

Hidden Children: the Story of State Care for Separated Children

Maria Corbett

Introduction

During the past ten years, over 5,300 children have come to the attention of the authorities in Ireland, having arrived here without the company of either of their parents. Many of these children, referred to as ‘separated children’ or ‘unaccompanied minors’, have experienced war and violence; some have been trafficked or smuggled into Ireland. They come from a wide range of countries, including Nigeria, Somalia, Ghana, Angola, Rwanda, China and parts of the Middle East and Eastern Europe.

It is impossible to give an example to illustrate the experiences of a ‘typical’ separated child: each has his or her own unique story. For some, fear will prevent them telling their full story so we can only guess at the circumstances that led to their leaving home, family and friends to seek safety or a better life in Ireland. Did they choose to leave – or were they taken? Was the person assisting them in their journey thinking of their well-being – or part of a sinister system of human trafficking? Were they being smuggled over borders to be reunited with family – or sent from family as a protection against political violence? And, crucially, how will they fare in Ireland?

This article will examine how the Irish State has responded to the presence within its territory of this group of vulnerable children.

The State’s Responsibility

The Irish State has a duty under national legislation, including the Child Care Act, 1991, to respond to the needs of any child (that is, any person, whether or not an Irish citizen, under the age of eighteen) within its borders who is in need of care or protection. Furthermore, it has obligations arising under international law – notably, the 1951 Refugee Convention, the 1967 Protocol Relating to the Status of Refugees, and the 1989 UN Convention on the Rights of the Child.

Under the Convention on the Rights of the Child, which Ireland ratified in 1992, the State is required to ensure that all children, including

separated children, within its territory have access to all of the rights set down in the Convention. Specifically, Article 22 requires that asylum seeking and refugee children should ‘receive appropriate protection and humanitarian assistance’. Under Article 20, the State has an obligation to provide special protection and assistance for children deprived of their family environment and to ensure that appropriate alternative family care or institutional placement is made available to them, taking into account the child’s cultural background.

Article 3 of the Convention has fundamental implications for the State’s response to the situation of separated children. This Article requires that: ‘In all actions concerning children ... the best interests of the child shall be a primary consideration.’ The ‘best interests’ principle applies to the framing of relevant legislation, to actions by the courts and administrative authorities, and to the provision of educational, health and social services, whether supplied by public or private agencies.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has highlighted the need to have ‘best interests assessments’ as an integral part of asylum and protection processes in relation to children.¹ It says such assessments have ‘particular relevance for unaccompanied and separated children’, and should start ‘from the moment of their identification ... and throughout the displacement cycle until a durable or long-term solution is implemented’.²

Put simply, the State is duty bound – by national and international law – to protect and provide for separated children in the same way it would for children normally resident in Ireland who are without parental care.

Absence of Specific Legislation

Despite this obligation, no specific legislation has been enacted in response to the arrival in Ireland of large numbers of separated children. There is no definition of a separated child in Irish law nor

is there any clarity as to how services provided by the State should respond to their needs. (Internationally, separated children are defined as those under eighteen years of age who are outside their country of origin and separated from both parents or their previous legal or customary primary caregiver.³)

Many groups working in the area of asylum and protection expected that the framing of the legislation that became the Criminal Law (Human Trafficking) Act 2008 would have provided an opportunity to ensure comprehensive protection for separated children who are victims of trafficking. Likewise, the Immigration, Residence and Protection Bill 2008, now before the Dáil, was seen as an opportunity to ensure greater legislative protection for separated children generally. However, neither the Act nor the Bill contains any measures designed specifically to improve the State's care and protection systems for separated children.

Care Provision

So where do these children go when they arrive on Irish shores? Who takes care of them? The majority of separated children are reunited with family members already in Ireland; the remainder are placed in the care of the State. Currently, there are in all around 180 separated children in the care of the Health Service Executive (HSE), the body which, under the Child Care Act, 1991, has statutory responsibility for any child who does not have adequate care.⁴

Figures for the number of separated children currently coming to the attention of the authorities are provided by the HSE social work team for separated children, located in Dublin. In 2007, 336 separated children came to the attention of this social work team; in the first nine months of 2008 the total number was 237.

