [accessed 30 September 2014], 79-94.

49. European Union: Council of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L 337; December 2011, pp 9-26, available at: <http://www.refworld.org/docid/4f197df02.html> [accessed 30 September 2014], Article 30(3).

50. See also: UN Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, available at: <http://www.refworld.org/docid/42dd174b4.html> [accessed 30 September 2014], 79-94.

51. Separated Children in Europe Programme, SCEP Statement of Good Practice, March 2010, 4th Revised Edition, available at: <http://www.refworld.org/docid/415450694.html> [accessed 30 September 2014], p 36.

52. UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, available at: <http://www.refworld.org/docid/4b2f4f6d2.html> [accessed 9 March 2015].

53. UN High Commissioner for Refugees (UNHCR), Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, available at: <http://www.refworld.org/docid/3ae6b3360.html> [accessed 30 September 2014].

develop the capacities and potential of each child, to support the development of independence, responsibility and resilience to enable each young person to become an active member of society whether they remain in the host country or return to the country of origin.<sup>54</sup> The Life Projects therefore provide a plan for young people in pursuit of a durable solution and after a durable solution decision has been made.

### 2.1.5 UNHCR and UNICEF's Definition

UNHCR's and UNICEF's Safe & Sound report define a durable solution as:

*"a sustainable solution that ensures that an unaccompanied or separated child is able to develop into adulthood, in an environment which will meet his or her needs and fulfil his or her rights as defined by the CRC and will not put the child at risk of persecution or serious harm. Because the durable solution will have fundamental long-term consequences for the unaccompanied minor or separated child, it will be subject to a BID. A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a state".<sup>55</sup>*

It must also, however, be emphasised that this is a process that involves many actors and one that requires regular review and revision.

### 2.1.6 Conclusion

Separated children need a durable solution in order to guarantee their rights. Upon arrival and identification, the process of finding a durable solution needs to be effected swiftly and efficiently, ensuring that all the child's rights are respected and that he or she has the right to give his/her view on all short-term and long-term decisions which will affect him/her.

The durable solution must also include a BIA. This is reflected in UNHCR's and UNICEF's description of the durable solution process, noting that consideration for Article 3.1 of the CRC, which relates to the best interest principle,<sup>56</sup> must be considered at the outset, before a durable solution decision can be taken.<sup>57</sup>

However, this report takes the position that the BIA and the durable solution assessment are inextricably linked. The BIA is the avenue through which a durable solution plan is made, further supporting the idea that the durable solution determination is a process, one that is living and evolves depending on the needs, interests and wishes of the child. In this way, the best interest assessment must come before decisions relating to the durable solution are made. As the durable solution process evolves, the best interests must also be re-assessed in line with any changes in circumstances or wishes of the child.

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54. Council of Europe, Life Projects for unaccompanied migrant minors : A handbook for front-line professionals , October 2011, available at: <http://www.refworld.org/docid/545ca9e74.html> (Accessed 2 October 2015).

55. UN High Commissioner for Refugees (UNHCR), Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, October 2014, p 22. Available at: <http://www.refworld.org/docid/5423da264.html> (Accessed 2 October 2015).

56. Convention on the Rights of the Child 1989, Article 3 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

57. See Figure 1 in UNHCR (2014) Safe and Sound: What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe, p 16.

## 2.2 Ireland: Service Providers Understanding of the Durable Solutions Process

All participants were aware of the care planning process used by social workers to plan for the short and long term needs of separated children, but very few participants had heard of the term ‘durable solution’ before the project began. One care professional had heard of it through the Core Standards project<sup>58</sup> and through the European Asylum Support Office.<sup>59</sup> The other participants that had heard of it were legal professionals. Nevertheless, in defining ‘durable solutions’ participants remarked that it:

*‘[is] a solution that can withstand challenge and stress’ but its ‘constantly evolving and changing’ and  
‘needs to be sustainable, lasts a little bit longer than a short period of time’*

One professional described the durable solution as something that was ‘long term’ and that was a ‘plan for [the children], when they come into the country’. Another professional stated that it is ‘a solution or a plan for a young person depending on his or her individual circumstances’ that would ‘have to take into account several possible outcomes’. Another care professional remarked that it is ‘something that’s sustainable, something that’s able to be adapted, something that can be inclusive, long-lasting and effective’.

Another care professional described the durable solution process as something that has to go ‘beyond the paper, more client led, needs led and engages with [the young people] more about their own opportunities’.

### 2.2.1 The Care plan as a Framework for Durable Solutions

During discussions on durable solutions, some care professionals referred to the care plan<sup>60</sup> as something that resembled their understanding of the durable solution process. One care professional discussed the care planning process in detail. S/he described the care plan as having ‘a very structured format’ and while s/he saw it in some ways as being a bureaucratic tool, s/he also saw its merits:

*“Sometimes in terms of the workloads it is hard to meet deadlines, but I see the value in them... In terms of service providers it holds us all accountable. It’s two part, one it’s a very nice way to [ensure that] the child can have a clear idea of what these people do and what they’re committing to do for them and it’s something that can be referred back, it can be altered, it can be updated.”*

It was clear that while the care plan was a form to be completed, it was not a static tool and needed to be updated and changed as the needs of the child changed; reflecting the descriptions of durable solutions above and in the previous section.

A care professional noted that the objective of the care plan is to ‘meet the child’s best interests and that is defined by everyone who participated in the creation of the care plan’.

Another care professional referred to the care plan as a platform for determining the best interests of the child:

*“That’s why that process works because you are bringing together all the experiences of the residential manager... an education officer. Sic Because everyone has to sign off, then everyone is in agreement and the child is a player. I mean if the child is refusing to sign, there’s a reason and then we explore that. I want them to be happy with it. I’ve never had a child not sign. That’s how I can stand over it, because everyone is in agreement”.*

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58. <http://www.corestandardsforguardians.com>.

59. <http://easo.europa.eu>.

60. Care plan as of January 2015.

Another stated that the first step of the durable solution was to 'identify [the children's] needs', which reflects the initial purpose of the care plan and the initial tasks of the social worker as discussed above.

### 2.2.1.1 Care planning for Separated Children

Within their assessments, Tusla social workers include aspects that relate specifically to separated children, which are not specifically mentioned in the care plan. These aspects include: family reunification and the asylum application. According to the care professionals interviewed, these tasks (and other matters arising specific to separated children), although not explicitly included in the care plan template, are nevertheless within the 'scope for discussion in relation to asylum'. One respondent noted that it was not necessary to tailor the care plan for separated children as the care plan leaves space to include other issues and vulnerabilities. Another care professional felt that some paperwork and checklists that apply to the mainstream 'do not relate to us the same way... but with the care plan, I actually think they have really good document with this'.

However, it is arguable that formalising this process, by including it in the care plan, could assist in ensuring all assessments of the needs of separated children are consistently taken into account and that there is a record of this process.

#### **Recommendation:**

A care plan form should reflect the specific needs of separated children.

### 2.2.2 Key Actors in Durable Solutions Planning

In interviews with service providers, the social workers reiterated that key stakeholders were involved in care planning. One social worker described the process as one that allows for those involved with the care plan to declare their concerns in writing on the plan itself. Another stakeholder stated that they work very closely with social workers and aftercare workers around the educational piece of the care plan. One care professional also noted:

*"[We] take part in [the child's] care plan, each young person's key worker<sup>61</sup> would do up their own report, the social workers have theirs, the young person has theirs, and they all come together on the day of a care plan, or care plan review, sic but the ultimate decision is always with the social worker, and the social work team".*

All participants noted that the oversight of the durable solutions process was the responsibility of the social workers,<sup>62</sup> including the care professionals. **This highlights the importance of social workers having the relevant competences including familiarity with migration and asylum systems.** Equally, there is an argument for a more holistic approach, which allows for assessments and determinations to be undertaken by all relevant stakeholders, rather than leaving decision making exclusively to the social worker team.

Existing literature on separated children highlights the importance of a multidisciplinary approach to determining the best interest, durable solutions and other decisions.<sup>63</sup> There can be a number of important actors in a separated child's life. The care plan provides a template for consultation with parents, other relatives, doctors, psychologist/psychiatrists, other social workers, foster carers, residential unit staff, other persons of significance to the child, the guardian and the child themselves. Additionally, the care plan requires notifica-

61. A key worker is a member of the care staff team in a residential home. Each young person will have a key worker or two assigned specifically to them for more one-on-one support.

62. Separated children have the option to complain about their social workers care plan, but in reality very few know how to do this. Some reports have suggested that young people are also afraid to complain for fear of repercussions. Arnold, S., 2011. Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland. Dublin: Irish Refugee Council.

63. See for example: Life Projects and Core Standards.

tion if key participants do not agree with the plan and also any reasons.

The other key actors involved with separated children are the legal professionals, the Department of Justice, educators, health professionals and community groups. Less frequently, the courts and Guardians ad Litem are involved (in cases where children are taken into care utilising a care order). If a durable solution process was developed in Ireland, the aforementioned would be the key stakeholders involved.

### 2.2.3 A Holistic Approach

It was noted that the social workers are responsible for the care plan with input from other actors. The social workers viewed themselves as the person ultimately responsible with decision making in consultation with others. The other respondents seemed to agree with this hierarchy, but some expressed their frustrations with either the level of their involvement or the extent to which their views were taken on board by the social workers. Although service providers or others can make submissions to the care planning process and can submit grievances about decisions made, this does not go far enough to suggest that the decisions are multidisciplinary. **In fact it is more accurate to describe the process as the domain of the social worker, who is obliged to consider recommendations and submissions from others, including from the child, in the process of making a social work decision.** There is therefore perhaps scope to look to expand this process to be more inclusive and multidisciplinary in nature. The care planning process could include a panel of experts, comprising a legal guardian, the child's lawyer, an educator, health and mental health professionals and a social worker, all with equal (or more equal) weight in decision making. Children should also be taken into care using a full care order. In this case, care plans would be subjected to judicial oversight. This would perhaps allow for a better system of 'checks and balances' for the team making decisions on behalf of the child with consideration of the child's own views through a Guardian ad Litem and the views of other stakeholders.

**Recommendation:** Establish a multidisciplinary panel for assessing the needs and interests of separated children in order to plan for durable solutions.

### 2.2.4 Conclusion

It is possible that formal inclusion of some of the elements that are specific to separated children could be one way of integrating the durable solution process into the statutory care plan, while at the same time introducing a multi-agency approach.

The remainder of this report reflects on the needs and rights of separated children and the ways in which they might and do interact with the care plan, with a view to suggesting the care plan be amended so that it can form the framework for a formal durable solutions process in Ireland.

## 2.3 Input from Young People about the Durable Solution Process

None of the young people had heard of the term before the focus group activity. The facilitators (two aged-out minors) asked the group to define 'solution', to which one young person replied 'an answer to a problem'. The facilitators then asked what 'durable' meant. The same young person answered that it was something 'long lasting, withstands change'. They were also asked if they were responsible for determining the durable solution of young people, how would they go about it.

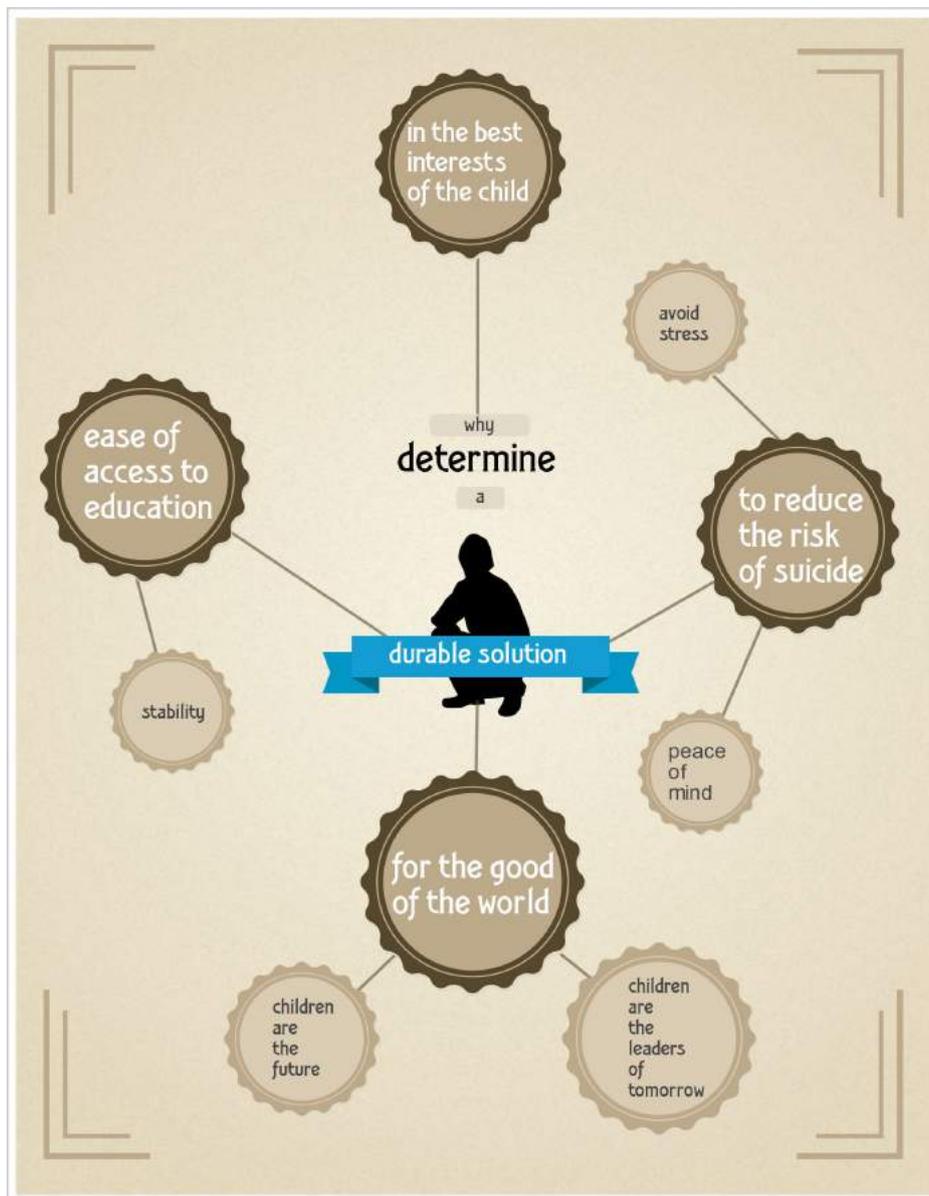
The young people felt that determining durable solutions involved a number of steps. Firstly, the young people expressed the need to respect the child by: being familiar with their case, listening to them, considering the child's age and cultural background and asking for their views while not discriminating, judging or doubting them. Some elements of trust and relationship building were reflected in their responses. The young people also identified the need for those working on behalf of separated children to establish the needs of

the child and what is in their best interests, or ‘what will benefit the child’. **It is noteworthy that when asked how to determine a durable solution the focus was more on the interaction and relationship between the service provider (in this case, the social worker) and the young person.** This is consistent with findings in other reports, where young people focussed on trust and relationship building with social workers as problematic, yet important.<sup>64</sup>



When asked why determining a durable solution is important, the young people referred to the emotional aspects of not having a durable solution. They noted that having one in place could give ‘peace of mind’, reduce the risk of suicide, reduce stress and provide stability. This supports the notion that re-establishing ‘normality’ aids recovery from traumatic experiences. The young people also emphasised the importance of education and how it also provides a sense of stability, while recognising that status was part of a durable education plan. Lastly, the young people highlighted the fact that young people ‘are the future’ and have a lot to contribute. Thus, providing durable solutions for separated children is ‘for the good of the world’ as it benefits the wider society. The discussions were underscored by the principle of the best interests. The young people felt, simply, that it is in the **best interests of the separated child to have a durable solution.**

64. For example: S. Arnold (2013) Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland Dublin: Irish Refugee Council.



### 3. The Best Interests Principle

The best interests principle was referred to by all participants in the context of durable solutions planning. Invariably each interviewee stated that any decisions relating to durable solutions must be made in relation to the best interests of the child. However, several previous studies undertaken in Ireland and Europe have pointed to the lack of a standard framework for determining such best interests.<sup>65</sup> Core Standard 1, The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child, provides the following checklist for guardians to arrive at the best interests:

65. For example: S. Arnold (2013) Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland Dublin: Irish Refugee Council & Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

- A)** Makes an assessment on the best interests of the child, for example before decisions are taken about:
- Legal procedures,
  - The choice of a lawyer,
  - Housing accommodation and placement,
  - Education,
  - (Health)care,
  - Leisure activities,
  - Other support.
- B)** Makes sure that an assessment on the best interest of the child is based on the views and opinions of the child and on individual circumstances.
- C)** Involves all relevant actors in the determination of the best interest of the child in decisions impacting upon the child to ensure a multidisciplinary approach.
- D)** Avoids having a conflict of interest concerning the child and works independently from other actors who make decisions about the welfare and status of the child.
- E)** Adjusts the assessment of the best interests of the child regularly, while taking at a minimum into account:
- The child’s personal background and past experience in the country of origin and journey, His/her development,
  - Family situation,
  - Duration of stay in the host country,
  - Phase of residence procedure or immigration status.

This list was developed on input from service providers and young people in 8 European Member States, based on international law and guidance.<sup>66</sup> Although the Core Standards largely attributes the overarching responsibility to assess the best interests to the legal guardian, the list still serves as a comprehensive summary of guidance relating to the best interests in the specific case of separated children.

This list also took into account the BIC-Model, which was developed in The Netherlands by Margrite Kalverboer, Elianne Zijlstra and Erik J. Knorth.<sup>67</sup> The model outlines the children’s rights that should be included in refugee decision-making procedures and how to realise the application of the child’s best interests and their right to development.

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66. Core Standard 1 refers to CRC Articles 3, 5, 6, 12, 18, 20, 24, 27, 28, 29, 31; Comment Number 6 paras 19, 20, 22, 24, 25, 30, 31, 33, 35, 40, 41, 44, 46, 47, 53, 69, 72, 82, 90, 92, 93 and the Statement of Good Practice paras B1, B4, B11, D3.1, D9.1 among other sources. See Core Standards (2011) pp 17-19.

67. Kalverboer, M., Faber, J. and Zijlstra, A.E., ‘Ama’s, pleeggezinnen en besluitvorming: het ontwikkelingsbelang van jonge ama’s bij snelle besluitvorming rond het toekennen van een verblijfsrecht’, Amsterdam: SWP Uitgeverij 2008.

BIC-model in short:				
Family: current situation	Care and upbringing	Family: future and past	Society: current situation	Society: future and past
<b>Physical wellbeing</b>  1. Adequate physical care 2. Safe direct physical environment	3. Affective atmosphere 4. Supportive, flexible childrearing structure 5. Adequate examples by parent 6. Interest	7. Continuity in upbringing conditions, future perspective	8. Safe wider physical environment 9. Respect 10. Social network 11. Education 12. Contact with peers 13. Adequate examples in society	14. Stability in life circumstances, future perspective <sup>68</sup>

In Ireland, the best interests principle is embedded in child care law and must therefore be considered in the context of both taking children into care and care planning. The care plan in its entirety presumably serves as a checklist for assessing the child’s best interest. The care plan is discussed throughout Part II.

#### 4. Barriers to Accessing Durable Solutions

This report, and in particular the interviews with stakeholders, focuses on what the durable solutions process looks like. However, discussions depart from the assumption that all separated children are able to access this process in Ireland. This section highlights some of the obstacles that may impede separated children from accessing the Durable solutions process based on findings in the literature, before moving on to discussions on the process itself with input from participants:

- Identification as ‘minor’

The implications of getting age wrong can be profound. If a child is age assessed to be over 18, <sup>69</sup> s/ he will not only live in adult accommodation, but the child would also be treated as an adult for the purposes of asylum or immigration applications. The implication of this would be that the threshold for the burden of proof would be higher, i.e. it would be applied in the same way that it would be in the case of adults. This may conflict with the child’s right to fair procedures as they may be held to a standard which does not correspond with their capacity, or age and maturity. <sup>70</sup>

68. Summary list provided by: <http://www.corestandardsforguardians.com/p/28/224/-/9/mo104-c205/mo116-mc63/mo94-c197/%2Apractitioners-standard-1>.

69. Age assessments are the responsibility of the Office of the Refugee Applications Commissioner (ORAC) as set out in Article 8.5(a) of the Refugee Act 1996. However, Tusla conduct their own age assessment for the purposes of their intake assessment and the findings of their assessment are often shared with ORAC. European Migration Network Ireland, Policies and Practices on Unaccompanied Minors in Ireland, Emma Quinn, Corona Joyce, Egle Gusciute, November 2014, p. 25. ‘Both TUSLA and ORAC attested to a large degree of consensus between the two bodies on age assessment in the case of unaccompanied minors. ORAC and GNIB further stated that officers are generally guided by TUSLA’s clinical assessment of the child’s age.’