In both 2007 and 2008, more than 50 per cent of separated children referred to the authorities were reunited with family members in Ireland. Of those who remained in State care, most of the remainder were placed in hostel accommodation, and a small number were placed in foster care or other form of care.

There is no standard approach to the provision of care for separated children. In some instances, these children are signed into voluntary care under Section 4 of the Child Care Act; in others, they are

taken into care under a full care order (Section 18 of the Child Care Act). In some HSE areas, Section 5 of the Act, which provides for the accommodation of homeless children, is utilised. Occasionally, sections of the Act which allow the statutory authorities to apply for an emergency care order are used.

There is obviously a need for a standard national approach, under-pinned by legislation, which would clarify the responsibility of the HSE for the care needs of the separated child and how these are to be met.

The quality of care for separated children is not of a standard equal to that provided for other children in care

When a separated child arrives in Ireland, one of the first things the authorities want to confirm is his or her age. In some instances, State officials may have doubts about the claim of a young person that he or she is under the age of eighteen. While this is a legitimate concern for the authorities, it is essential that the question be handled with due regard for the rights of the young person concerned.

The Irish Refugee Council has suggested that age should be assessed 'by an independent panel of experts including a social worker, a general practitioner and a psychologist, who have expertise in child and adolescent behaviour and who have been trained in child-friendly interview techniques'.⁵ The Council argues that the current practice, where immigration officers or members of An Garda Síochána are solely responsible for assessing the age of an applicant, is inappropriate.

Accommodation

Once the child's age status is confirmed, he or she must be accommodated. The *National Children's Strategy* – a ten-year policy plan for safeguarding children's rights and improving their lives, published in 2000 – gave a commitment that separated children would be treated in accordance with international best practice.⁶ The reality is, however, that the quality of care and accommodation for separated children is not of a

standard equal to that provided for other children in care under the Child Care Act, 1991. In effect, a two-tier system of care exists.

The majority of separated children in the care of the HSE are accommodated in private, unregistered, profit-making hostels funded by the State. Such hostels are not covered by the *National Standards for Children's Residential Centres* (2001), which govern residential provision for other children in the care of the HSE. These regulations set down standards concerning a wide range of issues, including staffing, children's rights, care plans, contact with family, child protection, and access to internal and external complaints systems.⁷ No inspection report relating to the hostels used to accommodate separated children has ever been made public.

Despite welcome improvements over the past number of years, concern remains that the level of care for separated children – in terms of adult supervision, security and support – is inadequate and significantly below that provided for other children in residential care. There is concern that this inadequate level of care is directly linked to specific instances of vulnerable separated children going missing and being trafficked for exploitation.⁸

Equality of Care

At present, Ireland's treatment of separated children breaches its obligations under the UN Convention on the Rights of the Child. The Convention requires the State to assure to *all* children within its territory, without discrimination of any kind, all of the Convention's rights.

A key requirement towards meeting the obligations arising under the Convention is that the HSE should, as a matter of urgency, adopt a policy of 'equality of care' for all children in its care, including separated children, and bring to an end the practice of accommodating separated children in a second-tier hostel system.

An 'equality of care' policy would mean that all care placements for separated children, whether in residential care or foster care, would be covered by national guidelines,⁹ with care provided by trained and vetted carers on a twenty-four hour basis. It would also mean that there would be a designated social worker for each child and that those in residential care would be assigned a 'key worker'.

There have been some steps in this direction. The HSE is in the process of opening three new residential units for separated children, on an equality of care basis. This is a welcome development, but the progress it represents needs to be put in context. There are, as noted, approximately 180 separated children in the care of the HSE. The new centres will provide a total of eighteen places (six of which will be for initial placement and assessment) which means that 90 per cent of separated children will continue to be accommodated in privately-run hostels.

Clearly, much remains to be done if the care provided for the majority of separated children is to be brought up to best practice standards.

Decentralisation of Care Provision

As a means of addressing the current situation where the majority of separated children are in accommodation that is inappropriate – and in light of the concentration of placements in the Dublin area – the HSE has mooted the possibility of spreading the care of these children more evenly around the country.

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A policy of dispersal may make sense from a logistical perspective. However, an impact assessment would need to be undertaken to ensure that relocation would not in itself become a negative factor in the care provided for separated children. An infrastructure of care and support now exists in Dublin – for example, specialised services and expertise (in relation to trauma, for instance) tend to be concentrated in Dublin; informal contacts and voluntary initiatives provide access to invaluable peer support, and a number of Dublin schools have experience of responding to the needs of separated children.

If a policy of dispersal is pursued, then appropriate groundwork would need to be laid down in advance, including the up-skilling of local staff in relation to relevant issues – for example, dealing with the impact of trafficking

and trauma specific to separated children, recognising the risk that there may be grooming of children in care for exploitation, and understanding how the asylum and protection systems operate.

Appropriate accommodation options and supports would also need to be put in place, including access to specialist psychological and mental health services. Work would need to be undertaken to ensure that non-governmental service providers, and specifically youth work and immigration organisations, are included in the creation of appropriate non-HSE supports in each dispersal location.

Seen in a wider context, it is clear that supporting separated children is not just the responsibility of the HSE, but requires a truly joined-up approach from a variety of local services and agencies.

Family Reunification

Family reunification is generally considered to be the best outcome for a separated child,¹⁰ and a significant proportion of separated children who arrive in Ireland are reunited with family members in this country.

However, there are concerns that in a minority of cases, the reunification of a separated child with his or her parent(s) or extended family results in the sexual exploitation of the child and/or in their being drawn into forms of domestic servitude and slavery. There are concerns, too, that in some instances the ‘family reunification’ has been fraudulent – in other words, the adults who came forward to claim the child were not, in fact, family members – and this has led to the child being exploited.

In order to ensure the safety and well-being of children reunited with family there is need for adequate assessment to verify the identity of the people who present as family members, and to ensure that children are not placed in an abusive situation. There is need also for periodic follow-up visits so that supports can be provided in cases where a child or family is having difficulty adapting following reunification. This obviously requires social work resources, which are already over-stretched. The reality is that at present in most areas of the country there is no follow-up care once a separated child is reunited with his or her family.

Application for Asylum and Protection

Whether the separated child is reunited with family or is in the care of the HSE, one possible option for ensuring the long-term stability of their situation may be to seek refugee or other form of protection status. Within the asylum and protection system, separated children face a series of distinct challenges as the system is not designed to be child friendly.

The HSE assesses the circumstances of each separated child in its care and decides whether or not an application for asylum or protection should be made on their behalf. However, the HSE may not be best placed to take this important decision. Rather, there is a strong case for saying that the decision should be made by an independent Guardian following consultation with the Refugee Legal Service. The Guardian – known as a Guardian *ad Litem* – would independently represent, aid and assist a separated child in the care of the State and advocate for and generally safeguard the child’s best interests.¹¹

In the *National Children’s Strategy* (2000), the Government gave a commitment that each separated child would have a Guardian *ad Litem*, but only rarely does this happen.¹² One of the recommendations of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, following his official visit to Ireland in November 2007, was that a Guardian *ad Litem* be assigned to each separated child.¹³

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Legal Limbo

Where an application for asylum or protection is not made on behalf of a separated child, he or she is left in a legal limbo. Although remaining in the country, he or she has no legal status, may not have any identity papers, and on reaching the age of eighteen, and no longer within the remit of the child care system, may be deported. With no national register of separated children, it is impossible to know how many young people are

caught in this untenable position. Since the Immigration, Residence and Protection Bill 2008 is still before the Oireachtas, there remains an opportunity to include a provision that would allow all separated children be granted 'temporary leave to remain' while their best interests are being determined. This opportunity should be seized.