70. The age-assessment measures are often described as non-invasive above. However, new legislation is being considered at present that would change this process. The International Protection Bill 2015 introduces the possibility of medical examinations. The Bill does not describe what form the examinations would take, only that they are a possibility. Although the Bill also contains provisions which relate to informing the child, getting consent from the child and guardians and the consideration of the best interest, this is a departure from the social-age assessment methodology that was previously employed. This is a ‘disappointing development’ as though the ‘current practice has been the subject of some criticism’, ‘the use of non-invasive methodology was always viewed as positive,’ Separated Children in Europe Programme, Newsletter No. 43, Summer 2015, <http://www.scepnetwork.org/images/sceptemp.pdf> (date accessed: 16th June 2015). SCEP discusses age assessment practices in Europe, including physical assessments, and states that ‘[t]here techniques often do not take into account ethnic variations, they are based on reference materials that for the most commonly used tests are out of date, and generate a margin of error that makes them too inaccurate to use.’ Separated Children in Europe Programme, Review of current laws, policies and practices relating to age assessment in sixteen European Countries, May 2011, at p. 4; See also, the European Asylum Support Office’s report on Age Assessment Practice in Europe [http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/age\\_assessment\\_practice\\_in\\_europe\\_0.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/age_assessment_practice_in_europe_0.pdf).

**Recommendation:** Put in place a system of effective guardianship, which is independent from those conducting the age assessment. The guardian should then be able to attend assessments and appeal decisions. Numerous studies around Europe have pointed to the conflict between the role of the social worker and the process of age assessment.

- Identification as ‘separated’

In Ireland, the Refugee Act 1996 refers only to ‘unaccompanied minors’:

*‘Where it appears to an immigration officer that a child under the age of 18 years who has arrived at the frontiers of the State is not in the custody of any person, the immigration officer shall, as soon as practicable, so inform the [Child and Family Agency] in whose functional area the place of arrival is situated and thereupon the provisions of the Child Care Act 1991, shall apply in relation to the child’.*<sup>71</sup>

The Refugee Act 1996 does not acknowledge the possibility that the child may be travelling with someone other than their habitual carer.

**Recommendation:** Amending the law to reflect the SCEP definition:

*‘Separated children are 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver’... ‘[s]ome children are totally alone while others, who are also the concern of the SCEP, may be living with extended family members who are not necessarily their customary or primary caregivers’.*

SCEP and others also recommend that a further assessment is carried out at the border to determine whether or not the separated child is in the custody of an appropriate carer.

- Identification as vulnerable and/ or in need of protection

Separated children accompanied by other non-caregiving adults may not be able to express a wish to seek asylum at borders and thus may risk not being identified.

**Recommendations:**

- Provide guidance and training to those working at ports of entry, to reflect the wider definition and circumstances of separated children may assist in reducing the possibility of breaching the right to non-refoulement and prevent trafficking and exploitation in children.
- Ensure children’s views are heard at the border in a way that is child-friendly and does not conflict with the child’s rights or the rights of their legal guardians.

- Preventing children from going missing

Identification as separated greatly reduces the physiological risks to the child. Separated children are still at risk of going missing from care, but these rates have been declining in Ireland in recent years.<sup>72</sup> Nevertheless, Corbett suggests that separated children who go missing from care may be at risk of trafficking and other forms of exploitation.<sup>73</sup>

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71. Refugee Act 1996, s. 8(5)(a).

72. See: European Migration Network Ireland, Policies and Practices on Unaccompanied Minors in Ireland, Emma Quinn, Corona Joyce, Egle Gusciute, November 2014, p. 64, table 6.1: Number of Unaccompanied Minors Who Have Gone Missing from SWTSCSA (Dublin) Care. In 2009 48 missing child significant notifications were made to Gardaí with 38 children still missing at the end of the year, while in 2014 (from the period January to October), 3 missing child significant notifications were made to Gardaí with only 1 child still missing at the end of the year. (This data is limited to the Dublin area.)

73. M. Corbett (2008) Hidden Children: the Story of State Care for Separated Children Working Notes • Issue 59 • November 2008, p 22. Available at: <http://www.workingnotes.ie/images/stories/pdf/issue59/hidden-children.pdf> (Last Accessed 29 September 2015).

Recommendation: To safeguard against children going missing from care, a number of changes have been recommended in the literature. This includes the introduction of a more effective system of independent guardianship and a more robust missing children's protocol; and updating the 2009 Joint Protocol between An Garda Síochána and the Health Service Executive (now, Tusla) coupled with wider training, taking into account the recommendations in the Garda Inspectorate's Missing Persons Review and Recommendations.

## 5. Building Blocks for Determining Durable Solutions

Determining durable solutions for separated children is a process involving many actors and many steps. In order to arrive at the point where determining a durable solution is possible, certain conditions must be met. This section introduces the building blocks to creating space and opportunity for best interest determinations as well as durable solutions planning. The discussions in this section are based largely on the literature rather than contributions from participants for the present research.

- **Child-Centred Legal Framework**

The Life Projects contend that in addition to policies that actively support any legislative measures, a robust legal framework, which places the child firmly at the centre, is essential.<sup>74</sup> Several reports argue that the legal framework must include: provision for the appointment of representatives responsible for separated children; allocating legal authority to the representative to determine the child's best interests and durable solutions; and general child care law which safeguards and protects separated children.<sup>75</sup>

- **Relevant Competences and Training of Service Providers**

The Life Projects, the FRA Handbook, the Core Standards and numerous other studies argue that guardians and other service providers, such as social workers, of separated children need to have relevant competences to be able to determine durable solutions for separated children considering their best interests.<sup>76</sup> Some reports refer to a background in social work or social care as the most relevant competency. Some argue that the guardian should have a legal background.<sup>77</sup> Many studies also contend that in addition to necessary qualifications, relevant competencies also include targeted professional development training and courses. This might include attending training events on trafficking, trauma and asylum law, etc.<sup>78</sup>

- **Trusting Relationship with Service Providers**

A growing body of research also looks at the guardian's ability to build trusting relationships with separated children. Several reports and studies have shown that relationship building is a critical component of determining the best interest of children. Care planning with separated children and on their behalf is enhanced if it is happening in the context of a positive relationship, based on trust.<sup>79</sup> Studies have shown that difficulties in truth telling on the part of the child and difficulties

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74. Life Projects 2011, p 12-13.

75. See, for example: Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands; ENGI, 2010 Towards a European Network of Guardianship Institutions, Utrecht.

76. Ibid and Life Projects 2010 and Handbook 2014.

77. Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

78. Ibid.

79. See, for example: Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands; Arnold, S., 2011. Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland. Dublin: Irish Refugee Council; Ní Raghallaigh, M. (2013) 'The causes of mistrust amongst asylum seekers and refugees: insights from research with unaccompanied asylum seeking minors living in the Republic of Ireland'. *Journal of Refugee Studies*, 27 (1):82-100.

in believing on the part of guardians have presented as barriers to determining what is in the best interest of the child.<sup>80</sup> Part of building trust is also consistency, and social workers in Ireland frequently change.<sup>81</sup> Critics argue that changes in staff can have a disruptive effect on relationship building and also the child's integration experience.<sup>82</sup>

One care professional for the present report stated that 'there is so much we don't know about these young people, which effects durable solutions planning' and that they 'can only go on what [they are] told by the young person'. Another reiterated findings in research on this topic, and identified 'time' and 'resources' as being essential in order to be able to adequately care for separated children. One care professional summed it up in this way:

*'The whole point is building the relationship with the kid. It doesn't matter what you're talking about or what the end goal is... sic. Everything is about having a relationship. Without that they're is no work, nothing will be done. [Separated young people] may never trust you fully sic but you can still have some core of a relationship. Even if it's based on a lie, it's still something we can both hang on to and build on'.*

Some reports, including the Committee on the Rights of the Child<sup>83</sup>, advise that independent guardianship is one way to assist guardians in being seen to be 'on the child's side' while also considering the child's best interest.<sup>84</sup>

Trust also applies to the legal professionals.<sup>85</sup> Indeed, all those interviewed highlighted how a trusting relationship is integral for them to effectively represent their clients. There is therefore, a need to ensure legal professionals have the time to build up this relationship. Some studies suggest that one way to achieve this is through the provision of quality early legal advice that permits the lawyer and child to spend considerably more time in consultations and preparation for first instance interviews.<sup>86</sup>

**Recommendation:** Ensure care and legal professionals have adequate time and resources, including financial, to build a relationship based on trust with the child.

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80. Ibid.

81. See: S. Arnold & L. Sarsfield Collins (2011) Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland & S. Arnold (2013) Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland Dublin: Irish Refugee Council.

82. Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

83. Comment Number 6 para 33.

84. Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

85. See, for example: ECRE, GUIDING PRINCIPLES FOR QUALITY LEGAL ASSISTANCE FOR UNACCOMPANIED CHILDREN <http://ecre.org/component/downloads/downloads/909.html>.

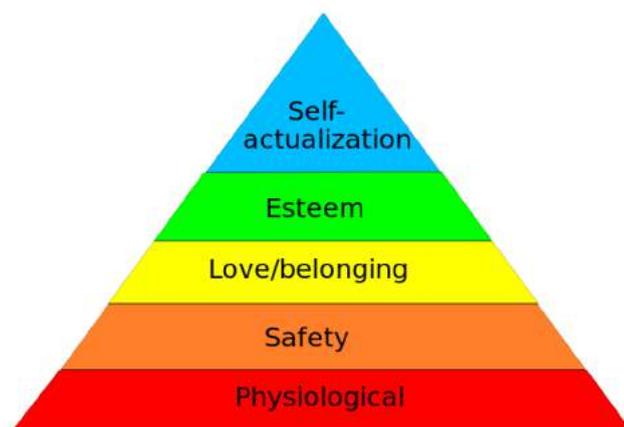
86. Irish Refugee Council, Best Practice in Early Legal Advice forthcoming.

## PART II

### 6. Framework for the Study: A Needs Based Approach to Durable Solutions Planning

All children and young people require certain conditions to develop and thrive. Article 6 of the CRC articulates the child's inherent right to life survival and development. The Convention holds that it is the State's responsibility to ensure that this right is upheld.<sup>87</sup> The most widely referenced articulation of needs in respect of healthy development is Maslow's hierarchy of needs, first published in 1943.<sup>88</sup> Maslow believed that people require their fundamental and basic needs to be met in order to be able to; firstly survive and secondly develop free of anxiety and tension. Once these needs are met, Maslow suggested that secondary needs must be met to motivate people to achieve.

There is some criticism of Maslow's hierarchy. Evidence has shown that people deprived of some needs still strive for self-actualisation.<sup>89</sup> This can also be seen within the separated children demographic. Ní Raghallaigh highlighted the resilience of the group despite past experiences.<sup>90</sup> The hierarchy can nevertheless be seen as a checklist for meeting the needs of separated children in the context of long-term planning.<sup>91</sup>



The most basic needs are often referred to as physiological in the pyramid representation of Maslow's theory. The needs associated with this category are the basic requirements needed for survival such as air, water, food, clothing and shelter.<sup>92</sup> Article 6 of the CRC reiterates this most fundamental need, placing the responsibility on the State:

- '1. States Parties recognize that every child has the inherent right to life.*
- 2. States Parties shall ensure to the maximum extent possible the survival and development of the child'.<sup>93</sup>*

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87. CRC Article 6. 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

88. Cofer, C.N. and Appley, M.H. (1964). Motivation: Theory and research. New York: Wiley. Hierarchy Theory. In Motivation and Work Behavior. R. M. Steers and L. W. Porter, eds. New York

89. Wahba, M. A. and L. G. Bridwell (1987). Maslow Reconsidered: A Review of Research on the Need : McGraw-Hill Book Company, 51-58.

90. M. Ní Raghallaigh, R. Gilligan (2010) Active survival in the lives of unaccompanied minors: coping strategies, resilience and the relevance of religion. Child and Family Social Work 15:2, 226-237.

91. For further reading on the hierarchy in the context of migration: Adler, S. (1977). Maslow's need hierarchy and the adjustment of immigrants. International Migration Review, 11(4), 444-451.

92. Locke and Rousseau, as early as the seventeenth and eighteenth centuries, also identified the need for these basic requirements to be met in order to begin to educate the child.

93. CRC, Article 6.

The second level of the pyramid relates to safety needs. This category refers to the need to protect children from war, natural disaster, violence, abuse, poverty and other forms of insecurity. Although Article 6 is also relevant in the context of safety, there is a myriad of provisions in the CRC<sup>94</sup> which seek to provide 'special care and assistance' for children.<sup>95</sup>

For the purposes of this project and in the context of separated children in the care of the Irish State, the most relevant rights relate to the child's right to: the 'highest attainable standard of health',<sup>96</sup> 'a standard of living adequate for the child's physical, mental, spiritual, moral and social development'<sup>97</sup> and protection 'from economic exploitation'<sup>98</sup> and 'sexual exploitation'.<sup>99</sup>

Once the physiological and safety needs are met, the next level of needs relate to feelings of love and belonging. Maslow argued that neglecting these needs can affect people's ability to form and maintain relationships. Maslow argued that people need to feel loved and feel they belong and are accepted within social groups.<sup>100</sup> Some of the above provisions in the CRC are relevant in the context of love and belonging.<sup>101</sup> Article 20, is perhaps the most relevant in the case of separated children as it refers to their rights to special protection and assistance provided by the State in instances where separation from family is unavoidable. The preamble is also full of references to the rights of the family. It notes 'that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding'. There are additional references to civil and political rights in the body of the treaty relating to the child's right to participate in cultural, artistic or political life referring to the child's right to build links with wider society. In this same vein, Article 30 reiterates the child's rights to 'enjoy his or her own culture, to progress and practise his or her own religion, or to use his or her own language'.

The CRC thus reflects the different sources of support from which a child may derive feelings of love and belonging, in particular from the family, but also through care arrangements, religion and cultural outlets and communities. Ní Raghallaigh and Gilligan highlighted that separated children may seek to bridge their past with their new life as a coping mechanism. They found this was particularly apparent in the context of religious and cultural communities. Ní Raghallaigh and Gilligan suggested that connecting with religious communities, or indeed simply practicing their religion and experiencing a sense of love from a 'higher power'

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94. Article 11: 'States Parties shall take measures to combat the illicit transfer and non-return of children abroad'; Article 19: 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'; Article 20: 'A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State'; Article 22: 'States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties'; Article 24: 'States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services'; Article 27: States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; Article 32 States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development; Article 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse; Article 35 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form; Article 36 States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare; Article 37(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment; Article 38 States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.

95. Recital 4, Preamble recalling commitment set out in the UDHR: 'childhood is entitled to special care and assistance'.

96. CRC Article 24.

97. CRC, Article 27.

98. CRC, Article 32.

99. CRC, Article 34.

100. Wahba, M. A. and L. G. Bridwell (1987). Maslow Reconsidered: A Review of Research on the Need : McGraw-Hill Book Company.

101. For example, CRC Articles 6, 20 and 27.

(eg God or Allah), facilitated coping, as did making connections with communities from the child's country of origin. This type of coping meant that important aspects of their past lives could be brought forward and connected to the present.<sup>102</sup> This is reflected in research in other jurisdictions as well.<sup>103</sup> By connecting with the past, separated children can feel a greater sense of 'belonging' and identity. In addition, research suggests that care relationships in the new context – such as relationships with foster families or with residential care staff – can foster a sense of belonging for separated children, with participants in Ní Raghallaigh's study on foster care highlighting the importance of feeling part of the family with whom they were living.<sup>104</sup>

The final two categories of needs as established by Maslow relate to self-esteem and self-actualisation. Self-esteem translates to the human need to feel respected by one's self and the people around them. People may develop a sense of self-esteem based on recognition for their contributions professionally, educationally or in other activities. Self-actualisation is used by Maslow to describe the point at which a person is able to realise their own potential.<sup>105</sup> This stems from a desire to become one's best self. A number of CRC rights relate to these two categories of needs, including Article 6 and the rights to inter alia: education,<sup>106</sup> non-discrimination<sup>107</sup> and identity.<sup>108</sup> However, the CRC makes clear that merely having access to these rights is not sufficient. The purpose of education, as articulated in Article 29, is directed to the 'development of the child's personality, talents and mental and physical abilities to their fullest potential'.

The CRC also notes that States have a responsibility to promote the positive recovery and reintegration of children who experience 'any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts'.<sup>109</sup> This is relevant in the context of separated children and self-esteem and self-actualisation as separated children often experience trauma in their home country and/or in transit, as mentioned earlier.

Maslow's pyramid of needs can be seen as both rights-based and centred on the individual's positive development. The durable solution can also be seen as rights based with the goal of ensuring positive development, considering the rights and protections set-out in the CRC and the child's individual needs as they develop. Maslow's hierarchy of needs is therefore used as a framework for analysing the durable solution process in practice in Ireland. For the purposes of this report, Maslow's needs are categorised under three main headings: (1) physiological and safety, (2) love and belonging and (3) self-esteem and self-actualisation. The CRC rights that correspond with these categories, presented in 'clusters', respectively, are:

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102. M. Ní Raghallaigh, R. Gilligan (2010) Active survival in the lives of unaccompanied minors: coping strategies, resilience and the relevance of religion. *Child and Family Social Work* 15:2, 226-237.

103. J.H. Goodman (2004) Coping with trauma and hardship among unaccompanied refugee youths from Sudan *Qualitative Health Research* 14:9, 1177-1196; E. Chase, A. Knight, & J. Statham (2008) *The emotional well-being of young people seeking asylum in the UK* London: British Association for Adoption and Fostering.

104. M. Ní Raghallaigh (2013).

105. A. Maslow (1954, 1970) *Motivation and Personality* 3rd edition. New York: Longman.

106. CRC Article 28 States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity

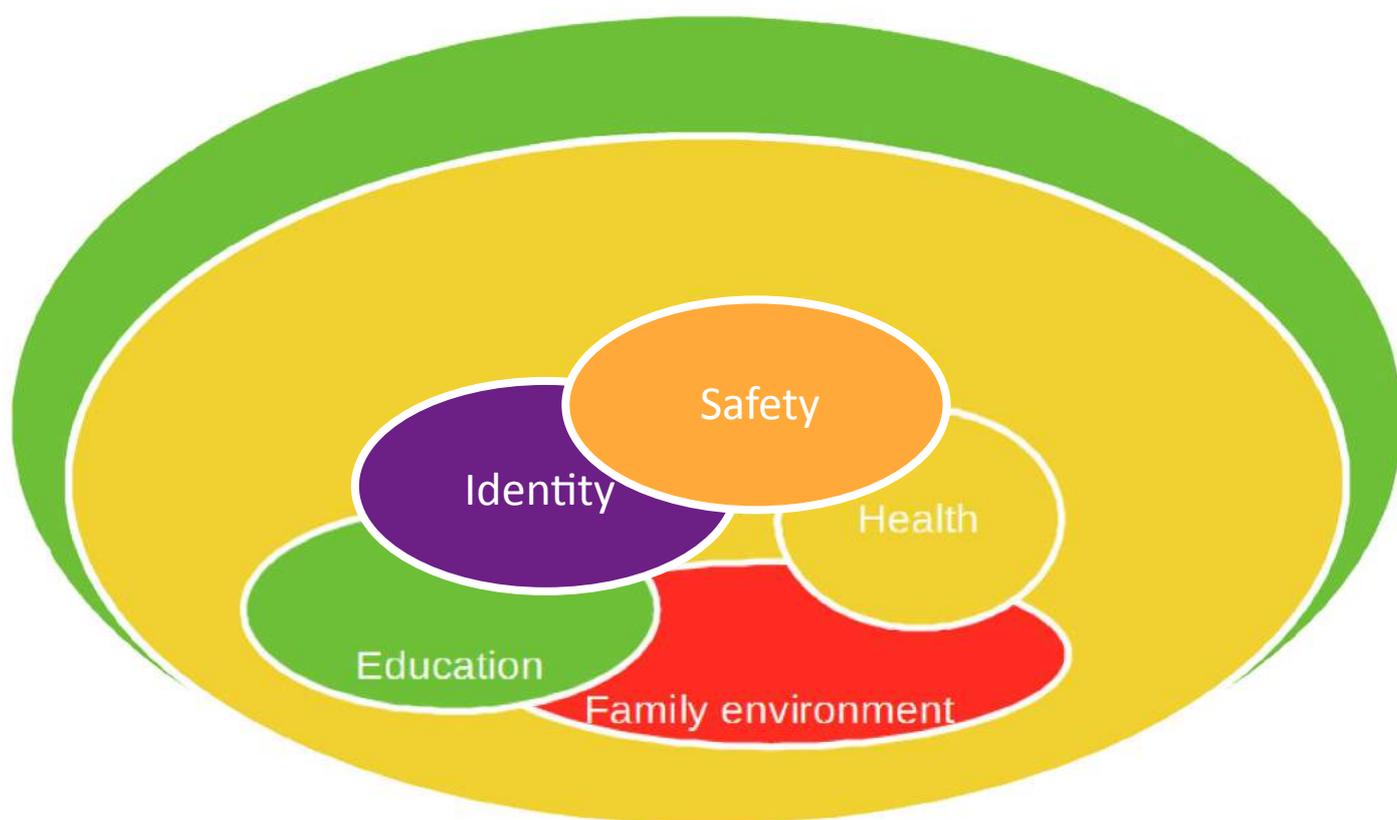
107. CRC Article 2.

108. CRC Article 8.

109. CRC Article 39 States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

- (1) The right to survival, development and within that inter alia<sup>110</sup> the highest attainable standard of health,<sup>111</sup> an adequate standard of living<sup>112</sup> and the right to be protected from harm and abuse,<sup>113</sup>
- (2) the right to development and within that to grow up in a family environment,<sup>114</sup> and the right to practice one's religion, language and culture (identity)
- (3) the right to development<sup>115</sup> and within that education.<sup>116</sup>

The process of taking into account the normative children's rights listed above, which reflect Maslow's hierarchy of needs, leads to a best interests assessment which happens in tandem with the durable solution process. The Durable solutions process therefore seeks to ensure that the child has access to their right to survive and development, considering all the rights that flow from that (as listed above)<sup>117</sup> in line with their best interests.



Maslow's hierarchy of needs – applied in conjunction with the CRC and the Committee on the Rights of the Child General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)<sup>118</sup> – can be utilised as a needs and rights based approach to interpreting the framework definition of the Durable solutions process for separated children in Europe, rather than viewing

110. CRC Article 6.

111. CRC Article 24.

112. CRC Article 27.

113. CRC Article 19, among others.

114. Preamble Recital 6 Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding and Articles 20 and 22.

115. CRC Article 6.

116. CRC Article 28.

117. There is some overlap between the rights identified as 'survival' and 'developmental'.

118. [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf).

this process through the lens of immigration. The following sections therefore use the three main headings, and the categories of needs that fall under them, to discuss the Durable solutions process for separated children in Ireland. This report does not analyse the Durable solutions process in respect of the needs identified by Maslow, rather the report merely employs the hierarchy of needs as a framework for conceptualising the durable solution process, alongside guidance provided by the CRC.

## **7. Maslow's Hierarchy: The Care plan and Durable Solutions Planning processes**

The obligation to meet the physiological and safety needs of separated children in Ireland is not only set out in legislation relating to taking children into care,<sup>119</sup> it also forms part of the statutory care planning process.<sup>120</sup> The needs outlined in the care plan relate to the child's overall well-being, their inclusion in the community around them and also their particular identity-based needs, such as those relating to their spirituality. From the outset, the plan references the need to consult with the child regarding any future plans. This, and the requirement to consider the long-term effects that care decisions have on the child, indicate that the care plan looks to the future to ensure actions taken, even in the short-term, consider any long-term implications.<sup>121</sup> It is also reviewed at regular intervals, including when circumstances change.<sup>122</sup> In this way, the care plan reflects the framework established previously around the Durable solutions process. The Care plan not only deals with the physiological and safety needs of children, but also those needs relating to: love and belonging and self-realisation and actualisation. Some participants, including legal and care professionals, however, worried that the care planning process could become a tick-box exercise, while three participants emphasised that planning for a durable solution is 'a solution for the young persons' life [and it] should not be just a tick-box exercise'. However, when care professionals were asked if they could see the care plan as a framework for the determination of a durable solution, all agreed that they could.

### **7.1 Physiological Needs Assessment and the Durable solutions process**

Article 6 of the CRC encompasses the child's needs in relation to their physiological health and survival and also their safety as set-out in Maslow's hierarchy of needs. Article 6.1 deals with the child's right to life in its most fundamental sense. Article 6.2 on the other hand addresses the child's broader right to survival and development. Article 6, therefore, is understood to not only mean that children have a right to life but also

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119. Child Care Act 1991, as amended S. 3.

120. The Child Care (Placement of Children in Residential Care) Regulations, 1995 (the Regulations) provides a framework for care planning for children being placed in residential care, a similar provision is provided in the Child Care (Placement of Children in Foster Care) Regulations, 1995 for children placed in foster care. The social work services, operating under the auspices of Tusla must endeavour to prepare a plan for the child's care.

121. The care plan begins with an introduction to the aims and objectives of the care placement, requiring social workers to set out: the purpose of the placement; the possible solutions to problems identified; interventions required to implement solutions; reasons why the proposed plan has been chosen over others and the long-term implications of bringing the child into care.

122. The care plan deals initially with the present and immediate needs of the child, a review is required at regular intervals. Tusla staff interviewed stated that the plan is reviewed after 6 months and every 6 months thereafter. This is consistent with the requirements of the Regulations, which require a review every 6 months for the first 2 years and once every calendar year after that. See 25. (1) A health board shall arrange for the case of each child who has been placed in a residential centre by the board and, in particular, the plan for the care of the child prepared under article 23 of these Regulations to be reviewed by an authorised person as often as may be necessary in the particular circumstances of the case, but in any event— ( a ) at intervals not exceeding six months during the period of two years commencing on the date on which the child was placed in the residential centre, the first review to be carried out within two months of that date, and ( b ) thereafter not less than once in each calendar year. This is also consistent with Article 25 of the CRC which states, 'States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement'.

One child care professional noted that the plan can also be reviewed at other times if circumstances require it or a stakeholder requests a review. They reiterated that the care plan could therefore be seen as a 'living' document. Another noted that it is 'revisited every so often' and when 'anything significant takes place, you should start revisiting that process from the beginning...' including if 'the placement changed or the parents arrived, you'd immediately start that again. It evolves. The more information you get, the more it changes, the more the child gets to know the us. That's why I say time-wise helps us. It allows us to assess situations. It also allows us to build rapport and trust with the child'.

the right to positive and healthy development.<sup>123</sup>

As discussed in Section 2, a number of CRC rights correspond to the right to safety, or survival, including, the rights to the highest attainable standard of health, adequate standard of living and the right to be protected from harm and abuse. These children's rights norms reflect the bottom two tiers of the Hierarchy – its foundation. This section discusses separated children's needs in relation to physiology and safety. The right to develop, as outlined in Article 6.2, is discussed primarily in Section 9 in the context of self-esteem and self-actualisation.

In the case of separated children arriving in Europe, physiological needs are typically considered to be met in the context of reception. European Member States are required by law to provide for the immediate needs of separated asylum-seeking or trafficked children. The Reception Directive (recast), for example, refers to the States' obligations to ensure the best interests of the child are considered in respect of: housing arrangements,<sup>124</sup> family<sup>125</sup> and detention.<sup>126</sup> Article 11.3 provides that 'As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age'.<sup>127</sup> The right to family unity also reflects the Maslowian need of belonging in addition to physiological needs, as it is presumed that the family is the provider of nourishment and the child's protector.

Ireland did not opt-in to the Reception Directive<sup>128</sup> or recast, but Irish legislation provides safeguards which resemble the obligations set out in the recast Directive. Article 42A.2.1° of the Irish Constitution states the following:

*'In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child'*

Additionally, Section 3.1 of the Child Care Act 1991, as amended, states that 'It shall be a function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection'.<sup>129</sup> Accordingly all separated children who enter Ireland are placed in the care of the Child and Family Agency.<sup>130</sup> The role of Tusla in the care of a separated child is laid out in the Refugee Act 1996:

*'Where it appears to an immigration officer that a child under the age of 18 years who has arrived at the frontiers of the State is not in the custody of any person, the immigration officer shall, as soon as practicable, so inform the health board in whose functional area the place of arrival is situated and thereupon the provisions of the Child Care Act, 1991, shall apply in relation to the child'.<sup>131</sup>*

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123. See, generally: . Fortin (2005) Children's Rights and the Developing Law, 2nd ed. Cambridge: Cambridge University Press.

124. Directive 2013/33/eu of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Preamble, Recital 22.

125. Ibid, Preamble 9.

126. Ibid, Article 11.2 The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States. In S. Arnold et al (2014) EMIL.

127. Ibid, Article 11.3.

128. European Union: Council of the European Union, Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States, 6 February 2003, OJ L. 31/18-31/25; 6/2/2003.

129. Child Care Act 1991, S.3(1).

130. K. Charles (2009) Separated children living in Ireland – A report by the Ombudsman for Children's Office Dublin: Ombudsman for Children's Office, p 14.

131. Refugee Act 1996 s.5(a).

A separated child falls under this provision as they have neither a home nor a legal guardian to provide them with care and protection in Ireland. Therefore, Tusla is obliged to provide some form of care for separated children.

## 7.2 Taking Separated Children into Care

According to the Department of Children & Youth Affairs, Tusla relies upon a principle of ‘equity of care’ for separated children vis-à-vis other children at risk in order to avoid a differentiation in care provision until the young person reaches the age of 18.<sup>132</sup> The particular care arrangements of a separated child depend on which section of the Child Care Act is utilised.

Some are treated as abandoned children under Section 4 of the Act.<sup>133</sup> Some are treated as homeless children under Section 5 of the Act.<sup>134</sup> There is no automatic allocation of a legal guardian or obligation to engage with the statutory care planning process in either case. However, typically, social workers act as legal guardians and care plans are undertaken.<sup>135</sup> Others can be taken into care under Sections 15-17 of the Act relating to concerns for child welfare.<sup>136</sup> In these cases, the process of being taken into care is overseen by the courts.<sup>137</sup> The court will assign legal guardianship to Tusla via a social worker and may appoint an independent Guardian ad Litem.<sup>138</sup> Furthermore, care orders place a statutory obligation on Tusla to put in place a care plan. This is not the case when utilising Sections 4 or 5 of the Child Care Act 1991, as amended. The literature in Ireland suggests that care orders provide more safeguards for separated children and are therefore recommended.<sup>139</sup>

Unfortunately, the majority are taken into care utilising Section 4.<sup>140</sup> The main difference between full care orders and Sections 4 and 5 relates to the role of the court in overseeing the child’s care plan and the possible allocation of a Guardian ad Litem.

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132. “An equity of care principle applies to separated children, which affords them the same standard of care provision as any other child in care. Tusla is committed to maintaining equity and equality of services to separated children vis a vis all children at risk or in state care, and to ensuring that there is no differentiation of care provision, care practices, care priorities, standards or protocols until the young person reaches 18 years’. [http://www.dcy.a.gov.ie/docs/Separated\\_Children\\_Seeking\\_Asymlum/1905.htm](http://www.dcy.a.gov.ie/docs/Separated_Children_Seeking_Asymlum/1905.htm) (Date accessed: 7th August 2014).

133. Child Care Act 1991, as amended S. 4 Voluntary care. 4.—(1) Where it appears to a health board that a child who resides or is found in its area requires care or protection that he is unlikely to receive unless he is taken into its care, it shall be the duty of the health board to take him into its care under this section. (2) Without prejudice to the provisions of Parts III, IV and VI, nothing in this section shall authorise a health board to take a child into its care against the wishes of a parent having custody of him or of any person acting in loco parentis or to maintain him in its care under this section if that parent or any such person wishes to resume care of him. (3) Where a health board has taken a child into its care under this section, it shall be the duty of the board— (a) subject to the provisions of this section, to maintain the child in its care so long as his welfare appears to the board to require it and while he remains a child, and (b) to have regard to the wishes of a parent having custody of him or of any person acting in loco parentis in the provision of such care. (4) Without prejudice to the provisions of Parts III, IV and VI, where a health board takes a child into its care because it appears that he is lost or that a parent having custody of him is missing or that he has been deserted or abandoned, the board shall endeavour to reunite him with that parent where this appears to the board to be in his best interests.

134. Child Care Act 1991, as amended S. 5 Accommodation for homeless children. 5.—Where it appears to a health board that a child in its area is homeless, the board shall enquire into the child’s circumstances, and if the board is satisfied that there is no accommodation available to him which he can reasonably occupy, then, unless the child is received into the care of the board under the provisions of this Act, the board shall take such steps as are reasonable to make available suitable accommodation for him.

135. Interviews with care professionals for this report.

136. D. Horgan, J. O’Riordan, A. Christie & S. Martin, *Safe Care for Trafficked Children in Ireland: Developing a Protective Environment* (Dublin: Children’s Rights Alliance, 2012) at 25. Available at: [http://www.childrensrightrights.ie/sites/default/files/submissions\\_reports/files/SafeCareForTraffickedChildrenInIrelandReport.pdf](http://www.childrensrightrights.ie/sites/default/files/submissions_reports/files/SafeCareForTraffickedChildrenInIrelandReport.pdf) (Date accessed: 14th August 2014).

137. Child Care Act 1991, as amended S. 18 Care order.

138. Child Care Act 1991, as amended S. 26 Appointment of guardian ad litem for a child.

139. S. Martin, A. Christie, D. Horgan & J. O’Riordan (2011) ‘Often They Fall Through the Cracks’: Separated Children in Ireland and the Role of Guardians Child Abuse Review 20:5.

140. S. Arnold & J. Kelly (2012) Irish Child Care Law and the Health Service Executive in Safeguarding Separated Children Seeking Asylum Irish Law Times 30, 178-183.

In all cases, the process of taking a child into care involves an initial needs assessment, followed by a more thorough assessment as part of the care plan.

**Recommendation:** All separated children should be taken into care using a full care order to ensure access to a legal guardian, a care plan and the possibility of the appointment of a Guardian ad Litem by the court.

### 7.3 Initial Assessments and Accommodation

One participant remarked that the social worker must ask ‘is the child safe, are they getting what they need, are they protected, are there risks around?’. According to Tusla’s website, during the assessment period, children under the age of 12 are placed directly in foster families. Children over 12 are placed in one of three residential homes, which are registered as children’s homes and are therefore subject to inspection and sometimes moved on to a foster placement after a few months, depending on the social work needs assessment.<sup>141</sup>

Tusla then facilitates a more thorough and multidisciplinary risk and needs assessment as part of the ‘care planning process’, which includes a medical examination and an educational assessment.

#### 7.3.1 Other Immediate and Long Term Needs

The care plan further requires the social work team to outline the child’s therapeutic needs, experiences of loss/grief, proposed interventions and the impact of care. This section also asks for information about: assessments or referrals to psychological or psychiatric treatment; services that the child is linked in the home community; the child’s spiritual needs and their medical needs. One care professional noted that managing young people’s health was seen as paramount and on-going.

**Recommendation:** Health professionals, including mental health professionals, should be part of the multidisciplinary team responsible for the Durable solutions process.

## 8. Love and Belonging

Once the physiological and safety needs are met, Maslow contended that people need to feel love and a sense of belonging to progress towards self-actualisation. Maslow argued that neglecting these needs impacts upon people’s ability to form and maintain relationships.<sup>142</sup> Related to this, Bowlby argues that primary attachments<sup>143</sup> provide a young person with a dependable ‘secure base’, essential for healthy development. Attachments foster a sense of safety and encourage exploration of the wider world.<sup>144</sup> Attachment relationships with responsive individuals can provide significant support and a protective role for a young person.<sup>145</sup> As discussed in Section 2, the need to feel loved and a sense of belonging corresponded with a number of CRC rights, including the right to grow up in a family environment and identity based rights; including those relating to religion, language and culture. The Care plan requires identification of an appropriate care placement, which could be with a family, and an assessment of the child’s spiritual needs, based on the young person’s best interests.

In the context of separated children, love and belonging may relate to the home environment, school and other community and social circles. The Fundamental Rights Agency’s Handbook on ‘Guardianship for children deprived of parental care’ noted that a number of actors engage with the child and provide support or other services, including school or other educational institutions, lawyers, residential care staff, child protection services,

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141 <http://www.tusla.ie/services/alternative-care/separated-children/> (Date accessed: 7th August 2014).

142. A. Maslow (1954, 1970) *Motivation and Personality* 3rd edition. New York: Longman.

143. John Bowlby (1969) uses the term attachment “to describe the strong affectional ties we feel with the special people in our lives” (Shaffer, D. and Kipp, K, 2010:445).

144. Bowlby, 1988 in R. Gilligan (2000) *Adversity, resilience, and young people: the protective value of positive school and spare time experiences* *Children & Society* 14:1, 37-47.

145. (Gilligan, 2000).

community-based services, police, victim support services, health services and many others.<sup>146</sup> The Handbook and the Core Standards further suggest that it is the responsibility of the guardian to create opportunities for the child to feel loved and find a sense of belonging through their care placement and the community. For separated children, this may also mean reunification with family in-country, in a third country or in their country of origin or previous country of habitual residence.

### 8.1 Host Country Care Placements

Care placements, community supports and exploring the possibility of reunification with family are all addressed in the statutory care planning process. Upon arrival, separated children may be placed in long-term residential care, short-term residential care while a foster family or supported lodgings placement is found or directly in a foster placement if the child is under 12. While very little research has been conducted on the residential care and family placements for separated children in Ireland, existing research has suggested that children and young people have mainly positive experiences, with the evidence suggesting that young people experienced love and belonging, at least to some degree, within their placements. In one study, entitled *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland: the views of young people, carers and stakeholders* young people noted that they found camaraderie and support in the residential units, both from peers in similar situations to themselves and from staff members.<sup>147</sup> The young people had opportunities to socialise in the house and the care staff also arranged outings for them, thus helping them to link with the wider community.

For those approaching 18, accommodation typically consists of a long-term residential home. Those not approaching 18 are typically placed in foster homes or supported lodgings. The main difference between the two forms of accommodation is the level of support from the carer themselves and sometimes the type of bedroom provided. Foster families are designed to serve as a surrogate family environment, whereas supported lodgings are designed to provide more independent living or freedom, but still in a family setting. In practice this may mean that the young person may have their own cooking facilities and spend less time with the family overall. However, some of the literature suggests that there is little difference between the two - some foster families provide more of a family environment than others and the same can be said of supported lodging arrangements.

There are examples of children going missing and also instances of foster placement breakdowns, but largely, the residential homes, supported lodgings and foster families in Ireland are seen by researchers, policy makers, non-governmental agencies and young people as positive at least until separated children reach the age of 18. A number of participants noted that the role of the carers in providing support to the child was very important. One care professional described the foster carers as having a role in the Durable solutions process and being a 'huge influence, generally positive, for the young people making decisions'.

The issue of cultural competence did not arise in the research, but may also play a role in the provision of a happy and healthy home environment. Specific cultural training for carers is often recommended in the literature.<sup>148</sup>

In relation to accommodation care professionals and other service providers noted that the foster family and carers play an important role in supporting the child. Although, the words love and belonging were never used, it was clear that the participants recognised the supportive relationship and the effect that relationship had on accessing other services and getting support through difficult times such as the asylum interview and awaiting a decision or tracing family. One service provider noted

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146. Handbook 2014, p 91.

147. M. Ní Raghallaigh (2013).

148. Core Standard 7 in Core Standards for Guardians of Separated Children in Europe.

*I think foster parents are probably a good idea, especially younger kids, who need that kind of support and stability’.*

### **8.1.2 Relationships and Trust**

However, it emerged in a variety of studies that children were aware that the role of the care staff and social workers was a ‘professional’ one, which came with limitations regarding relationship building, trust and even out-of-hours emergency contact, in the case of social workers.<sup>149</sup> This raises questions about the ability to foster love and belonging, particularly love, in the residential setting. Indeed, professionals are likely to be trained to create caring relationships with young people that are professional and boundaries rather than creating relationships based on ‘love’, thus highlighting the limitations of this type of care arrangement.

In addition, in the report *Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland*, young people felt they were watched too closely at times. They did not like that notes were kept about them in the house and that they had to meet curfews. However, the care staff and social workers noted that these were measures employed to keep the young people safe. Indeed, such procedures are in keeping with international best practice and with Ireland’s National Standards for Children’s Residential Centres.<sup>150</sup> Yet, these practices reinforce the feeling that care staff are caring for young people in a professional capacity. They reflect what Kendrick has referred to as ‘the increasing tension between defensive practice and professional distance and the need for positive relationships between children and residential staff members’.<sup>151</sup> As such, while residential centres can provide positive experiences for many young people, in general it is viewed that such settings probably will not represent a ‘normal’ environment for those living within it, thus the possibility of forming a ‘loving’ relationship that can last beyond the professional milieu is unlikely and indeed often not encouraged.

### **8.1.3 Leaving Care**

In the literature, the residential homes have also been criticised by service providers around the issue of transitioning out of the homes either into a foster or supported lodgings placement or into Direct Provision (adult accommodation for asylum seekers in Ireland). Some stakeholders also criticised the use of residential homes as a short-term solution while a foster or supported lodging placement was secured, arguing that it could be destabilising, and suggesting that, instead, young people should be placed directly into foster care upon arrival. Critics noted that while in residential care the young people made friends, built relationships with care staff and started integrating in the community, including through education. Moving to placements some distance away, sometimes out of Dublin was therefore not in the young peoples’ best interests.<sup>152</sup>

Although foster care was largely well-received and young people and carers had positive experiences with it, carers felt that young people sometimes did not settle into the family environment for a variety of reasons. Among them was the sense that young people knew they would likely be moved to Direct Provision and were therefore less inclined to settle into the family environment as it was not seen as a long term, or durable, arrangement.<sup>153</sup> Another reason, as one care professional pointed out, related to the possibility that the young people will be moving on to be reunited with family:

*‘While a lot of foster carers get really attached to the young people that they serve and that they care for, there is still a sense that they know that this child has some pain, emotional pain, maybe some emotional injury from not being with their family. A lot of foster carers will say, I’d love to keep you*

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149. M. Ní Raghallaigh (2013).