Missing and Trafficked Children

For some years, a particularly worrying issue in relation to separated children has been the number who go missing from their care placement. HSE data show that in 2007, 41 children went missing from care. In all, between 2000 and 2007, 441 separated children were recorded as missing from their care placement and of these only 53 (12 per cent) were eventually accounted for. However, it appears that during 2008 there has been a marked decline in the numbers going missing: this is clearly a very welcome development.

We do not have a sufficient understanding of why, and how, separated children disappear and what happens to them afterwards. It appears that in the past at least, a high percentage of the separated children who went missing did so within one or two days of coming to the attention of the authorities. Some of these children would have been identified outside office hours, when they may have been placed in hostels for homeless children by the out-of-hours service.

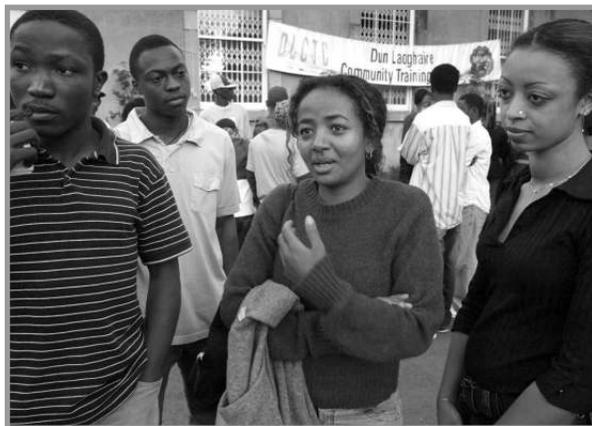
Media reports and anecdotal evidence point to the possible reasons separated children go missing. Some children may be unofficially reunited with a family member in Ireland or another country. Some who are approaching their eighteenth birthday may fear that once they no longer come under the protection of child care legislation they will be deported and so they leave the official system. Others may leave because they want or need to work but cannot legally do so.

Clearly, any child who has left a care placement and is without family support is particularly vulnerable to exploitation. And some children *are* exploited. Media reports show evidence of children being trafficked to Ireland, within Ireland, or from Ireland, for exploitative purposes, including sexual exploitation, domestic servitude and forced marriage.¹⁴

It is extremely difficult to trace, and to maintain any contact with, separated children who go

missing. The disappearance of separated children is, however, not an inevitable phenomenon; it can be addressed. International experience demonstrates that good practice can reverse trends in separated children going missing.

Measures that may help include the availability of social work services at points of entry to assist in the identification, assessment and referral of separated children, and the registration of each separated child upon their coming to the attention of the authorities. It should be noted, however, that the majority of separated children in Ireland are not identified at ports of entry (seaports and airports) and may have been in the country for some time before coming to the attention of the statutory agencies.



Young people involved in the P+L+U+S (Please Let Us Stay) campaign

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The provision of adequate care by trained staff, and the availability of 'safe house' accommodation where this is required, are fundamental elements of a policy to reduce the incidence of children going missing. Clearly, a better understanding of how separated children arrive in Ireland, and why they arrive here, is essential to addressing the problem of how and why they subsequently go missing.

Trafficking of Children

There have been some welcome steps towards addressing the problem of child trafficking. The Anti Human Trafficking Unit in the Department of Justice, Equality and Law Reform was established in November 2007. This Unit has responsibility for facilitating the implementation of a planned new national strategy to address trafficking; its remit includes working in coordination with An Garda Síochána and the Irish National Immigration Service, as well as engaging with NGOs involved in the issue.¹⁵ Among the working groups already established by the Unit is one on

child trafficking; this brings together representatives of a range of agencies and organisations concerned about the issue.

Another welcome initiative is the development by the HSE and An Garda Síochána Missing Persons' Bureau of new national protocols regarding missing children.¹⁶ It is to be hoped that these protocols will address not only the issue of reporting the fact that a child is missing but the question of follow-up mechanisms for all missing children.