150. Department of Health and Children (year??) National Standards for Children’s Residential Centres. Available at: [http://www.hiqa.ie/system/files/Standards\\_children\\_crc\\_DOHC.pdf](http://www.hiqa.ie/system/files/Standards_children_crc_DOHC.pdf).

151. Kendrick, A. (2013) Relations, Relationships and Relatedness: residential child care and the family metaphor. *Child & Family Social Work*, 18, 77-86.

152. M. Ní Raghallaigh (2013).

153. Ibid.

*forever, but your mom and dad are in Italy, so we need to get you to Italy or your mom and dad were found in Nigeria, so we need to get you back with them.'*

This perspective reiterates the important part foster carers play in the durable solution process and emphasises the need for a durable solution to be adaptive and encompass temporary options while long term options are pursued, while being mindful of the difficulties transition from one placement to another or into adult accommodation may bring.

**Recommendation:** Ensure placements have the young persons' future in mind. Ensure placements extend beyond 18 if in the best interests of the child. Assist young people with the leaving care transition if that is in their best interests.

#### 8.1.4 Conclusion

Residential homes, foster placements and supported lodgings all provide an avenue for establishing feelings of belonging and love, at least to some degree, through peer camaraderie, support from care staff and love or belonging from carers and their extended families in the home. In particular, while there were exceptions, in general young people emphasised the fact that their foster carers treated them like their own children, thus enabling a sense of belonging within the home. The main limitation of this type of care provision relates to the differential care provided for those who turn 18 and do not yet have status. As mentioned, the lack of stability that this creates means that it is challenging for current care provision to reach a sufficient threshold to satisfy this need outlined in Malsow's hierarchy. The foster homes, in particular, are nevertheless examples of efforts to ensure that separated children access their right to a family environment.

#### 8.2 Belonging and the Role of Community

During adolescence identity development is a crucial task. Yet, while adolescence is often associated with young people developing a sense of individuality and independence, having a sense of connectedness to a wider community – whether it be a community of peers, of people of the same ethnic group or religion, a geographic community, a community of people with similar interests (sports, music etc) – is also crucially important. It could be argued that having this sense of community – similar to Maslow's notion of belonging – becomes particularly important for separated children who arrive in a very new and different context where it is likely their previous communities are no longer easily accessible, if accessible at all. Indeed, numerous studies and reports highlight the importance of building a community around separated children as a means of: aiding recovery from trauma associated with past experiences and separation from family, friends and country; facilitating integration and as a means of providing love and belonging.<sup>154</sup> A number of different avenues for community building exist in the literature. These include religion and culture as well as community groups.

##### 8.2.1 Religion and Culture

Within the Irish context and internationally, research has suggested that religion and ethnic community groups play an important role in coping with the transition from one culture to another.<sup>155</sup> For separated young people, religion, and the sense of community provided by it, can help to bridge the past and the present and to deal with the uncertainty of the future, thus facilitating identity development through the creation of a sense of continuity.<sup>156</sup> Both relationships with a higher power (e.g. God, Allah) and relationships with members of a community of believers can help separated children to feel a sense of love and belonging, even

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154. See: Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands.

155. M. Ní Raghallaigh (2011) Religion in the lives of unaccompanied minors: An available and compelling coping resource. British Journal of Social Work, 41, 539-556.

156. Ní Raghallaigh & Gilligan (2010).

within situations where isolation is evident or few people are trusted.<sup>157</sup>

Regarding access to ethnic community groups, the importance of minority youth incorporating a positively valued ethnic identity into their sense of self has been highlighted in the literature.<sup>158</sup> As such, having contact with members of their own ethnic group is important for separated children, particularly regarding the development of a sense of belonging. In addition, contact with members of their own ethnic group provides opportunities for support and for continuity of culture.<sup>159</sup>

Religion and cultural considerations did arise in some interviews with care professionals around the care planning process. Care professionals noted that it forms part of the child's intake assessment and is also considered when seeking care placements. Tusla recognises that access to religious and cultural communities is important for separated children and social work teams attempt to place at-risk separated children with families that have a similar culture to their own.<sup>160</sup> However, as Ní Raghallaigh pointed out, this is not always possible due to shortages in foster placements available, among other factors.<sup>161</sup>

### 8.2.2 Community Groups

Other community groups provide immigration, integration and educational support as well as providing opportunities to socialise with other young people. One example is a largely state-funded programme - the City of Dublin Education and Training Board (CDETB) Separated Children's Service<sup>162</sup> - which provides a range of education related services through the Refugee Access Programme as well as outreach and youth services. The aim of the service is to empower separated children to live independent and healthy lives and to integrate into Irish society.<sup>163</sup> Education is dealt with in the following section in the context of self-esteem and self-actualisation, but it is important to note that it plays an important role in building community and a sense of belonging as well.

Additionally, there are voluntary groups that provide a variety of educational and support services, such as the Dún Laoghaire Refugee Project,<sup>164</sup> which is comprised of volunteers who aim to provide support for refugees and asylum seekers. Education and training for young people are priorities of the Project. They run a drop in centre which offers advice, practical and emotional support once a week. Another example is the Irish Refugee Council's Advocacy Programme, which pairs separated children with an advocate to act as their mentor. The aim of the project is to encourage the integration of the young people in Irish society and to support them through the asylum process. The role of the advocate is to: provide information on the asylum process and their rights and entitlements to the young person; offer support in a trusting environment and give mentorship in order to link the young people with local communities.<sup>165</sup> Additionally, the young people may link in with the Irish

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157. M. Ní Raghallaigh, 2011.

158. Phinney, J & Rosenthal, P (1992) Ethnic identity formation in adolescence: process, context and outcome. In: Adolescent identity formation (eds. G Adams, T Gullotta, & R Montemayor) Sage: Newbury Park, CA.

159. Mels, C; Derluyn, I. & Broekaert, E. (2008) Social support in unaccompanied asylum seeking boys: a case study. *Child: Care, Health and Development*. 34, 6, 757-762 & Ní Raghallaigh & Gilligan (2010). & Ní Raghallaigh & Gilligan (2010).

160. C. Joyce & E. Quinn at 59.

161. Ní Raghallaigh 2013.

162. <http://www.separatedchildrenservice.ie>.

163. Their services include the following: Refugee Access Programme: aims to equip the young people with the skills necessary to access the Irish education system with a focus on English as a second language, maths and life skills; Study Buddy Programme: a homework club to assist the young people with their studies; Outreach work: offers support to the young people; Drop in service: practical support for the young people. Offers a safe place for the young people to come and talk with youth workers; Youth club: aims to foster a sense of belonging and identity, allow the young people to grow in confidence and gain necessary skills for integration in Ireland.

164. <http://www.drp.ie>.

165. T. Smith (2014) Irish Refugee Council Independent Advocacy Programme: Evaluation Report April 2012 – November 2013 <http://www.irishrefugeecouncil.ie/wp-content/uploads/2014/06/IAP-Evaluation.pdf>.

Refugee Council's youth group, the European Youth in Migration Forum, which is a youth-led educational group focused on advocacy around children in migration in Ireland and Europe, generally.<sup>166</sup> Another organisation, EPIC, also has an advocacy service for young people that provides support to young people in care.<sup>167</sup>

All of these community groups and many more – such as sports groups, religious communities and ethnic communities – create opportunities for young people who engage with them to feel that they belong. Ensuring that children have access to these outlets is generally accepted to be the role of the social worker.<sup>168</sup> Community groups did not feature as a prominent element in respect of durable solutions in the interviews. This is despite the fact that in previous research, including the research conducted for Closing a Protection Gap and the Core Standards Report, community support and integration were viewed by young people as very important and necessary, in particular where they did not have a good relationship with their social worker. Some of the young people interviewed for this report noted that they did not feel that the social workers worked to put them in contact with outside organisations and that, instead, they had to seek them out themselves. In the present project, when young people participated in the focus group on what durable solutions would look like for separated children, they made reference to 'local integration' through 'school, foster parents' 'church and religion'. This shows that young people value local integration, reiterating the views of the care professionals and existing research, by noting that education, family and religious communities were important to them.

### **8.2.3 Community and Leaving Care**

In discussing community, love and belonging, another factor to consider is leaving care. Young people may be moved away from the community that they have become part of as a result of turning 18 and being moved into direct provision accommodation. Additionally, as mentioned previously, sometimes young people may be moved from a Dublin-based residential home to a foster home a significant distance from the residential home or in another county. This represents an additional layer of discontinuity within a context of much turmoil and change. In addition, it does not help to facilitate integration or belonging.

### **8.2.4 Conclusion**

This section discussed the child's right to a family environment as set out in the CRC and children's needs relating to love and belonging. The professionals interviewed for this report felt that the family environments serve as a support system for separated children. They also noted that finding suitable accommodation was part of the Care plan. It is then evident that the care placement is the avenue through which this right and need are met. The care professionals and research discussed herein also point to the importance of supporting the child in maintaining cultural, religious and linguistic ties. This may be facilitated by care placements that take into account cultural similarities between the child and the carer. This section also introduced other community supports that cater specifically for separated children. Research and input into this report also pointed to education playing a role in community building and this is discussed in subsequent sections.

## **8.3 Family Tracing and Reunification**

As mentioned above, the care plan (and the Child Care Act 1991, as amended) requires the social work team to explore the possibility of family reunification. The first page contains basic information about the child, the reason they are being taken into care, the type of care arrangement (eg residential or foster care) and information relating to exploring family reunification. The plan also requires the social work team to assess whether or not there are any child protection concerns or concerns for the child's welfare if reunification is attempted. The plan also requires an assessment of the parents to see if they are capable of adhering to tasks

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166. <http://www.irishrefugeecouncil.ie/children-and-young-people/eymf>.

167. <http://www.epiconline.ie>.

168. Core Standard 5 in Core Standards for Guardians of Separated Children in Europe <http://www.corestandardsforguardians.com/p/1/67/core-standards>.

set out in the plan. The reunification component in the care plan may not have necessarily envisaged the particular circumstances of separated children, but it is nevertheless relevant and allows for this consideration.

### 8.3.1 Tracing

Generally, contact with the family in the country of origin is arranged through the Irish Red Cross, while the decision to go to the Red Cross lies with the social worker.<sup>169</sup> When interviewed, the participant from the Irish Red Cross noted that the family tracing service should be ‘used as part of that [durable solution] plan’, noting that the child must be heard in this process.<sup>170</sup> Although young people are given a chance to speak with the Red Cross directly, it was highlighted that when there is another person in the room, namely the social worker, the child may not be as forthcoming. They also argued that the mere act of locating family and finding out they are safe can ‘de-stress’ the young people. For this reason, they noted that the earlier the application goes in the better the outcome because things ‘change so fast in their countries’. However, this participant also noted that sometimes children need more time if they are experiencing any trauma. This participant also noted that the foster families provide a source of support during this process as separated children may find it ‘emotional when they’re trying to find their family members’.

One care professional felt pressured by immigration bodies to seek to reunite children with their families in their country of origin. However, the social worker felt the decision to trace family should be taken after an assessment of the child’s needs and wishes. The literature supports this view. A number of studies argue that tracing should only be pursued if, after an assessment, it is found to be safe to do so and in the best interests of the child. This assessment must consider child-specific forms of persecution, such as female genital mutilation or child marriage which may make family reunification unsafe.

**Recommendations:** Tracing should only be pursued if, after an assessment, it is found to be safe to do so and in the best interests of the child.  
The child should be informed of the option of meeting with the Irish Red Cross on his/her own.

### 8.3.2 Pre-Reunification: Family Assessments

One legal professional reiterated the unique challenges to reunification, highlighting the importance of a comprehensive assessment of the conditions in the country of origin. Another also stated that they built these questions into their legal consultations with young people: ‘whether it’s not safe to return them to the parents, if there is something, abuse by the parents for example, in the country of origin’.

If reunification is going to be pursued, presumably after a best interests assessment, Tusla carries out a series of checks to verify the familial relationship with the child when exploring the option of reunification. Documents such as birth certificates and photographs are routinely requested.<sup>171</sup> DNA testing has been developed as a practice for all families who seek reunification with separated children.<sup>172</sup> However, one report noted that DNA testing alone is not sufficient grounds in order for reunification to occur. Social work assessment interviews are carried out to assess the familial relationship. According to Tusla as reported in one study, if family reunification is not considered to be in the child’s best interests, the child will remain in State care.<sup>173</sup>

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169. See ICRC (2004) *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*. Geneva: ICRC.

170. There was a shift from taking information from the social worker to taking the information directly from the young person. This was a recommendation from the International Committee of the Red Cross.

171. *Ibid.*

172. D. Horgan, J. O’Riordan, A. Christie & S. Martin at 48. [www.tusla.ie/services/alternative-care/separated-children/](http://www.tusla.ie/services/alternative-care/separated-children/) (Date accessed: 7 August 2014).

173. C. Joyce & E. Quinn at 35.

### 8.3.3 Reunification

A significant number of children referred to the Dublin based social work team are subsequently reunited with family members.<sup>174</sup> One care professional stated the following: ‘One of [the] primary mandates of our

team is to put families back together’. In general these children are reunited with family members who were already living in Ireland before the child arrived, or with family members living in the UK.<sup>175</sup>

Given that often the reunification occurs following a significant period of time in which the family members were separated from one another, it is widely recognised that it would be in the best interests of children if social workers were to provide on-going support following the reunification. However, a lack of resources means that social workers are generally unable to conduct follow-up on cases of family reunification.<sup>176</sup>

**Recommendation:** Family reunification procedures need to be robust and open to review and follow up, including where the child is returned to their country of origin, in order to ensure that this particular durable solution decision reflects the best interest of the child and does not breach any other right enshrined in the CRC. Reunifications should be reviewed and monitored in the same way in Ireland, Europe and outside of Europe.<sup>177</sup>

#### 8.3.3.1 Reunification in Ireland

##### Family Reunifications for Separated Children with Refugee or Subsidiary Protection Status

All recognised refugees<sup>178</sup> and beneficiaries of subsidiary protection<sup>179</sup> are entitled to apply for family reunification. Where permission for family reunification is granted, subjects of an application who are outside the State may then be instructed to apply for a visa.<sup>180</sup> If the subject is already present in the State they may be instructed to register with the Garda National Immigration Bureau (GNIB).<sup>181</sup> There is no means to appeal an application if permission is denied unless significant new information becomes available whereby an application may be re-submitted.<sup>182</sup> It is uncommon in Ireland that a separated child would be recognised as a refugee or beneficiary of subsidiary protection under the age of 18 due to a number of factors, discussed in Section 10.

##### Reunification with Asylum Seeking Families in Ireland

If the parents are seeking asylum in Ireland and do not yet have a determination on their claim, the children will join them in Direct Provision accommodation. Direct Provision is the government policy which governs reception in Ireland. Typically direct provision centres are former hotels, hostels, etc where food is provided on a full-board basis at set times in a communal canteen. Often families share one room and also share bathroom facilities with other residents. Since its inception, numerous authors and bodies have been critical of

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174. M. Ní Raghallaigh (2013) p 9.

175. Ibid.

176. Ibid.

177. HIT Foundation - <http://hitfoundation.eu/projects/monitoring-of-returned-minors/>.

178. Refugee Act 1996, s. 18. Applications are made to the Irish Naturalisation and Immigration Service (INIS). These are then forwarded to ORAC for examination as required under Section 18 of the Refugee Act. Following this examination a report is prepared and this is forwarded to INIS. Under the Refugee Act a refugee may apply for permission for his/her children who are under the age of 18 and unmarried to be reunited with him/her, and refugees under 18 years of age may apply for their parents/guardians to be reunited with them. The Minister for Justice and Equality also has discretion to grant permission for other dependent family members to be reunited with a refugee (such as a grandparent or sibling). In all such cases, the person in respect of whom such permission is sought must show clear evidence of dependency.

179. Family reunification for persons with subsidiary protection status is provided for under Regulation 25 of the Subsidiary Protection Regulations. Applications are determined by the Minister for Justice without recourse to prior investigation by ORAC. S.I. No. 426/2013 European Union (Subsidiary Protection) Regulations 2013, s. 25.

180. [http://www.inis.gov.ie/en/INIS/Pages/Family\\_Reunification\\_Information\\_Leaflet#1](http://www.inis.gov.ie/en/INIS/Pages/Family_Reunification_Information_Leaflet#1) (Date accessed: 12th August 2014).

181. Ibid.

182. Ibid.

this system.<sup>183</sup> Geoffrey Shannon, the Special Rapporteur on Child Protection, has described Direct Provision as creating a ‘real risk of abuse’.<sup>184</sup> Additionally, a recent high court judgment in Northern Ireland held that a transfer to Ireland from Northern Ireland would not be in the best interests of the child as several reports have criticised direct provision accommodation as being unsafe<sup>185</sup> and not fit for purpose.<sup>186</sup> This arguably comes into conflict with the child’s need for safety. Research has also suggested that living in direct provision is likely to be detrimental in terms of overall child welfare and development.<sup>187</sup>

Reuniting the child with the family is only one element of the durable solution as viewed through a more holistic and child-centred approach. It is an important element, but consideration for the child’s other needs must also be taken into account, for example their safety and their overall wellbeing. Social workers therefore need to weigh the option of living with family and placing the child at risk of potentially being exposed to harm associated with life in direct provision. However, it is also arguable that the best option would be to support the child to be reunited with the family in an appropriate family setting other than direct provision, thus increasing the likelihood that a sense of love and belonging can be experienced within an environment that is not detrimental to well-being. However, policies that exist with respect to asylum seekers mean that this rarely happens.<sup>188</sup>

### **Reunification with Family Members in Europe**

Three care professionals interviewed described the difficulties in reuniting families across borders. The main difficulties encountered related to the length of time it took for children to be reunited and the challenges in transferring a case to another jurisdiction’s social work team. One social worker noted that the barrier to transferring one particular case to the UK was likely due to financial constraints placed on social work teams and a reluctance to take on new cases. One professional argued that this was a breach of the young person’s right to ‘family life’. Another stated that when circumstances prevent families from being together ‘That’s not in the child’s best interest. No one could ever convince me of that.’

Other studies have also highlighted the implications on belonging and love of extended stays in Ireland while a transfer procedure is underway. Transfers between jurisdictions can take several months. Young people may have difficulties in forming strong relationships in Ireland thus impacting on their ability to feel a sense of belonging when they know that they will be moving. On the other hand, if they do form strong relationships, moving then becomes difficult. Again, ensuring stability and continuity is challenging in circumstances such as these. Such situations can also cause difficulties for carers, residential staff and foster carers. One foster carer who participated in the study by Ní Raghallaigh stated that she felt like a ‘child minder’ given that the young person’s parent was in the UK and seemed capable of minding the young person but bureaucracy

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183. See, for summary: Irish Refugee Council (2013) *Direct Provision: Framing an alternative reception system for people seeking international protection*. Dublin: Irish Refugee Council pp 21-23.

184. In his 2011 report, the Special Rapporteur stated that the system had been ‘criticised for giving rise to concerns about the detrimental effect on children growing up in a form of institutionalized poverty with parents unable to adequately care for their children’ and that there was also a ‘real risk of child abuse’, Fifth Report of the Special Rapporteur on Child Protection, Geoffrey Shannon, 2011, pp. 31-32.

185. In the Matter of an Application for Judicial Review by ALJ and A, B and C [2013] NIQB 88 (14 August 2013), see especially [102]-[106]. ‘There is ample evidence of physical and mental health issues developing in Ireland amongst those asylum seekers who are in Direct Provision accommodation. Ireland has opted out of the minimum standards directive and there is considerable evidence that the provisions in Ireland do not meet the minimum standards in that directive. Any analysis of the best interests of the children would have led to the inevitable conclusion that the best interests of the children favoured remaining in Northern Ireland.’ [102].

186. Houses of the Oireachtas, Joint Committee on Public Service Oversight and Petitions, Report on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision Service (DPS) and the extension of the remit of Freedom of Information to cover all aspects and bodies associated with the DPS including all the suppliers of goods and services, whether from the Private or Public Sectors, May 2015, at p. 29.

187. Ní Raghallaigh, M. & Foreman, M. (2015) Submission to the working group on the protection process. Available at [https://www.iasw.ie/attachments/Working\\_group\\_on\\_the\\_Protection\\_Process\\_Submission.pdf](https://www.iasw.ie/attachments/Working_group_on_the_Protection_Process_Submission.pdf)

188. S. Arnold (2012) *State Sanctioned Child Poverty and Exclusion*. Dublin: Irish Refugee Council p 21.

was not allowing the reunification to happen in a timely manner.<sup>189</sup>

### Family Reunification in Country of Origin

Reunification outside Europe presents more challenges as it is often difficult to trace family and communicate with local social work teams or there may not be any local social work teams or services available in the child's country of origin. One care professional noted that this is the one area, specifically return to the

country of origin as presented in the questionnaire, that the TSCSA were 'most shy of really exploring':

*'... because it jams up with the implied right to self-determination of the young person having even arrive here. However, therapeutically it may be in the best interests of the child to be with their family in their country of origin... Even when we have information from [International Social Services] or the [International Organization for Migration] it is still very hard on us to say 'we really think you should go home'. But if the young person isn't willing to, they don't have to, we can't kick the kid out of care simply because we know that the father is a minister in Congo'.*

Additionally, social workers and lawyers have expressed concerns when they have had a child in their care who has expressed a desire to return home but their parents refuse to take them back into their care.