Separated Young Adults

When a separated child reaches the age of eighteen, he or she leaves the protection of the State's child care system. Even if the young person has obtained refugee status or been given humanitarian leave to remain in the country, their situation can be precarious: he or she may be very much on their own, at an age when most young people in Ireland are still emotionally and probably economically reliant on their parents and family. For these young people, an aftercare system is crucial, including supervised transitional accommodation and other supports to assist the young person's adjustment to independent living.

'Aged-out Minors'

The term 'aged-out minors' is used to describe young adults who came to Ireland as separated children, and have now passed their eighteenth birthday, but who do not have refugee status or other form of protection. Once these young people leave the child care system, they are transferred, by the Reception and Integration Agency (RIA), to 'direct provision' accommodation where they remain while their application for refugee or protection status is being processed.

There are no exact figures for the number of separated young people over eighteen who are without protection status. However, it appears that during each of the past four years, between 50 and 60 separated children have been transferred to 'direct provision' accommodation, on reaching the age of eighteen.

In some cases, these young people have been waiting for several years (as many as five or more) for a decision on their application for asylum or humanitarian leave to remain. This group is at high risk of going missing. The unique situation of these young people requires a response that is humane and compassionate and

fully respects their rights and best interests. They have attended school here, have developed friendships, and may already have children born here; all their support systems are in Ireland and many have become integrated into Irish society. They may either have no family members remaining in their country of origin or have lost contact with them: in effect, if these young people were to be returned to their country of origin, they would be strangers there.

Some provisions of the Immigration, Residence and Protection Bill 2008, if enacted, would have serious consequences for this group. Under existing legislation, an 'aged-out minor' who has been refused asylum or subsidiary protection may be granted leave to remain by the Minister for Justice, Equality and Law Reform. Among the grounds the Minister may consider when making a decision in these cases are 'humanitarian considerations'. The 2008 Bill does provide that the Minister can grant a temporary residence permit to a person who is refused refugee status or subsidiary protection, where there are 'compelling reasons' for so doing. However, two features of the Bill's provisions give rise to concern that the intention is to limit the extent to which account will be taken of humanitarian considerations.

Firstly, the Minister will be required to consider whether the presence of the applicant in the State would give him or her an unfair advantage compared to a person not present in the State but in otherwise similar circumstances.

Secondly, the Minister will not be obliged to take into consideration factors which do not relate to the reasons for the applicant's departure from his or her country of origin or that have arisen since their departure. Strictly interpreted, this could mean that conditions and developments in the country of origin since the applicant left, as well as the personal circumstances of the applicant since their arrival, would be excluded from consideration.

In the case of applications from 'aged-out minors', it would seem the Minister would not be obliged to take account of the degree to which a young person who had come to Ireland as a separated child had become integrated into Irish society; the fact that they had begun a family of their own in Ireland; the fact that the political situation in their country of origin may have deteriorated or that they no longer had contacts in that country.¹⁷ In essence, this provision of the

Bill would mean that a decision affecting the young person's whole future would not take into account critical realities of their life. Many groups commenting on the Bill have called for the restoration of 'humanitarian considerations' as specific grounds for the granting of temporary residence.

Conclusion

Over the past ten years, as significant numbers of separated children arrived in Ireland, it became evident that in many instances the services available were unable to meet the needs being presented. The result was an inadequate level of care, social supports and accommodation.

Services *have* improved somewhat in recent times, and there are encouraging signs of further reform, but there is a considerable way to go before the level of care provided for these children will be in line with that available to other children in care in Ireland – or in line with internationally accepted standards for the care of separated children. It is regrettable that recent efforts to update and reform the law in relation to trafficking and protection have not given due regard to the need to make comprehensive legislative provision for separated children.