#### 8.3.3.2 Voluntary Return

Where return home is deemed in the best interest of the child and where children are willing to return, the voluntary return of separated children living in Ireland takes place in conjunction with the IOM office in Ireland.<sup>190</sup> This takes place under the Voluntary Return and Reintegration Programme. IOM and local partners in the country of origin provide reintegration support to separated children.<sup>191</sup> This support can involve helping the child to re-enter the local education system.<sup>192</sup> A small fund is made available to the young person upon return to their country of origin. This can be used for activities relating to education or training courses.<sup>193</sup> IOM endeavour to follow-up by providing counselling and advice to the young person.<sup>194</sup>

One care professional noted that, the majority of separated children who have been returned, returned to a family environment. The Irish government does not operate a policy of returning separated children to alternative care facilities. In cases where a suitable care arrangement with an extended family member or guardian was not available the decision is taken to allow the child to remain in Ireland.<sup>195</sup> The social workers are responsible for co-ordinating the family assessment in the country of origin through the IOM, International Social Services and sometimes other services where neither are available in the country of return. One participant noted, however, that

*'Those assessments can be quite challenging to get a full picture. A social assessment might show that the home is not in the best interest of the child due to socio economic factors – but the family wish to be united, [which requires] balancing safety and opportunity with family and nurturing [and ensuring that the family are] willing to adhere to our safety plan'.*

The care professional commented that they have to make a decision and weigh up the conditions they may

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189. M. Ni Raghallaigh (2013).

190. C. Joyce & E. Quinn at 60.

191. European Council for Refugees and Exiles Comparative Study at 85.

192. Ibid.

193. <http://www.ireland.iom.int/programmes/voluntary-assisted-return-and-reintegration-for-separated-children> (Date accessed: 14th August 2014).

194. Ibid.

195. Ibid.

be faced with on return versus having access to the *‘nurturing and loving relationships with their family and the culture and society from which they came’*.

Another care professional noted that when family reunification is not an option, steps need to be taken to work towards putting in place a durable solution for separated children in the country of origin:

*‘clearly if they’re being denied to go to that jurisdiction. If it’s completely unsafe, if there is nobody to offer care for this child in the country of origin, then we need to look how can we best have them settled here and how would that look and how do we do that. So again that’s why this formal structure [the care plan] is revisited every so often’.*

This also reinforces the need for a more elaborate section and guidance on family reunification and tracing in the care planning/durable solutions planning process.

#### **8.3.4 Conclusion**

The Child Care Act 1991, as amended and the statutory care planning process requires social workers to undertake a family reunification assessment, but the process has not been formalised outside the care plan to account for the differences in the process when looking to reunification and family assessments in different jurisdictions, especially where there is a risk of endangering the refugee applicant child. This is an area of the care planning process, or durable solution process that could be improved.

The practice around reunification between countries is not very well developed or dealt with in literature in Ireland. There is a need for more research, but also clear guidelines on these procedures to be available to social workers when exploring family reunification options.

In general, there is no research on this in Ireland and the care professionals indicated that they did not have extensive experience working with the IOM and also working to voluntarily return young people in general, with the exception of the aftercare workers. This may be due to the small numbers of children returning to their countries of origin. Regardless, more in depth research is required in order to develop procedures that reflect the needs of separated children in the family reunification process. For the purposes of the durable solutions process, more guidance is required for social workers and others working with separated children in relation to the three stage process: family tracing, family assessments and family reunification, including monitoring and support over a period of time.

### **9. Self-Esteem and Self-Actualisation**

The final two categories of needs as established by Maslow relate to self-esteem and self-actualisation, which relate to with the CRC rights relating to development and education, among other rights, such as those relating to identity. Self-esteem relates to the human need to feel respected by themselves and the people around them. People may develop a sense of self-esteem based on recognition for their contributions professionally, educationally or in other activities.<sup>196</sup> A care professional argued when discussing durable solutions that there has to be *‘discussions around child development’*. One area of the care planning process that relates to both self-esteem and self-actualisation is education and learning of skills. However, as the care planning process should plan for beyond the age of 18, the following section also addresses the issue of ageing-out as it often happens in critical years for growth in respect of self-esteem and actualisation.

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196. Supra notes: 89, 91 & 105.

## 9.1 Right to Access Education

Access to education is a fundamental human right enshrined in the CRC and numerous other treaties.<sup>197</sup> For example, Article 29.1(a) of the UNCRC articulates that ‘State Parties agree that the education of the child shall be directed to...The development of the child’s...fullest potential’. Similarly, Article 13.1 of ICESCR not only recognises ‘the right of everyone to education’, it states ‘that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all...groups’. Ireland’s ratification of many international instruments provides great guidance for best practice. However, unless these international ‘obligations’ are incorporated into Irish domestic law they are not enforceable.<sup>198</sup>

Education is a ‘Fundamental Right’ under Article 42 of the Irish Constitution.<sup>199</sup> The Education Act 1998 provides the first statutory framework for the Irish education system, for both primary and secondary levels.<sup>200</sup> In addition to the educational rights articulated in the Constitution, this Act is essential to any discussion on education. Principles central to the Act include the importance of partnership between educational establishments, students, teachers, parents and the community, and respecting the diversity of cultures, values, traditions, beliefs present in Irish society.<sup>201</sup> The Act places an obligation on the Minister of Education to ‘ensure that the educational needs of all students, including those with a disability or other special educational needs are identified and provided for’.<sup>202</sup>

While separated children are entitled to attend school in Ireland, they can face some difficulties in relation to access.<sup>203</sup> Firstly, a number of studies have shown that immigrant children do not always receive adequate support in terms of their language support needs<sup>204,205</sup> and integration needs.<sup>206</sup> Additionally, the religious

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197. The Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Social Charter (revised) (ESC), UN Convention on the Rights of the Child (UNCRC), UN Convention on Migrant Workers and their Families (UNCMWF), and International Convention on the Elimination of Racial Discrimination (ICERD)

198. Nolan, C. (2008). unilink – Supporting students with mental health difficulties at third level. Continuing Education Workshops. Maynooth, Ireland: National University of Ireland, Maynooth.

199. “as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social” Furthermore “In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.”

200. ASTI (2014) Submission- Foreign languages in Education Strategy. Available at: <http://www.asti.ie/publications/articles/publication-article/asti-submission-foreign-languages-in-education-strategy/> (Accessed 4 October 2015).

201. Education Act 1998.

202. The Education Act 1998, Part 2, no.9a.

203. Numerous Acts, policies, plans, strategies and guidelines etc. effect the integration of separated children in Ireland. Focusing on education policy, ‘The Education Act (1998)’, ‘The Education (Welfare) Act (2000)’ and the ‘The Education for Persons with Special Educational Needs Act’ (2004) provide a statutory framework for the Irish education system. ‘Integration: A Two Way Process’, and ‘The Equal Status Acts 2000-2004’ are also legislative examples promoting integration and positive equality of outcomes. Furthermore ‘The National Action Plan Against Racism (2005)’, ‘Towards 2016: Ten-Year Framework Social Partnership Agreement (2006-2015)’, ‘The National Development Plan 2007- 2013; Transforming Ireland, A Better Quality of Life for All’ containing the ‘Immigrants Integration Sub-Programme’, The National Action Plan for Social Inclusion (2007- 2016)’, and The ‘Intercultural Education Strategy (2010-2015)’ are examples of strategies that directly affect the integration of a separated child.

204. See: E. Smyth et al (2009) Adapting to Diversity: Irish Schools and Newcomer Students Dublin ESRI. <http://www.ucd.ie/issda/static/documentation/esri/diversity-report.pdf>; Understanding the Challenges of Immigration for Education Provision (2008) Oireachtas Library and Research Service Spotlight No. 1. <https://www.pobal.ie/Publications/Documents/Understanding%20the%20Challenges%20of%20Immigration%20for%20Education%20Provision%20-%20Oireachtas%20Library%20-%202008.pdf>

205. Towards 2016: Ten-Year Framework Social Partnership Agreement (2006-2015) for example “provides for enhanced support for the effective integration of migrant children at both primary and second levels through the provision of an extra 550 language support teachers by 2009”, reforming “the then limit of two additional language support teachers per school” (OECD 2009:19). Under this regime schools could have up to six language support teachers, (dependent on the number of students with EAL need). This provision changed following budget cuts in 2008, schools could apply for “one whole-time equivalent/post” if they had between 14 to 30 students, two for between 31 to 90 students” with potential for a third / fourth post depending on demand” (Taguma et al. 2009, p.39). Budget cuts leading to the insufficient provision of EAL support in Irish schools, thus greatly affects many separated children who are in need of such support (REF).

206. Similarly Fine Gael immigration spokesperson Denis Naughten also makes reference to the notion that language support cuts will exacerbate “Irish and non-Irish competing for teacher attention” and that “this forces teachers to allocate inordinate amounts of time to some students” (The Irish Times, December 2009). Is/was Fine Gaels political agenda primarily to support migrant children or to support the agenda of the majority ‘indigenous’ Irish voter? A 2011 survey reveals that “36%” of TDs “thought raising issues on behalf of migrants would negatively affect their vote-winning capability” (The Irish Examiner, 2011).

ethos of many Irish schools has also been criticised as non-inclusive and may have an effect on the way separated children are treated or included in school life.<sup>207</sup> The religious ethos of a school is not restricted to class times of religious instruction, as religious values and practices permeate school life. Lodge articulates the incongruence experienced by children from diverse religious backgrounds attending such schools.<sup>208</sup>

Yet, despite the challenges relating to education for separated children, the importance of education for this group has been highlighted again and again both within the national and international literature.<sup>209</sup> Indeed, care professionals and educators interviewed for this project all agreed that helping to meet the educational needs of separated children was the most tangible and important aspect of their work. One care professional noted: ‘the most concrete thing I can do is education, no matter what the outcome’. Another argued that providing education to separated children amounted to a durable solution: ‘for me a durable solution is, is Johnny going to school? For me that is a more durable solution’. This emphasises the importance the TSCA associated with education as at least part of the solution. This is compounded by the challenges faced by those without status in accessing third level education. Not providing a durable solution that solves the problem of immigration status affects the child’s access to other rights and needs.

## 9.2 Education as a Road to Self-Esteem and Self-Actualisation

Education is often referred to as synonymous with empowerment, as it directly affects an individual’s development, self-actualisation, self-esteem, and sense of belonging, as mentioned previously. While, worryingly, the international literature points to poor educational outcomes for children in care,<sup>210</sup> research on separated children has frequently highlighted the many important roles that schooling and education plays for them, including its role in integration,<sup>211</sup> in coping<sup>212</sup> and in relation to social support.<sup>213</sup> While the roles that education plays in these realms are likely in themselves to lead to increased self-esteem, the more direct impact of education on self-esteem is also evident. Within the Irish context, research has suggested that many separated children flourish within the educational system and do extremely well despite the many obstacles that they face.<sup>214</sup>

In the broader Irish policy context, which does not address the specific needs of separated children, the National Standards on Foster Care state that ‘educational needs and progress are considered and recorded in assessments, care plans and reviews’, and appropriate ‘educational attainment targets are agreed, and supports necessary for the achievements of the targets are put in place’.<sup>215</sup> Indeed, writing in relation to the general population of children in care, Gilligan suggests that a key mechanism for securing the optimal educational progress of the young person in care lies in the development of an educational plan for each young

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207. The religious ethos of a school is not restricted to class times of religious instruction, as religious values and practices permeate school life (Lynch and Lodge 2002 in Lodge and Lynch, 2004).

208. K. Lynch & A. Lodge (2002), *Equality and Power in Schools: Redistribution, Recognition and Representation*, London: RoutledgeFalmer in A. Lodge & K. Lynch (2004) *Diversity at School*. Dublin: Equality Authority.

209. See, for example: S. Arnold & L. Sarsfield Collins (2011) *Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland*, S. Arnold (2013) *Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland* Dublin: Irish Refugee Council & K. Charles (2009) *Separated children living in Ireland – A report by the Ombudsman for Children’s Office* Dublin: Ombudsman for Children’s Office.

210. Hayden, C. (2005) *More than a piece of paper? Personal education plans and ‘looked after’ children in England*. *Child & Family Social Work*, 10, 343-352; Berridge, D. (2007) *Theory and Explanation in child welfare: Education & looked after children*. *Child & Family Social Work*, 12, 1-10.

211. *Supra* note 229.

212. Ní Raghallaigh & Gilligan, 2010.

213. *Supra* note 229.

214. See, for example: One Foundation, *Never letting go: How collaborative philanthropy that didn’t give up improved the lives of separated children*: <http://www.onefoundation.ie/wp-content/uploads/2013/08/One-Foundation-CaseStudy-Separated-Children.pdf>.

215. <http://health.gov.ie/wp-content/uploads/2014/03/National-Standards-for-Foster-Care.pdf> p. 27

person. The plan should include identifying the young person's strengths and vulnerabilities (academic, social and behavioural, etc.), and how they interact with each other.<sup>216</sup> Strategies are then devised (e.g. the management of any behavioural problem that may arise in school or specific educational supports required).<sup>217</sup> Teachers can provide young people with opportunities to develop strengths across numerous areas, including social competencies. Knowledge of a child's vulnerabilities can enable a teacher to support a child. In this way, as mentioned previously, education also overlaps with belonging.

In the context of separated children, the trauma and disturbances experienced are multi-fold. School thus has the potential for being a significant resource for separated children. In addition to the promotion of learning, teachers can also provide young people with emotional support.<sup>218</sup> For example, a positive relationship with a teacher for a short period may play a significant role in fostering confidence in the young person.<sup>219</sup> They may also act as mentors, confidants and guarantors to a vulnerable young person.<sup>220</sup> This assists in the important process of re-establishing normality as a means of recovery from a traumatic experience.<sup>221</sup>

Teachers can provide consistency, offer structure and encouragement, and help young people identify and develop skills and talents, facilitating children to engage in self-actualisation. The durable solution process is aided by a school that identifies the fundamental importance of developing relationships. A school that promotes empathy, and a caring attitude, generates 'activities and interventions that are motivational and energizing' for young people.<sup>222</sup> The sense of having a secure base<sup>223</sup> is fostered by a sense of belonging and membership, of a supportive social network.<sup>224</sup> Successful schools nurture a sense of community and belonging and cultivate loyalty and commitment from both adults and young people.<sup>225</sup> Thus teachers are a significant resource for separated children, to develop supporting relationships which can help foster a sense of belonging, positive self-esteem and self-actualisation.

It is therefore important that educators also play a role in the care planning and durable solution planning processes. The care professionals confirmed that educators did participate in the process.

All separated children initially attend the CDETB Refugee Access Programme. The Programme aims to provide English language and academic support aimed at facilitating the young person's transition to mainstream school in Ireland. An educator representing the Refugee Access Programme reiterated the fact that education must form part of the durable solution planning process to ensure the educational path of the child will serve them in the future, regardless of where they end up, geographically:

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216. R. Gilligan (2009) *Promoting Resilience — Supporting children and young people who are in care, adopted or in need*, Second Edition, London, British Agencies for Adoption and Fostering, 54.

217. Gilligan, 2009.

218. R. Gilligan (2009) 1-123; R. Gilligan (2007) "Adversity, Resilience and the Educational Progress of Young People in Public Care" *Emotional and Behavioural Difficulties* 12.2: 135-145.

219. Doyle, 2012 R. Gilligan (2000) The importance of listening to the child in foster care. In: Kelly, G. & Gilligan, R. (eds) *Issues in foster care*, pp. 40-58. London: Jessica Kingsley.

220. Gilligan, 2000.

221. Summerfield, D. (1999) A critique of seven assumptions regarding psychological trauma programmes in war-affected areas. *Social Science and Medicine* 48, 1449-1462 & Bracken P. (2002) *Trauma, Culture, Meaning and Philosophy*. London, Whurr Publishers in L. Robbins & J. Rylands (2004) *The Experience of Unaccompanied Minor Mothers in Ireland The Social Work Team for Separated Children and the Psychology Service for Refugees and Asylum Seekers*. Available at: <http://www.lenus.ie/hse/bitstream/10147/85782/1/Robins%26Rylands.pdf> (last accessed 30 September 2015) p 97.

222. Interculturalism promotes "education which respects, celebrates and recognizes the normality of diversity in all areas of human life. It sensitizes the learner to the idea that humans have naturally developed a range of different ways of life...and that this breadth of human life enriches us all" (DES 2010, p. 2). Fullan, 2002 in Collier, 2006.

223. See: J. Bowlby (1969, 1982) *Attachment and Loss Volume 1 Attachment*, 2nd edition. New York: Basic Books.

224. Gilligan 2000.

225. R. Gilligan (2007) *Adversity, Resilience and the Educational Progress of Young People in Public Care Emotional and Behavioural Difficulties* 12:7, 135-145.

*'I think we focus very much on preparing them to be able to manage in a mainstream school setting here in Ireland, and because of the restrictions that are placed on them while they are in the asylum process that is the only sort of path that they can initially take. It would be interesting to look at more diverse education training packages that would be more suitable for some of them.'*

This participant also noted that when assessing a child's educational needs:

*'Upon referral we assess the young person's education background and feel of English and Maths. After a settling in period we issue a preliminary needs assessment to the care staff outlining the young persons' immediate education needs. After approximately six to ten weeks another report is issued to the care staff outlining the young person's progress in terms of English, Maths, integration into the group and school behaviour. When a decision is being made as to the future education options for a young person we always consult with all concerned - care workers, teachers, youth workers and not least of course the young person.'*

The same professional, when asked if they had a role in the care planning process, clarified that their role was limited to the immediate educational needs of the young person early on in their journey. It is important to note that this educator was working in a Dublin based service and as separated children often move out of the Dublin area within a few months of arrival this service usually ceases to be involved in their education.

*'I suppose, in our own way yes... we don't necessarily have an input into that young person's durable solution, whatever that might be down the line... I am thinking in terms of journeys now, we are there at the start of a journey of a young person when they come to Ireland, we are not always there later on, when maybe an alternative sort of solution is looked for.'*

This participant pointed out that the outcomes for separated children are unknown to them at the point in which they are involved as educators. The implication is that they cannot tailor their education to suit their future needs or ambitions. On the other hand, the educator also noted that education was nevertheless stressed as an important part of the durable solution and care planning process as their education not only has the potential of impacting their life here in Ireland, but also elsewhere.

### **9.3 Education for Children who do not Remain in Ireland**

A Separated child in care attends mainstream school (after initially attending the CDETB Refugee Access Programme), like other 'Irish born' and migrant children living in Ireland. Like all children, separated children have individual needs. However, not all separated children remain in Ireland. They may return to their country of origin, or go to another country where the child's relatives reside. A separated child's future is thus uncertain. One educator noted that, considering the uncertain future, a durable solution is:

*'...a plan for a young person, depending on his or her individual circumstances, and I suppose it would have to take into account several possible outcomes, because, one area might influence another area, and one never knows what an outcome in one area will be in terms of their asylum procedure for example. So when we look at what the best options for them might be in terms of their education that might not necessarily mean that they will be staying in Ireland and continuing their education here - that might be elsewhere. So, I think a durable solution has to be open to different possibilities and future paths.'*

Mainstream schooling in itself does not necessarily take into account these diverse possibilities. One educator noted that mainstream education is not always the best option for young people who may be faced with

the eventuality of returning home even if it is well after they turn 18, arguing that :

*'maybe training around having a particular skill, and then this is where we talk about transferable skills, where those transferable skills would be useful to them wherever they may continue their life, whether that is in Ireland or abroad'*

The same complications arise for social workers working with separated children returning home in relation to their education as in the other areas of the child's life as discussed throughout. Care professionals stated that making contact with organisations and other services in countries of origin is challenging. This means that ensuring continuity in terms of education can be very difficult. As such the young person's self-esteem and path to self-actualization can be affected.

#### **9.4 Conclusion**

This section introduced some challenges for educators and care professionals in ensuring that children receive an education that best serves them while in Ireland and into their future, whether that be in Ireland or elsewhere. It is clear that immigration status impacts upon this process and adds to the uncertainty. Given the challenging nature of linking children in with services in the country of origin and even third countries, while appreciating that the numbers of separated and former separated children leaving Ireland is comparatively low, it is again noted that more research is needed around the educational needs of those who will not stay in Ireland. Education was described as an integral part of the durable solution process impacting upon a lot of needs including: belonging, self-esteem and self-actualisation – overlapping with Article 6 of the CRC and the right to positive development. Education crosses into any geographical location the child may find themselves. It therefore transcends time and geography and is a permanent structure within the durable solution and care planning process. However, care needs to be taken to ensure educational planning is thought of in the wider sense, with the child's potential future, taking into account all eventualities.<sup>226</sup> To have the best impact on a child's life, participants argued that a durable solution should be put in place as soon as possible. This section argues that any decision made regarding the durable solution must also consider the child's need and right to access education that facilitates their positive development in line with Article 6 of the CRC and in accordance with their best interests.