On ratifying the UN Convention on the Rights of the Child in 1992, Ireland made a formal declaration to the international community, and indeed to the people of Ireland, that it was committed to the full implementation of the Convention. However, deficiencies in the care and protection systems show that Ireland is failing to keep its commitment in respect of separated children. Reform is urgently needed. A separated child is a child first and a migrant second: Ireland has a duty to vindicate their right to a decent childhood.

Notes

1. United Nations High Commissioner for Refugees, *Guidelines for Formal Determination of the Best Interests of the Child*, Geneva: UNHCR, 2006.
2. *Ibid.*, p. 9.
3. UNHCR and Save the Children, *Separated Children in Europe Programme, Statement of Good Practice*, third edition, Copenhagen and Geneva, 2004.
4. Council of Europe, *Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Ireland, 23–30 November 2007*, Strasbourg, 30 April 2008, CommDH(2008)9, n. 48. (<http://wcd.coe.int>)
5. Irish Refugee Council, *Comments by the Irish Refugee Council on the Immigration, Residence and Protection Bill 2007, in relation to the Protection of Separated Children*, 26 July 2007, n. 3. (www.irishrefugeecouncil.ie)
6. *Our Children: their Lives: National Children's Strategy*, Dublin: Stationery Office, 2000, p. 71.
7. Department of Health and Children, *National Standards for Children's Residential Centres*, Dublin: Stationery Office, 2001.
8. Carl O'Brien, 'Migrant Group Aware of Child Victims', *The Irish Times*, 22 November 2005; Maeve Sheehan, 'Teen Missing from Care Working as a Prostitute', *Sunday Independent*, 12 April 2007.
9. *National Standards for Children's Residential Centres, op. cit.*; Department of Health and Children, *National Standards for Foster Care*, Dublin: Stationery Office, 2003.
10. The Irish Constitution and the UN Convention on the Rights of the Child strongly emphasise the right of the child to a family life.
11. The UN Committee on the Rights of the Child has provided authoritative guidance on the role of such guardians. See: Committee on the Rights of the Child, *Treatment of Unaccompanied and Separated Children outside their Country of Origin*, General Comment No. 6, Geneva: Committee on the Rights of the Child, Thirty-ninth Session, 17 May–3 June 2005. Under Article 12 of the UN Convention, a child has a right to have their views taken into account in any matter affecting him or her, in accordance with his or her age and maturity.
12. The National Children's Strategy states: 'Unaccompanied children seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and Guardian-Ad-Litem'. (p. 71)
13. *Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Ireland, 23–30 November 2007*, Recommendation 11. Mr. Hammarberg's visit 'was part of a continuous process of regular country missions by the Commissioner to all Council of Europe member states to assess their effective respect for human rights'. (n. 1)
14. For example, Ali Bracken, 'Files sent to DPP after Garda Probe into Child Sex Trafficking', *The Sunday Tribune*, 10 February 2008; 'Traffickers may have Brought Minors Here', *The Irish Times*, 21 June 2008; Ruadhán Mac Cormaic, 'Gardaí Believe Teenage girl was Trafficked', *The Irish Times*, 9 July 2008; 'Trafficked Teen Released into Care of HSE', *The Irish Times*, 14 July 2008. See also: Pauline Conroy, *Trafficking in Unaccompanied Minors in Ireland*, Dublin: International Organization for Migration, 2004, and US Department of State, Office of the Under Secretary for Democracy and Global Affairs and Bureau of Public Affairs, *Trafficking in Persons Report*, Washington DC: US Department of State, Publication 11407, June 2008.
15. Department of Justice, Equality and Law Reform, 'Lenihan Announces New Anti Trafficking Unit', Press Release, 20 November 2007. (www.justice.ie)
16. Information contained in Recommendation 11, *Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Ireland, 23–30 November 2007*.
17. Children's Rights Alliance, *Submission to the Select Committee on Justice, Equality, Defence and Women's Rights in Relation to the Immigration, Residence and Protection Bill 2008*, April 2008, n. 5, pp. 7–8. (www.childrensrights.ie)

Maria Corbett is Policy Director of the Children's Rights Alliance