#### **10. Applications for Protection and Other Forms of Immigration Stay**

Separated children arrive in Ireland for a variety of reasons, as discussed in Section 2. Some separated children are reunited with family in their country of origin or in a third country, as discussed previously. However, separated children are not forcibly returned under 18 and very few have been deported when they have reached the age of 18.<sup>227</sup> This means that the vast majority of separated children in the care of the State pursue applications for some form of protection or leave to stay in Ireland at some point. However, the Care plan, as previously mentioned, does not provide guidance for social workers in respect of immigration and asylum. Irish asylum law provides guidance for social workers only in relation to submitting an application for protection. This is discussed below.

##### **10.1 The Process**

Refugee and Subsidiary protection are at their foundations protection measures, reflecting the Maslowian physiological and safety needs of all persons. To determine a child's asylum application, officials must consider to what extent the child's safety is at risk and what is in their best interests. Ireland opted in to Directive 2005/85/EC (Procedures Directive)<sup>228</sup> which states that the best interests of the child should be a primary consideration

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226. See: Life Projects (2010).

227. This is based on the input from care professionals in various reports: including: C. Joyce & E. Quinn p xiii.

228. European Union: Council of the European Union, Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 2 January 2006, OJ L 326; 13 December 2005.

of Member States when dealing with separated children.<sup>229</sup> The Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011) gives effect to this Directive in Irish law (Ireland opted out of the recast of this Directive).<sup>230</sup> The best interests should therefore be considered in relation to a protection claim as well as in relation to their wider needs and rights discussed throughout this report.

Separated children may make an application for refugee status or subsidiary protection, seek an alternative form of permission to stay on the basis of their involvement with a trafficking investigation or apply for leave to remain on other grounds at the discretion of the Minister for Justice.<sup>231</sup> Separated children typically enter into the asylum process at some point during their stay; they are infrequently assisted in pursuing other immigration options to remain in Ireland.

In the case of seeking protection, at present<sup>232</sup> the applicant typically applies for refugee protection, followed by an application for subsidiary protection if the refugee claim is rejected<sup>233</sup> and when those options and appeals are exhausted, they then apply for leave to remain on human rights or humanitarian grounds.<sup>234</sup>

In the case of a trafficking investigation, if the child is not already an 'asylum seeker', they can apply for temporary residence permission from the Minister for Justice in accordance with the Criminal Law (Human Trafficking) Act 2008. The system of applying for the temporary residence permit has been criticised on the basis that permits are granted only when the applicant participates in a criminal investigation.<sup>235</sup> This is not consistent with the Council of Europe Convention on Action against Trafficking which provides that residency decisions should be made on the basis of the child's best interests.<sup>236</sup> The issue of trafficking and the identification of potential victims of trafficking did not arise during the interviews and is therefore not discussed further in this report.

## 10.2 The Role of the Social Worker

All stakeholders interviewed attributed the responsibility to deal with asylum and immigration issues primarily to the social workers. The Refugee Act 1996, s. 5(b) stipulates that the responsibility to apply for protection, and to determine if the child should apply, lies with Tusla:

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229. Procedures Directive at Preamble: Recital 14 & Article 17(6).

230. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Preamble: Recital 58. Article 24 if the EU Charter of Fundamental Rights is binding in applying this Directive.

231. See: Immigrant Council of Ireland (2011) Asylum seeking victims of human trafficking in Ireland: Legal and practical challenges. Dublin: Immigrant Council of Ireland. Available at: [http://immigrantcouncil.ie/files/publications/84faa-18.11.2011un\\_gift\\_report.pdf](http://immigrantcouncil.ie/files/publications/84faa-18.11.2011un_gift_report.pdf). (Accessed 4 October 2015).

232. This process is set to change if the International Protection Bill becomes law. The Bill introduces a single procedure meaning that children, and all applicants, would apply for both refugee and subsidiary protection at the same time. This is already an option through an administrative arrangement that was introduced in April 2015. Applicants who have made an application for protection may also make an application for subsidiary protection, however, the application will not be actively considered unless and until a final refusal decision on refugee status issues; interviews, hearings and the procedures concerned remain separate (S.I. No. 137 of 2015 drafted in light of: H.N. v. The Minister for Justice, Equality and Law Reform, Ireland and the Attorney General). A single procedure could reduce the length of time an applicant waits for a determination on their protection claim.

233. Separated children have the right to apply for subsidiary protection under the Subsidiary Protection Regulations. In fact these Regulations contain specific provisions relating to separated children. These Regulations state that the best interests of the child should be a primary consideration and recognise the vulnerable position of separated children. Subsidiary Protection Regulations, Regulation 22(3)(a).

234. Separated children may also be granted leave to remain in the State under Section 3 of the Immigration Act 1999. Under the Act, the Minister for Justice and Equality is required to consider several humanitarian grounds when determining the application including the applicant's connections to the State, their family situation, their character and conduct.

235. Immigrant Council of Ireland (2011) Asylum seeking victims of human trafficking in Ireland: Legal and practical challenges. Dublin: Immigrant Council of Ireland. Available at: [http://immigrantcouncil.ie/files/publications/84faa-18.11.2011un\\_gift\\_report.pdf](http://immigrantcouncil.ie/files/publications/84faa-18.11.2011un_gift_report.pdf). (Accessed 4 October 2015).

236. See: GRETA report – [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2013\\_15\\_FGR\\_IRL\\_public\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf). (Accessed 4 October 2015).

*'Where it appears to [Tusla] concerned, on the basis of information available to it, that an application for a declaration should be made by or on behalf of a child referred to in paragraph (a), [Tusla] shall arrange for the appointment of an officer of [Tusla] or such other person as it may determine to make an application on behalf of the child'.*

The social workers are thus instrumental in the process of assessing whether or not it is in the child's interests to apply for asylum and also in carrying out this duty on behalf of the child. This has been criticised in a number of reports as presenting a barrier to accessing the right to seek asylum.<sup>237</sup> This has been criticised as presenting a barrier to accessing legal aid as it is up to the social worker to decide when to make an appointment with the Refugee Legal Service, the State-funded legal aid service for asylum seekers in Ireland.<sup>238</sup>

### 10.3 The Role of Legal Professionals

In the asylum context, lawyers play an important role. One legal professional felt that they had a role in the durable solution process of separated children

*'insofar as there are legal issues involved and the best interest of the child would of course be at the foremost in all our dealings with children, you know the UNHCR guidelines, the [Statement of Good Practice], we can't just say [the legal aspects] operate in isolation'.*

No care professional mentioned the lawyers as integral to the care planning process, but most noted that they played a role in the durable solutions planning process. The care and immigration systems are therefore seen as separate. However, separated children tend to experience both as the same system.<sup>239</sup>

The legal professionals interviewed, however, stressed the importance of their role in this process. Two legal professionals emphasised that their role is to provide information and advice for the social worker 'to go away and decide what is in the best interest of the child'. It was stated that ultimately 'the social worker makes the application'. The legal professionals all stated that their role was to represent separated children and to give them and their social workers advice, but some argued that they regretted the limited role they currently feel they have:

*'By the time a solicitor meets with child and their social worker, by definition the social worker has already decided..... and really your role is very much reduced, it is effectively limited to saying "this is the process..... Whether or not the asylum application should have been made in the first place is moot at that stage- it's already a fait accompli, it has already been decided, or in fact done'.*

This participant noted that they sometimes encountered differences in views with the care professionals, but felt that 'the lawyer doesn't matter'.

Some legal professionals interviewed expressed their frustrations with not being involved in the care planning process:

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237. See, for example: S. Arnold & L. Sarsfield Collins (2011) Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland & S. Arnold (2013) Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland Dublin: Irish Refugee Council.

238. Services for Asylum Seekers is a specialised office established by the Legal Aid Board to provide confidential and independent legal services to persons applying for asylum in Ireland. Legal aid and advice is also provided in appropriate cases on immigration and deportation matters. Avxailbe at: [http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee\\_Legal\\_Service](http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service). (Accessed 4 October 2015).

239. See, for example: S. Arnold & L. Sarsfield Collins (2011) Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland & S. Arnold (2013) Implementing the Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland Dublin: Irish Refugee Council.

*'... the legal role that I have had in relation to children has been very circumscribed - as a public servant. The services that could be offered to children and the children to whom the services could be offered was circumscribed. I realised over the years working with children that I was just a cog in the wheel. I was a necessary stop along their way, trying to build up their new life in Ireland and I was neither here nor there.'*

### **10.3.1 Towards a Holistic Approach**

Two legal practitioners suggested that they should be much more integrated in the process of determining a durable solution, not just part of the tick-box exercise, or a list of tasks that needed to be accomplished:

*'presumably they get their eyes tested, their educational assessment..... I think that the role of the solicitor is much much more fundamental to the situation that they are in'.*

*'the role of the solicitor should be much more broadened in relation to working with children and should meet that of the social worker, there should be more of a meeting of minds between the legal professionals and the actual carers'.*

One legal professional emphasised the importance of good interagency work, specifically with the social worker and also having the time to build a good relationship with the child. O'Donnell in the CONNECT project also recommends interagency work both formally and informally to improve cooperation amongst actors and to better facilitate input from children.<sup>240</sup>

Despite feelings of frustration with their limitations, all legal professionals interviewed also commented that they were still able to take the views of the child into account in this process. One private practitioner noted

*'I take into account the separated/aged-out child's instructions and the instructions of their assigned social worker. The older and more mature the child is, the more weight their instructions carry'.*

However, the same person added that where the 'child's and social worker's instructions do not coincide and/or are in conflict with each other, I may not be able to take instructions'. The potential for differing views between care professionals and legal professionals emphasises the need for a multidisciplinary approach where no one person makes decisions, in particular when it is outside their area of expertise. Legal professionals should be part of the Durable solutions process from day one as it is certain the child will need legal advice given they are non-national.

One legal practitioner noted that they had '*very good interagency work*' and they would have regular meetings with the social workers and ORAC. '*They stated that they 'find them very open to viewing the case in a holistic way in terms of the best interest of the child'.*

One legal professional noted that although their responsibility relates to the child's 'legal solution', they needed to consider 'the child's medical needs and psychological needs' while 'tying in with the social worker as to whether, for example, a psych report would be appropriate'. They reiterated that 'It's an all-encompassing thing, it's not in isolation, it's not in a vacuum, everything is, you know, in conjunction with what the child thinks, what the social worker thinks and an understanding that the child can actually speak themselves'. This highlights the conflict and separation between care and migration systems, reflecting professional boundaries and priorities rather than a child-centred approach to inter-agency work.

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240. R. O'Donnell (2014) Connect Project Report. Save the Children p 50. Available at: [http://www.connectproject.eu/PDF/CONNECT-Project\\_Report.pdf](http://www.connectproject.eu/PDF/CONNECT-Project_Report.pdf). (Accessed 4 October 2015).

Some legal professionals interviewed saw themselves as having a role in both the care and the legal aspects of the Durable solutions process. For example some legal professionals noted that they may liaise with a child’s school and the Separated Children’s Education Service, including around the issue of age assessment.

One legal professional noted that in order to ‘determine what is in the child’s best interests’ the lawyer must ‘[take] into account the child’s wishes and instructions and the opinions and instructions of the social worker’, while also considering:

*‘Information about the child’s personal, family, educational, social, cultural, linguistic, religious background; personal bio-data; family circumstances; experiences of past persecution and/or serious harm; fear of future persecution and/or serious harm; the known human rights and security situation in the country of origin; the current circumstances of the family; reasons for travelling to Ireland; personal documents (passport, birth certificate, school reports, travel documents, etc); contact details of family members or other significant adults’.*

This quote illustrates the overlap between care and asylum consideration in durable solutions planning highlighting the need for a more holistic and better integrated inter-agency approach.

In relation to the best interest, one legal professional noted that ‘[i]f an application for asylum is made, I would consider that in that particular case, the best interest would be to get that client declared a refugee’. However, they also noted that where a negative decision is received ‘[t]he best interest sort of changes a little bit in that we have another legal thing to consider and I suppose that is for us always focussed on the legal aspect of it as we are the legal advisors’. One legal professional described the durable solution as ‘part of the best interest of the child, it’s part of that process’. This highlights the need to review durable solutions decisions as time goes by and circumstances change, reinforcing the idea that the durable solution concept is a process intertwined with the best interests assessment.

#### 10.4 Delays in Applying for Asylum or Leave to Remain

Tusla reported that 98 separated children<sup>241</sup> were referred to TUSLA in 2014,<sup>242</sup> yet only 41 applications were submitted over the same period.<sup>243</sup>

	2009	2010	2011	2012	2013	2014	2015*
Asylum Applications made by Unaccompanied Minors	56	37	26	23	20	30	11
Total Asylum Applications	2,689	1,939	1,290	956	946	1,448	890

241. See Appendix 4.

242. TUSLA There is no data on unaccompanied minors referred to or placed in state care on a national level. C. Joyce & E. Quinn p ix-x.

243. Source: Eurostat <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/main-tables> (date accessed 13 October 2015)

Applications by Unaccompanied Minors as % of total Asylum Applications	2.08	1.9	2.02	2.4	2.1	2.07	1.2
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The reasons for the low number of asylum applications from separated children each year include the following:

1. *Younger children are sometimes kept out of the process until they are of an age to better understand the process and represent their case competently.*<sup>244</sup>

One care professional stated the following:

*‘I’ll do it when the child’s ready. I want them to know exactly what they’re doing. You’re only allowed to apply for asylum in one EU State. They’re fingerprinted. There’s a record. I want them to know what they’re doing and that they’re clear why they should do it... It’s not something I do immediately, because it’s not always clear and it may evolve later that (sic) it’s not in the [young person’s] interests’.*

The participant also stated that the ‘whole process is invasive’ and expressed concerns over entering children into the process without the child understanding it.

One legal professional suggested that delays in applying would relate to ‘*the individual circumstance of the child... the social work team for reasons of best interest they’ve decided the child isn’t ready to apply for asylum’* noting that it’s a ‘*balancing act*’. They noted that in these cases, the lawyer and ORAC would place their ‘*faith in the social worker*’. They also noted that these cases are rare.

2. The social work team decides that they do not have a credible case for asylum and would be placed under unnecessary pressure by proceeding. This decision relates to a small number of separated children and is always based on advice from the Refugee Legal Service.<sup>245</sup>

A small number apply for permission to remain in Ireland on immigration grounds, as highlighted by one legal professional:

*‘We have only had two cases where a decision was taken not to apply for asylum and instead, an application was made under Section 4 of the Immigration Act<sup>246</sup> and they were two successes as well... but the vast majority is asylum’.*

3. Some children state that they do not wish to apply for asylum.<sup>247</sup>

One solution to this delay in entering the asylum process may be to ensure that children and young people can access the asylum process on their own and access legal aid on their own, in accordance with their age and maturity, rather than rely on their social workers to facilitate this process for them. Children should always have access to legal advice at the earliest possible point. It should be the legal professionals assisting

244. D. Horgan, J. O’Riordan, A. Christie & S. Martin at 24-25.

245. Ibid.

246. Immigration Act 2004 S. 4 Permission to land.

247. Ibid.

the child in arriving at a decision to apply for asylum or not as it is there area of expertise. A holistic approach which integrates the work of the legal professionals in the Durable solutions process from the outset is recommended, based on the input from the stakeholders. This process could be aided by the appointment of an independent legal guardian. It is also worth questioning whether or not being placed in care far from their legal practitioners or ORAC adds an additional barrier to accessing the asylum process.

However, there are other issues associated with the low numbers of applications and the recognition rate in Ireland, first instance refugee recognition rates are low (12.9% for 2014).<sup>248</sup> Critics argue that this points to a systemic problem in the Irish asylum system.<sup>249</sup> Unfortunately, the ORAC does not publish disaggregated statistics on recognition rates, but from the experience of the care professionals, we know that the rate is also extremely low as very few have had any experience with minors getting status before reaching the age of 18. This can be problematic in the context of durable solutions planning and may even be seen as a barrier to accessing the care planning and Durable solutions process. One legal professional noted: *'the asylum system that we have at the moment, you know, ... that is a challenge at times to work through'*, , Another stated that the *'systemic delays impact on the durable solutions.., [which is] outside the remit of both the social worker and the lawyer... you're operating within a system'*.

### 10.5 Durable Solutions: Status and Stability

The Durable solutions process is cross-cutting in nature. It must be viewed as a process that encompasses both the asylum process and the young person's other needs, including their needs and CRC-based rights to safety, love, belonging, self-esteem and self-actualisation and their right to develop, considering their best interests. One care professional emphasised that: *'a determination needs to happen at the earliest opportunity so that it does not affect other aspects of the Durable solutions process'*. Another stated: *'I would like durable solutions to happen for young people in a 6 month period'*.

The care professionals also highlighted delays and problems with the process as a barrier to accessing durable solutions, arguing that *'you need advocacy to get to a durable solution'*, because immigration overshadows the social work process of finding durable solutions:

*'I think the durable solution gets lost with a simplistic vision of rights to residency. In our work it's about what will happen if you do get status... or if you don't, how do we continue to find solutions for you. Removing the immigration barriers would allow me to do a more robust needs assessment. Child care work becomes saddled with immigration responsibilities. I'm not as much of a decision maker as I'd like to be. Immigration are the ones making durable solutions decisions and they are not making them from a client-based approach, they are making them from a government-based approach. That's problematic'*.

Yet one care professional described the care plan as *'child care focussed, not asylum focussed'*, which highlights the gulf between the two systems separated children in Ireland are typically engaged with. Another care professional noted that *'there is no link there (between immigration and welfare), no communication, not supporting each other, you can't plan anything'*. It is therefore clear that care professionals see the international protection procedure as having a significant bearing on their ability to make decision relating to durable solutions for separated children. One care professional noted that *'in an ideal world, removing the immigration barriers.. [it] would allow me to do an accurate assessment of children's needs'*. Another care professional noted that the two challenges to putting durable solutions in place relate to the ability of the young person to disclose necessary information and the delays and problems with the immigration system.

248. However, the recognition rates for subsidiary protection are higher. See Table 13: [http://www.orac.ie/website/orac/oracwebsite.nsf/page/CRSE-9XQK2A15304722-en/\\$File/2014%20Annual%20Report.pdf](http://www.orac.ie/website/orac/oracwebsite.nsf/page/CRSE-9XQK2A15304722-en/$File/2014%20Annual%20Report.pdf).

249. See: B. Barrington (2009) *The Single Protection Procedure: A Chance for Change*. Dublin: Irish Refugee Council & S. Conlan, S. Waters & K. Berg (2012) *Difficult to Believe: The assessment of asylum claims in Ireland*. Dublin: Irish Refugee Council.

*'If they had the security of knowing, you know that I can't go home, I want to stay in Ireland and clearly that's the case - then yes you can stay. That is the big thing we miss because you are relying on the Department of Justice in all its forms to give permission to stay.'*

## **10.6 Separated Children not Seeking Asylum**

As mentioned previously, the only social work team in Ireland that works with separated children specifically is referred to as the 'Social Work Team for Separated Children Seeking Asylum'.<sup>250</sup> Although there are likely separated children who are European or non-asylum seeking, there is very little research available dealing with non-asylum seeking separated children and furthermore it did not come up in the interviews. One legal practitioner from the Refugee Legal Service (the State funded legal service for those seeking asylum) noted that 'almost invariably' separated children had a case for asylum. The fact that this was the view of the State's legal service and the fact the social work team's mandate is specifically focused on asylum seeking separated children implies that it is assumed that the vast majority of separated children in Ireland will at least eventually seek asylum. It also implies that separated children from European countries do not fall within the remit of either service. Further research on European and non-asylum seeking separated children is recommended.

## **10.7 Conclusions and Recommendations**

Given the 'cross-cutting' nature of the asylum determination process and the inability of social workers to put in place a conclusive durable solution for separated children without a status decision, it is arguable that the asylum process needs to be fully integrated into the durable solutions process. One way of accomplishing this is to widen the remit of the care plan process to include asylum and immigration considerations. In this way, those responsible for determining the asylum or immigration-related solutions for separated children would need to be integrated into this process in a way that did not further compromise the separate role of the social workers and their role in the relation to the child's best interests. This section and indeed this report highlights the need for the Durable solutions process to be holistic in nature and for the care considerations and the status considerations to become integrated in respect of finding the best possible outcome for separated children, considering their best interests.

Further integration of asylum and immigration systems and the care system brings with it further issues around independence and conflicts of interest. The child's wider care, safety and developmental needs should take precedence over any asylum or immigration policies that may restrict access to any rights established in the CRC or needs discussed herein as articulated by Maslow. Any process that integrates the two aspects of the child's durable solution process must ensure decisions are based on the child's best interests and not the interests of the State.

One way of ensuring independent oversight of the durable solutions process is to appoint an independent legal guardian to every separated child in Ireland. There are very good examples of independent guardianship in Scotland<sup>251</sup> and now in England with their pilot service for trafficked children.<sup>252</sup> The service in Scotland 'works to help young asylum seekers to feel supported and empowered throughout their journey whilst their claim is assessed and their status determined. It enables them to access the assistance they need when they need it and help them to make informed decisions about their future'.<sup>253</sup> This Service has received positive reviews and continued funding as a result.<sup>254</sup>

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250. <http://www.tusla.ie/services/alternative-care/separated-children>.

251. See: <http://www.gov.scot/Topics/People/Young-People/protecting/lac/guardianship><http://www.gov.scot/Topics/People/Young-People/protecting/lac/guardianship>

252. Seminar on Core Standards for Guardians of Separated Children, University of Bedfordshire 4 December 2014.

253. See: <http://www.gov.scot/Topics/People/Young-People/protecting/lac/guardianship><http://www.gov.scot/Topics/People/Young-People/protecting/lac/guardianship>

254. H. Crawley & R. Kholi (2013) Evaluation of the Scottish Guardianship Service Pilot. Glasgow: Scottish Refugee Council.

### Recommendations:

- All social workers working with separated children across Ireland receive adequate training on the various aspects of durable solution planning, in particular: asylum, immigration, trafficking and family assessments and reunification.
- Meetings with legal professionals must be part of the durable solutions process. This engagement should take place soon after arrival when the child is ready to explore immigration and asylum options.
- Provide legislation to allow separated children to exercise their right to seek asylum without requiring the consent of their social worker.
- Ensure children have access to legal advice in advance of making an application for asylum at the earliest possible time after arrival.

## 11. Turning 18

Leaving care presents a number of challenges for separated young people. Turning 18 affects their ability to access some of their rights and may also impact upon their development into adulthood. Young people who are 17.5 and young people who are 18 and a day have similar needs. A number of recent studies have emphasised the particular needs of this group of young people, many of them recommending the continuation of care and guardianship beyond the age of 18.<sup>255</sup>

These findings and recommendations are also reflected in Irish discussions and research. One legal professional from the present report noted:

*'I think that having looked at all of the difficulties that unaccompanied minors could possibly encounter in a new situation and given their particular psychological difficulties, possibly, that one would need to come up with some kind of solution for looking after them at least until they reach maturity, but also that it would be very very important to have a plan for them post maturity and that this would be a solution that would be literally durable, that it would be durable, that it would not be dependent on particular circumstances or the State or whoever was in government or whatever the prevailing idea was as to what is best for children. And a durable solution is one that everybody would understand, and sign up to and one that would be transparent and understandable to everyone.'*

A number of reports have supported this view and have found that separated young people who reach the age of 18 face a number of obstacles to integration, accessing supports and accessing education. For this reason, charities and organisations introduced programmes to support this particular group of young people, including the Crosscare Youth Aftercare Support Service,<sup>256</sup> the Irish Refugee Council's Independent Advocacy Programme<sup>257</sup> and the One Foundation's scholarship programme,<sup>258</sup> to name a few.

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255. UNHCR/Council of Europe field research on European State practice regarding transition to adulthood of unaccompanied and separated asylum-seeking and refugee children, 'Unaccompanied and Separated Asylum-Seeking and Refugee Children Turning Eighteen: What to Celebrate?' March 2014, Strasbourg, France, p. 21 '... UASASC [Unaccompanied and Separated Asylum-Seeking and Refugee Children] in transition to adulthood have their own needs as a specific age category, and should be given proper support in order to facilitate that phase in order to achieve greater autonomy and integration.' Goeman, M. et al. (2011) Core Standards for guardians of separated children in Europe: Goals for guardians and authorities Leiden: Defence for Children, the Netherlands; Arnold, S., 2011. Core Standards for Guardians of Separated Children in Europe, Country Assessment: Ireland. Dublin: Irish Refugee Council; See also recent EMN study - [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn\\_study\\_policies\\_practices\\_and\\_data\\_on\\_unaccompanied\\_minors\\_in\\_the\\_eu\\_member\\_states\\_and\\_norway\\_synthesis\\_report\\_final\\_eu\\_2015.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_study_policies_practices_and_data_on_unaccompanied_minors_in_the_eu_member_states_and_norway_synthesis_report_final_eu_2015.pdf).

256. <http://www.cdysb.ie/Clubs/Directory/Crosscare-Aftercare-Unit.aspx>.

257. <http://www.irishrefugeecouncil.ie/children-and-young-people/independent-advocacy-programme>.

258. <http://www.onefoundation.ie/wp-content/uploads/2013/08/One-Foundation-CaseStudy-Separated-Children.pdf>.

There is a clear international consensus in the research that care and support to separated children should not stop once they reach the age of 18. This section discusses some of the main concerns raised by participants in relation to turning 18.

### 11.1 Aftercare Services

Aftercare services may include remaining in a particular care arrangement as discussed above, moving to private rented accommodation if they 'have status' or moving into Direct Provision if they do not have status. All of these options require an assessment of vulnerability and maturity, among other considerations.

Tusla has ultimate responsibility for planning for aftercare. Aftercare in Ireland is discretionary, meaning it is up to the social work team to make an assessment as to the child's need for aftercare provision.<sup>259</sup> The European Migration Network Ireland state that the use of discretion regarding access to aftercare creates '*uncertainty and a lack of transparency*'.<sup>260</sup>

Presently, few separated children remain in care arrangements past 18, unless they receive status before leaving care. One care professional described the leaving care plan as having a '*dual route - if the kid has status, this is their plan, if the kid has to go to [the Reception and Integration Agency] or something, this is the plan for them. They're two main routes. If you go down one road, you get less entitlements*'.

Young people in both scenarios may have an assigned aftercare worker, but as one care professional noted '*that doesn't mean [Tusla] works intensively with them*'.

### 11.2 The Role of the Aftercare Worker

The role of the aftercare worker is to link in with the young person in relation to their health, education and other needs. One care professional noted that once the young people reached the age of 18, 'the social workers would be in the background'. Another care professional described the role in this way:

*'The aftercare workers are brought in later, it's part of their leaving care plan. Sic ..we can use [the care plan] as the core of our needs assessment'*.

The care professionals in general described the care planning process, including the aftercare piece as the role of the social worker up until the child reaches the age of 18.<sup>261</sup> However, once the young person turns 18, an aftercare worker can then pick up where the social workers had left off. However, according to one care professional, if circumstances change (ie a change in immigration status) '*along the way... we won't draw up a new leaving care plan since they already left care*'. In this way, the formal care planning process ends once the young person turns 18. One aftercare professional noted that this is beginning to change: '*we are trying to get a little bit of structure for the aftercare piece*'.

### 11.3 Transitioning to Direct Provision

As discussed in previously, the adjustment to life in direct provision can be difficult for young people, with

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259. See: <http://humanrights.ie/children-and-the-law/aftercare-and-asylum-who-is-responsible-for-separated-children/>.

260. See Ni Raghallaigh: Under s.45 of the Child Care Act 1991 access to aftercare depends on a discretionary assessment by TUSLA. The European Migration Network Ireland state that the use of discretion regarding access to aftercare creates 'uncertainty and a lack of transparency'. 'Policies and Practices on Unaccompanied Minors in Ireland', Emma Quinn, Corona Joyce, Egle Guscuite, November 2014. However, in March 2014, the Government approved the Heads of the Aftercare Bill 2014. When enacted there will be a change to s. 45 of the Child Care Act 1991 so that the Child and Family Agency will be obliged to prepare and aftercare plan for each eligible child before they leave care. <https://www.iasw.ie/attachments/90f0c186-82ef-427c-8f07-84fd45ba16e4.PDF> (date accessed: 11th June 2015).

261. The social workers are responsible for writing an aftercare plan for young people once they reach the age of 16.

many having negative experiences with other residents; facing difficulties accessing study space and dealing with relocations, or transfers, away from school, college, foster families and friends. In some studies, carers, care professionals, educators and those in the voluntary sector have criticised the transfer of young people from care into direct provision highlighting the traumatic effects of another move, especially one that places the child into a situation of deprivation.<sup>262</sup> Carers and other advocates of varying backgrounds have appealed to Tusla to reconsider decisions not to provide a continuation of their care arrangements as they have felt the decisions have not taken into account the child's best interests.<sup>263</sup> Although a number of researchers and child care professionals have advised against moving aged-out minors into direct provision, it is still policy. It is therefore part of the care and after-care planning process.

#### 11.4 Turning 18 and Education

Another challenge for these young people relates to education. Firstly, care and education professionals described challenges in getting access to third level education and secondly in ensuring that any coursework undertaken will be of use to the young person even if they are eventually returned to their country of origin. One education professional emphasised that 'third level education is the most important element in respect of aftercare, even if they go back – would improve the quality of outcomes not just for themselves but an immeasurable amount of people in their communities. And that's what young people want being able to thrive and its challenging when you are stuck in the asylum process and [they] can't see a durable solution for themselves'. They went on to say:

*'...in terms of durable solutions, there is also a need to look at education in the wider sense, not just academic sort of stuff, and preparing them to go into school and the leaving cert, but what I would like to maybe call the more life skills area, and already before they have, you know moved into after care, or moved out of care provision to provide them with the life skills that they are going to need one way or another, and a lot of them would need a lot of work around that'*

One care professional noted that part of their advocacy is around securing courses for aged-out minors. They viewed this as critical for their futures. They saw informing young people of scholarship opportunities as part of their role.

#### 11.5 Getting Status

In the case of young people who do receive status before turning 18 or for those who receive status after leaving care, aftercare workers noted that this process can also be difficult:

*'Mental health problems start once they get papers because kids can't handle going to the [Community Welfare Officer]... getting an apartment... It's stressful - the health system, the asylum system and education system - it doesn't actually cater to separated children. It's a constant struggle in almost all the services, especially after they have their papers, to settle into the community. Another care professional noted that there are challenges in preparing a young person with status to move on from residential to private accommodation, [as] 90% of places do not take rent allowance and [they] will be in school, [they can't] afford anything else. They remarked that this process places 'a lot of stress on the young person as well.'*

In this case, aftercare services typically include a continuation of the care placement (or at least the option to have it continued) and continued support from carers and the social work team.

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262. See: M. Ní Roghallaigh (2013) pp 77-84.

263. Based on interview with one care professional and information available through the Irish Refugee Council's Independent Advocacy Programme: <http://www.irishrefugeecouncil.ie/children-and-young-people/independent-advocacy-programme>.

### 11.6 Forced returns

While no legislative prohibition to deportation of unaccompanied minors under 18 years is in effect, in practice no such deportations have taken place to date. Aged out separated children may be subject of a deportation order when they have exhausted all avenues and appeals to stay in Ireland, however this very rare. The process of removal can take months or even years in Ireland.<sup>264</sup> One participant described the challenges of trying to contact organisations that might be in a position to offer support to an aged-out minor in his country of origin before they were returned after receiving a deportation order: 'I found it very difficult because there was nothing I could do. I tried phone calls and emails to contact [local support organisations], but I failed completely'. One care professional stated that their approach to all of these difficulties came down to 'trying to address the issues directly with [the young person] and try to find out what they think should be the next steps'.

### 11.7 Conclusion

Leaving care can lead to innumerable difficulties for young people with and without status. It may affect young people's access to: the communities they have established since arriving, including educators, their carers and/or friends made in residential homes; safe accommodation; religious communities, temples, churches or mosques; their legal representatives; support services, including psychological support and education, both second (some students are moved during leaving certificate years because they have turned 18) and third level. Although care professionals identified difficulties in relation to both aftercare scenarios, having a refugee or immigration decision prior to ageing-out of care, would allow for the social work team to put in place a more 'durable' care and aftercare plan, one that can still evolve, but where there is more certainty for the team, the young person and the other people in the young persons' life.

The solution in the case of aftercare may be as simple as ensuring that children's cases are decided and implemented as soon as possible with the possibility for review at regular intervals and as things change, as discussed in the previous section. Determining young people's asylum, subsidiary protection and leave to remain (and/or trafficking) applications within 6 months, to use the recommendation of one care professional, would greatly reduce the challenges for social workers, aftercare workers, carers, educators and legal professionals in promoting and accessing the needs and rights of children. This section further emphasises the need for the durable solution process to be holistic in nature and engage with both the asylum and immigration needs of the young people as well as their care and integration needs.

**Recommendation:** Determine the status of separated children before they reach 18.

## 12. The Durable solutions process in Ireland - Conclusion

The Durable solutions process in Ireland can be described best as a series of siloed objectives and areas of work. The main care objectives identified in this report and contained within the care plan were accommodation or care placements, family reunification, education, health and identity based rights such as religion and culture. These objectives mirror the rights and needs discussed in Part I consistent with the CRC and Maslow's hierarchy. The social workers had a role in ensuring these objectives were met (or explored in the case of family reunification) and were in the best interests of the child. However, other stakeholders are involved in achieving each objective:

- a. accommodation or care placement – foster carers or residential staff (and possibly Guardians ad Litem and the courts)

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264. 'Since 2009, over 14,000 orders have been made but only 1,500 persons were removed from the State during the same period'. D. Moriarty & E. Quinn (2014) No End in Sight Lives on Hold Long Term in the Asylum Process. Dublin: Jesuit Refugee Service p 15.

- b.** family reunification – Red Cross, IOM, ISS, local organisations and services and the family (and carers)
- c.** education – educators and school staff (and carers)
- d.** health – medical and mental health professionals (and carers)
- e.** identity rights – religious, cultural and community groups (and carers)

The other side of the durable solutions process is the immigration and asylum needs of the separated child. In this case the social worker plays a significant role in Ireland, as provided by law, but the legal professionals were also identified as a key stakeholder.

- f.** asylum and immigration – legal professionals & the department of justice (legal guardians and carers)

The report also identified the child as a key actor in the durable solutions process.

- g.** All objectives – the child (and carers)

The report also found that while other stakeholders could feed in to the process, ultimate responsibility for the durable solution remained with the social work team.

- h.** decision making regarding all decisions – the social work team (with input from all actors)

However, the report highlighted some deficiencies in this approach. Namely that the care and integration (whether in Ireland or elsewhere) objectives could not be adequately satisfied without the asylum or immigration objective having been fulfilled. This points to three main recommendations from the report:

- i.** The asylum and immigration decision must be of paramount priority and should be integrated into the durable solutions process in Ireland. This means that a ‘status’ decision must be made as soon as possible.
- ii.** The decision to seek asylum must happen in consultation with legal professionals. This means the legal professionals need to be integrated into the Durable solutions process.
- iii.** Independent guardianship is needed for oversight of the Durable solutions process and representation throughout the process in relation to care and migration related decisions.

The carers play an important role in all aspects of the child’s life and should be seen as central to the protection, support and development of the child. The carers have a day-to-day presence and they should be well-integrated into the durable solutions process both as a service provider and a support to the child.

Having legal advice and a status decision (or reunification decision) within the first 6 months, as one care professional recommended, would allow for better outcomes in respect of the care and integration objectives, namely: accommodation and care, family reunification, education, health and identity based rights such as religion and culture. In addition, the issues that arose in relation to aftercare may also be remedied somewhat if all young people turning 18 had a decision on their immigration, asylum or family reunification needs.

The report also discussed the existing care plan as a possible framework for the durable solutions process in Ireland. However some areas needed to be added to the care plan document such as family reunification, trafficking and asylum and immigration.

The framework referred to above and throughout, the deficiencies and the recommendations are fed into the European report and guide. The final output of the project, Best Practice in Determining and Implementing Durable Solutions for Separated Children in Europe is discussed within the European Report.<sup>265</sup> See Appendix 1 for a copy of that Framework.

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265. S. Arnold et al (2015) ....Dublin: Irish Refugee Council.

## Best Practice in Determining and Implementing Durable Solutions for Separated Children in Europe: A Multidisciplinary Approach

Table 1

### Durable Solution

'a sustainable solution that ensures that any child on the move is able to develop into adulthood, in a safe and secure environment which will meet his or her needs and assert his or her rights as defined by the CRC and will not put the child at risk of persecution or serious harm. Because the durable solution will have fundamental long-term consequences for children on the move, it must consider the child's views and wishes and any decisions must be in their best interests. A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a state.'<sup>266</sup>



### Bringing child welfare and immigration together

*Children on the move are children first and foremost.*

All needs and rights need to be assessed in order to determine the durable solution that is in the best interests of the child. Both their protection and immigration needs and their wider CRC rights need to be considered. Decisions should be made with the future development of the child in mind. Assessments must be carried out in respect of all options and in all geographical locations. **The BIC-Model** should be adapted as a best practice example of this type of assessment, bearing in mind the elements to consider identified in [Comment Number 14](#) and Safe & Sound outlined and expanded upon in Table 3.



### The Durable Solution Process

Determining a durable solution should be seen as a *process* that involves many actors. This process may require periodic review and revision.



### The [Convention on the Rights of the Child](#) and the [General Principles](#)

The Durable Solution Process is underscored by all the rights contained within the CRC, with a particular emphasis on the General Principles:

- [The best interest of the child](#) (Article 3)
- [Non-discrimination](#) (Article 2)
- [The right to life and survival and development](#) (Article 6)
- [The right to be heard](#) (Article 12)

266. Safe and Sound, p 22: <http://www.refworld.org/docid/5423da264.html>. (Insertions underlined were revisions to the definition provided by input from stakeholders and the project itself).

Table 2

### Who is involved in the Durable Solution Process?

The Durable Solution Process should be holistic and adopt a [multidisciplinary approach](#). The following actors may be involved:



- [The child](#)
- [Independent legal guardians](#)
- Social workers
- Carers, including reception care staff and foster families
- [Legal professionals](#)
- External agencies ([IOM](#), [ISS](#), [ICRC](#))
- Medical professionals
- Educators
- Community workers and non-governmental organisations
- [Child specific country of origin information](#)

Allow sufficient time and provide sufficient resources for the establishment of trusting relationships

- Immigration and protection agencies

### How can these professionals and individuals work together in the best interests of the child?



Ideally, the Durable Solution Process would be [multidisciplinary](#) and a decision would be taken by a qualified majority of professionals. However, where this is not possible, it is recommended that immigration and protection decision makers allow for submissions from persons working directly with the child. Information must be kept [confidential](#) where appropriate and information sharing should reflect national legislation on the topic. The [con-](#)  
[sent](#) of the child should be obtained.

**Table 3**

**What information is relevant for the Durable Solution Process?  
Gathering Information**



**The voice of the child is at the fore in all decision making procedures**



**Risk analysis (immediate and longer term)**

**Risk of:**

- Physical harm, abuse and neglect from the immediate family or others
- Psychological harm, abuse and neglect <sup>269</sup>
- Social or economic deprivation<sup>271</sup>
- Sexual or labour exploitation, including [trafficking](#)<sup>272</sup>
- [Going missing](#)<sup>274</sup>

**The child**

- Basic information relating to identity <sup>267</sup>
- Aspects of culture considered important
- Values that are of importance <sup>268</sup>
- Views, wishes and expectations <sup>270</sup>
- Individual and/or special needs
- [Physical and mental health needs](#) and any experiences of trauma <sup>273</sup>
- Migration plans<sup>275</sup>
- Journey and background
- [Goals, ambitions and plans](#)<sup>276</sup>
- Level of education <sup>277</sup> and [future plans](#) for education & skills<sup>278</sup>
- Level of education and future plans for education & skills
- [Resilience](#)
- Coping strategies and sources of support such as community, including religion
- Resources
- Strengths

267. [CRC](#) Art. 8 Right to preserve or obtain identity; [C6](#): 20, 31, 84, 93; [SGP](#): D4; [RCD](#) Art. 6, 21, 22; [APD](#) Preamble (22), Art. 25.5; [Anti-Trafficking Directive](#) Preamble (23); [Directive on Residence permits for victims of human trafficking](#) Art. 10(c); [UNHCR Guidelines](#), p.5.1-5.3, 5.6 and 5.8.

268. [CRC](#) Art. 8, 24, 30, 31; [C6](#): 42, 72, 59; [SGP](#): B8; [RCD](#) Art. 11.2, 23.3; [Return Directive](#) Art 17.3

269. [CRC](#) Art. 9.1, 19; [Recast RCD](#) Art. 19, 23.4, 25.1; [QD](#) Preamble (40), (46), Art. 30, 30.2; [Anti-Trafficking Directive](#) Preamble (18), (22), Art 11.5, 13,14,17; [Directive on Residence permits for victims of human trafficking](#) Art 6.1, 7, 9.

270. [CRC](#) Art.s 9.2, 12; [SGP](#): B11,12; [RCD](#) Art 23.2; [APD](#) Art 34.1; [QD](#) Preamble (18); [Dublin III](#) Art. 5 [Anti-Trafficking Directive](#) Art. 15; [FRD](#) Art 5.2.

271. [CRC](#) Art. 27.

272. [CRC](#) Art. 32.1, 34, 35, 36; [C6](#): 23,24, 50-56; [SGP](#): C3.

273. [CRC](#) Art. 24, 39; General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (C15); [RCD](#) Art. 19, 23.4, 25.1; [QD](#) Preamble (40), (46), Art. 30, 30.2; [Anti-Trafficking Directive](#) Preamble (18), (22), Art 11.5, 13,14,17; [Directive on Residence permits for victims of human trafficking](#) Art 6.1, 7, 9.

274. (ie to try to join family members in another jurisdiction, risk of trafficking or irregular labour)

275. [SGP](#): C2

276. [FRA Handbook](#) S. 6.2 & [Life Projects](#).

277. See [FRA Handbook](#) S. 6.2.

278. [SGP](#) D8.3.

### Family/Community:<sup>279</sup>

- Family situation pre-arrival and post-arrival (in host country and abroad)<sup>280</sup>
- Relationship between child and family
- Assessment of non-familial supportive relationships<sup>281</sup>
- Views and wishes of immediate family<sup>282</sup>
- Views and wishes of extended family<sup>283</sup>
- Possible need of support for the family to be able to care for their child

Family should only be contacted when it is safe to do so and in the best interests of the child



### Environment (host, origin or third countries)

- Security and stability of country
- Access to child-specific rights in the country<sup>284</sup>
- Developmental opportunities: inter alia education and skills, [leisure activities](#),<sup>285</sup> religious and spiritual activities or communities and future work prospects
- [Risks, including child specific forms or manifestations of persecution & other forms of persecution which are not child specific, but have a disproportionate impact on children](#)



Information should be gathered by professionals, ideally an [independent guardian](#) where available, working directly with the child (social workers, educators, schools, carers) in the host country and in the country of origin and/or third country.<sup>286</sup> Information should not be gathered at the expense of the child's safety.

279. ISS, Guide 15: ISS Guidelines: Unaccompanied and Separated Children from ISS Manual, p. 76 - 81.

280. [CRC](#) Art. 8; [C6](#): 93, 95, 99, 100.

281. [CRC Preamble](#) the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding; [UN Guidelines on Alternative Care II.A.4](#): 'Every child and young person should live in a supportive, protective and caring environment that promotes his/her full potential'; [C6](#): 93; [Recast RCD](#) Art 24.3; [QD](#) art 31.5; [Directive on Residence permits for victims of human trafficking](#) Art 10(c); [FRD](#) Preambles (9), (12), Arts 4, 10.3; [Return Directive](#) Arts 5, 10.2.

282. [CRC](#) Arts. 9(3); 10(1); 10(2); [C6](#): 81, 83.

283. [CRC](#) Art. 9.2, 5; [UNHCR Guidelines](#), paragraphs 5.6 & 5.8 - 5.10

284. [CRC](#) Art. 22; [C6](#): 31, 59, 66; [SGP](#): CI1-CI3.

285. General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (C17).

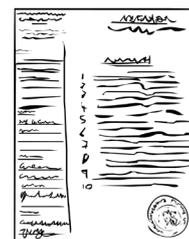
286. [CRC](#) Art. 32.1, 34, 35, 36; [C6](#): 23,24, 50-56; [SGP](#): C3.

**Table 4**

**The Durable Solution Process**

**Gather information**

Make a proposal for the durable solutions **hearing** within 6 months of the child's arrival or as soon as possible in line with their best interests



**Interagency case conference or hearing**



**Analysis of different options**

Decision by qualified majority of **professionals** on a multidisciplinary panel with expertise in, inter alia, 'child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner'

Where this is not possible, submissions from all actors should be enshrined in policy and law, see Table 2.



Binding decision before 18 years of age (within 6 months) where possible and where it is in the best interest of the child.  
**The decision must be durable beyond 18.**

**DURABLE** The aim of a durable solution before the child turns 18 (or indeed as soon as possible) is to promote positive development and access to rights through:

- Ensuring access to education and reducing the likelihood that it will be interrupted
- Ensuring access to immediate and on-going medical and mental health services
- Ensuring continuity of care
- Facilitating family reunification (where possible and in the best interests of the child) & reducing the time spent separated from family
- Ensuring that young people can plan for their futures and be supported to do so
- Re-establishing normality

Table 5

### Procedural safeguards

The Durable Solution Process relates to the rights children hold regarding care and development and their rights regarding migration as they are inextricably linked.

Due to their young age, dependency and relative immaturity, children should enjoy specific procedural and evidentiary safeguards to ensure that fair decisions are reached.

- Any decisions relating to the durable solution must:
  - Be written down
  - Be open to [independent appeal](#)
  - Carry the option of [suspensive appeal](#)
  - Provide an effective remedy
  - Require that the [burden of proof is shared](#)
  - Apply the [benefit of the doubt](#) principle

- Appointment of a [legal and independent guardian](#) who:
  - Is accessible
  - Has relevant competencies
  - Is free of potential conflicts of interest<sup>287</sup>

Independent guardians should also be present in meetings between the child and the legal representative

- Appointment of an [independent legal representative with experience working with children](#) at no cost<sup>288</sup>

- [interpreters should be made available](#). They should be:
  - Accessible
  - Trained in child specific interpretation
  - Free

- Case conference or hearing should be [adapted](#) to the age and maturity of the child, allowing for meaningful participation

- The process should begin as soon as possible after the child is identified and should conclude within 6 months depending on the best interests of the child.

Decisions should be in a reasonable time to decrease uncertainty acknowledging that [time perception](#). 'Delays in or prolonged decision-making have particularly adverse effects on children as they evolve'.

287. [CRC](#) Art. 3 (3), 18 (2), 19, 20; [C6](#): 33, 95–97; [C12](#): 7, 34, 36, 49, 134 (g), 135 (competences); SGP: B10, D3.3; [C6](#): 55 (conflict of interest); [EC Child Protection Principle 6, 8, 9](#).

288. [CRC](#) Art. 18.2, 20.1; [C6](#): 36, 37; [C14](#): 96.

- Analysis: must be multidisciplinary
- Decision: must be [reasoned](#) and presented in a child friendly way
- There must be an [option of an effective appeal](#)
- [Due process](#) must be applied in the same way as to adults, including mechanisms to revise or review
- [Access to independent and effective complaints mechanisms](#) in respect of care and migration needs (including guardianship, carers, legal representatives etc)<sup>289</sup>
- [Monitoring](#) of all institutions, representatives and procedures
- [Child Protection Systems have transnational and cross-border mechanisms in place](#)
- Information should be provided in a way that is accessible to children<sup>290</sup>

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289. [C12](#): 46, 47

290. C6: 31, 52; [UNHCR Child Asylum Claims](#): para 65 Due to their young age, dependency and relative immaturity, children should enjoy specific procedural and evidentiary safeguards to ensure that fair refugee status determination decisions are reached with respect to their claims.

**Table 6**

**Review and Revision of a Durable Solution**



Revision is possible if it is in line with the best interests, wishes and views of the child. The durable solution is comprised of many factors, including health and education. Therefore, some elements of the Durable Solution may be reviewed.



A decision to overturn an immigration or protection decision must have the consent of the child, the parents and the guardians and it must be in the best interests of the child.

## Appendix 2 Participants

Legal Professionals	Private (2) and Public (2)	4
Care Professionals	Social Workers (2), After Care Workers (2) & Care Staff (1)	5
Educator CDVEC Separated Children's Service, Refugee Access Programme		1
Irish Red Cross		1
Separated Children		7
Aged-out Minors		10
Aged-out Minor Facilitators		2 (included in the 7 above)
Accompanied Children		2
Irish Youth		1

### **Appendix 3 Questionnaire for service providers**

1. Have you heard of the term 'durable solution' [before this project]? If yes, what does the term mean to you? If no, what do you think it means? [If not answered: what is the time-span of the durable solution? Eg 1 year, 5 years..]
2. How have you heard of it? (through information provided as part of your work or your own personal interests)
3. Do you have a role/What is your role in determining and assessing durable solutions, or determining and assessing future plans for separated children? If so: In making decisions about durable solutions or future plans for separated children, what things do you take into account? Is this a formal procedure or is this up to the individual and their way of working?
4. For the purposes of this project, the three main categories under which examples of durable solutions fall are: integration in host country, relocation and resettlement in country of origin or a third country. Would you agree with these three umbrella categories?
5. Do you consider each of these three 'solutions'/plans in our work with separated children? [Why/Why not?] What would you take into account when planning for each of these three 'solutions'/plans? Who would you talk to/consult with/link with? [If the participant has not already mentioned the child's role in this, ask: what about the child?/how is the child consulted?]  
Are you describing the current procedure? Is this different from what you think should be done.  
Is this a formal procedure or is it up to the individual?
6. What do you feel you need to determine a durable solution for an individual child? How do you establish a relationship based on trust with the child and do you think that relationship has an effect on your ability to determine the durable solution?  
What else might you need? (eg information about the child's journey, access to reliable information regarding durable solutions options)
7. How is the best interest of the child determined in this process (the process of determining durable solutions/future plans for the separated child)?  
Is this a formal procedure or is it up to the individual?
8. How are other actors involved in the process of making decisions regarding durable solutions? Do you ever encounter differences in views? If so, how do you manage these conflicts/resolve them?
9. How does family tracing and /or family assessment feed into the determination of a durable solution? How is this done, by who and how does it impact the decision (eg, how is this information used – to support the child in determining his best interests and the durable solutions that reflect them or to 'find a place to return them')?  
Is this a formal procedure or is it up to the individual?
10. Who is involved/who is consulted with in the process of determining the best interests of the child when determining durable solutions/future plans for the separated child? And how are they involved/consulted?  
Is this a formal procedure or is it up to the individual?
11. At what point do you seek to make decisions regarding the durable solutions/future plans for the child?/  
When is the durable solution implemented?  
Is this a formal procedure or is it up to the individual?
12. Do you [or have you ever] encounter any limitations/barriers/challenges in implementing durable solutions/future plans?
13. Are durable solution/future plans decisions reviewed? If so, how often? And why might they be reviewed? By who can a review be asked?  
Is this a formal procedure or is it up to the individual?

#### Appendix 4: Statistics

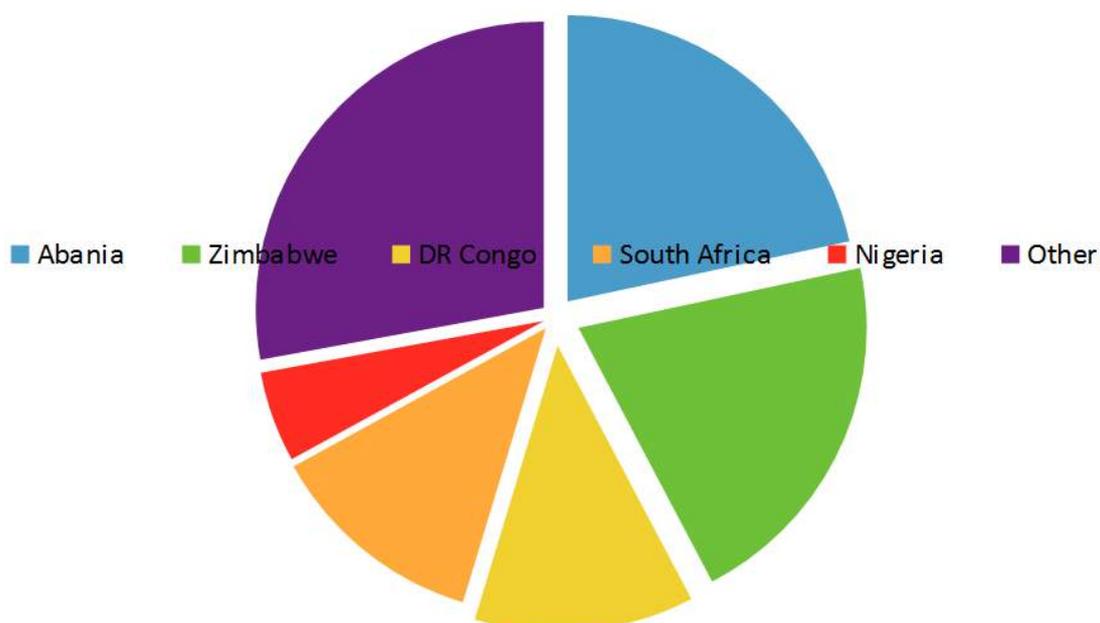
	Total referrals	Total reunifications	Total placed in care	Inappropriate referrals	Inappropriate referrals
1. Jan 2014	6	0	5	1	0
2. Feb 2014	8	3	6	2	0
3. March 2014	7	4	4	1	0
4. April 2014	6	3	4	0	0
5. May 2014	4	2	2	2	0
6. June 2014	8	2	4	2	0
7. July 2014	10	1	10	0	0
8. August 2014	4	0	4	0	0
9. September 2014	13	2	9	1	1 (returned)
10. October 2014	10	1	8	1 (deemed adult)	0
11. November 2014	13	0	12	1	0
12. December 2014	9	1	8	0	0
13. January 15	7	3	7	3 (2 from USA, 1 from Brazil)	0
14. February 15	4	1	3	0	0
15. March 2015	4	1	4	0	0
16. April 2015	11	0	10	1	0
17. May 2015	7	0	7	0	0
Total	131				

Referrals to the Team for Separated Children Seeking Asylum

**Countries of origin:**

	Male	Female	Total
Afghanistan	4		4
Albania	24	1	25
Algeria	3		3
Botswana		1	1
Brazil	2	1	3
Burundi	2		2
Cameroon		1	1
DR Congo	3	9	12
Japan	1		1
Korea	1		1
Moldova		1	1
Nigeria	3	2	5
Pakistan	1		1
Seychelles		1	1
Somalia	2		2
South Africa	3	9	12
Swaziland	1		1
Uganda		1	1
USA	1	2	3
Venezuela	1		1
Zimbabwe	9	11	20
Zimbabwe	61	40	101

There were two children listed that did not have any country of origin information.



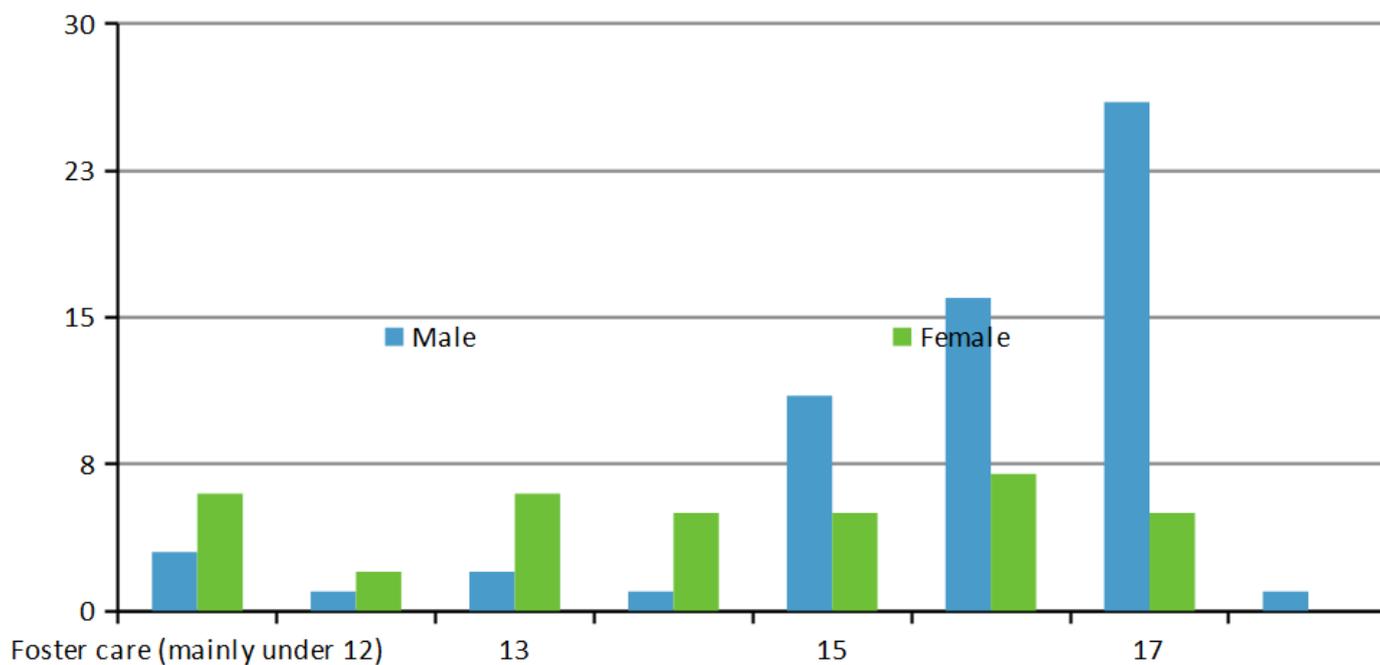
Top 5 countries of origin:

- Albania – 20.7% - 25
- Zimbabwe – 19.8% - 20
- DR Congo – 11.8% - 12
- South Africa – 11.8% - 12
- Nigeria – 4.9% - 5
- Other – 26.7% - 27

Ages of those being referred:

	Male	Female	Total
Foster care	3 (ages: 11, 9, 10)	6 (ages: 14, 2, 3, 10, 9, 4)	9
12	1	2	3
13	2	6	8
14	1	5	6
15	11	5	16
16	16	7	23
17	26	5	31
18	1		1

Ages of UAMs referred to TUSLA

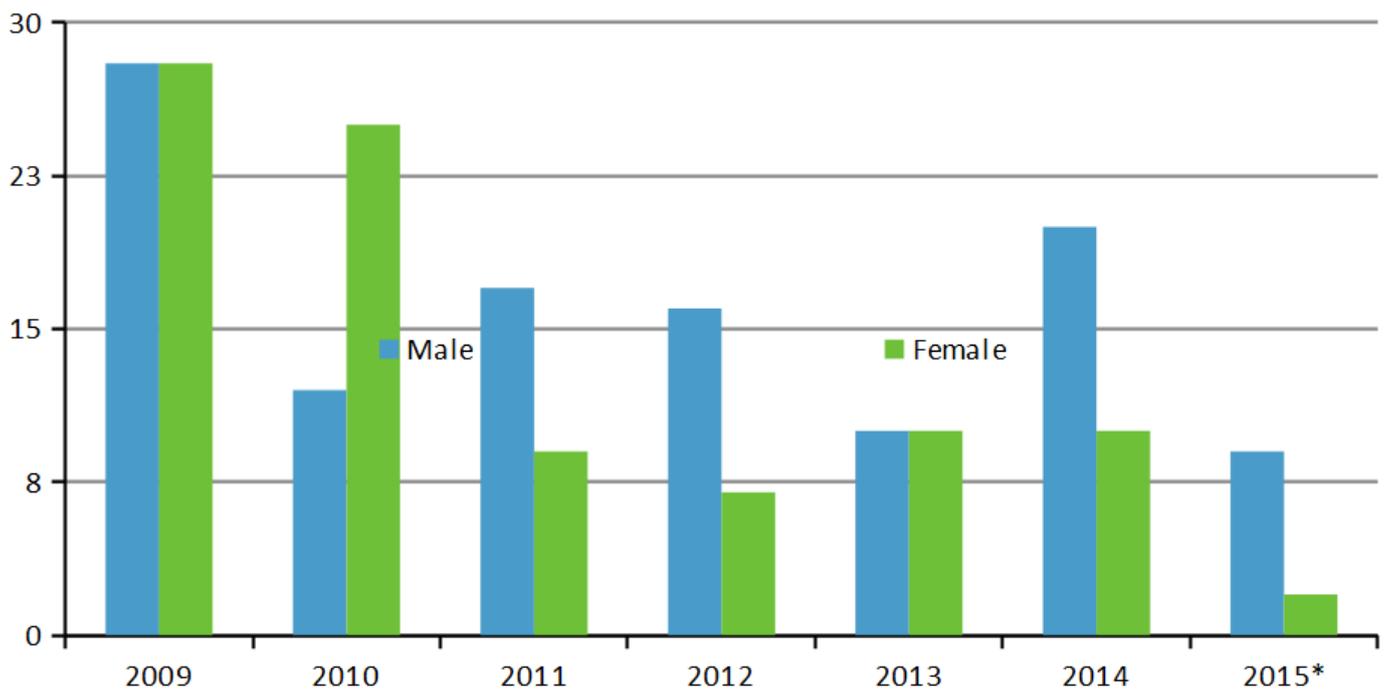


**Asylum applications made by UAMs**

	2009	2010	2011	2012	2013	2014	2015
Asylum Applications made by Unaccompanied Minors	56	37	26	23	20	30	11
Total Asylum Applications	2,689	1,939	1,290	956	946	1,448	890
Applications by Unaccompanied Minors as % of total Asylum Applications	2.08	1.9	2.02	2.4	2.1	2.07	1.2

\*Up to end of April 2015

Asylum applications by gender:



\*Up to end of April 2015  
may be involved:

