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## **Immigration Policy versus Welfare Policy: Protection issues facing Separated Children on arrival in Destination Country**

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### **Abstract**

This paper will explore the conflict which exists between immigration policy and welfare policy in relation to separated children and the situation they face when they arrive in their destination country. The paper will consider this in relation to both Ireland and the United Kingdom. While Ireland is bound under national law, the Child Care Act 1991, and international commitments such as the United Nations Convention on the Rights of the Child to protect and care for separated children, this right to care and protection is brought into question as conflicts arise between immigration policy and welfare policy in relation to entry to the state and age assessment procedures. This paper will focus on entry procedures and age disputes in Ireland and the subsequent effect that this has on separated children. In addition to this, current practice in the UK will also be addressed and will consider how a culture of disbelief, a system of pre-entry controls and age assessment contributes to a conflict between immigration policy and welfare policy. It must be noted that while separated children's perceived vulnerability is linked to their experiences prior to

arrival in a country, it is important to acknowledge the current challenges that separated children face in the country in which they seek asylum.

**Keywords:** Separated children; child protection; immigration policy, welfare policy

### **Introduction**

Separated children migrate from a wide variety of countries including Somalia, China, Angola, Romania, Sierra Leone and Ethiopia (Ayotte, 2000). Added to these countries now are the Darfur region within Sudan, Iraq and Afghanistan (Bhabha et al, 2007). Separated children are defined as: "...under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver. Some children are totally alone while others, who are also the concern of the Separated Children in Europe Programme (SCEP), may be living with extended family members..." (Separated Children in Europe Programme, 2009, p. 3). Separated children are also referred to as unaccompanied minors.

However, the term separated children will be utilised throughout this paper as it is thought that separated provides a better definition of the essential problems faced by these children (SCEP, 2009). In addition to this, both children who arrive and are accompanied by an acquaintance, family member, friend, sibling or relative and children who arrive and are unaccompanied are taken into account in this definition (Veale et al, 2003).

It has come to light that children migrate and seek asylum for similar reasons as that of adults and flee to escape persecution, civil upheaval, ethnic strife and to escape war (Bhabha, 2001). Added to this, it has also come to the fore that these children may have experienced forms of persecution which are specific to children and include female genital mutilation, the sale of children, forced conscription of child soldiers and child marriage among others (Mooten, 2006). Other reasons for the movement of separated children include survival, family reunification, exploitation and torture (Bhabha et al, 2007).

### **Ireland's Obligations**

In recent years, over 5,300 separated children have arrived in Ireland (Corbett, 2008).

Ireland, under national law and international commitments, is bound to provide for separated children in addition to protecting them. The Child Care Act 1991 coupled with the United Nations Convention on the Rights of the Child (CRC) requires the state to provide protection and care for any child who is in need of it (Charles, 2009). Significantly, the CRC places a responsibility on the state to ensure that every child in their jurisdiction has their needs addressed. Therefore, this does not allow a distinction to be made between children who are citizens and children who are not citizens. Thus, every child has an entitlement to equal rights as set out in the conventions articles which include rights to education, health care and social security among others (Fanning and Veale, 2004). In addition to this, the Refugee Act 1996 as amended saw the integration of the Geneva Convention of 1951 and also the 1967 Protocol into law in Ireland and therefore Ireland's international obligations were further compounded (Charles, 2009). There is significance in the integration of the Geneva Convention of 1951 and the 1967 Protocol into law in Ireland as the Geneva Convention of 1951 relates to refugee status and the 1967 Protocol provides for a system of international protection for refugees (ORAC, 2008).

### **Protection Issues**

There is a general consensus that the protection of children lies primarily with the family and also the community. However, in the event of a breakdown of these protective structures and normal safeguards, resulting in a child becoming separated from these protective structures and thus fleeing to a different country, the responsibility of filling this void is placed on international bodies and also significantly, on governments (MacDonald, 2009). While conventional wisdom, practice knowledge and research findings indicate that separated children face multiple challenges stemming from their experiences pre-departure, their migration to a new country and the life they live in exile (Ni Raghallaigh and Gilligan, 2010), there is a tendency in which the discourse regarding the perceived vulnerability of separated children on arrival in their destination country is predominantly attributed to their experiences pre-arrival (Enenajor, 2008). While separated children are typically characterised and presented in policy and research as a group of children who are highly vulnerable and traumatised by previous experiences on arrival (Rutter, 2007 cited in Abunimah and Blower, 2010), it is important to acknowledge that these past experiences only place separated children at risk of psychological

problems developing. It has been noted that further research is required in relation to how, and if, other aspects of separated children's development such as social relationships, educational development, behaviour and physical health are affected by the risk factors that separated children face (Abunimah and Blower, 2010). It is also important to take cognisance of the fact that separated children are not necessarily a homogenous group (Abunimah and Blower, 2010) and that not every separated child will experience outcomes which are adverse (Ni Raghallaigh and Gilligan, 2010). This practise of focusing on separated children's perceived vulnerability which stems from their past experiences therefore precludes the conditions that separated children face in their destination country being analysed in relation to how this affects their vulnerability (Enenajor, 2008). Research conducted by MacDonald (2009) noted a possible tension between policy and law designed to support and protect separated children and the experiences of separated children who are subject to immigration control. It came to light in this research that immigration issues can become central as opposed to being peripheral to the care and protection response provided to separated children. This leads to the primacy of separated children's welfare not being reflected in these proceedings and also has a significant impact on separated children's entitlement to exercise their rights as set down under the United Nations Convention on the Rights of the Child.

### **Entry into Ireland**

Until recently in Ireland the entry of non-Irish nationals was governed by basic legislation such as the Aliens Act 1935 and also the Aliens Order 1946 as amended. However, the growth of inward migration particularly from the 1990s demanded a review of Ireland's immigration policy (Quinn et al, 2008). The Refugee Act 1996 as amended is the legislation which is most notable in relation to domestic legislation regarding asylum seekers and refugees in Ireland. The law relating to immigration is based on numerous pieces of legislation which commenced with the aforementioned Aliens Act 1935 and the Aliens Order 1946 which was later followed by the Refugee Act, the Illegal Immigrants (Trafficking) Act 2000, and also the Immigration Act 1999, 2003 and 2004 (Joyce, 2010). The Refugee Act as amended provides an initial procedure in which to deal with 'a child under the age of 18, who has arrived at the frontiers of the state or has entered the state and is not in anyone's custody' (The Refugee Act as amended, 1996 cited in Veale et al, 2003, p.15). In addition to this,

The Immigration Act 2003 states that those who are to be arrested and then detained as they have been refused leave to land; this will not apply to a person who is believed to be under 18 years of age. However, there is no reference made to separated children in either the Refugee Act 1996 as amended or the Immigration Act 2003 (Joyce and Quinn, 2009). The Irish Society for the Prevention of Cruelty to Children argue that this obvious gap in legislation regarding separated children significantly compounds their vulnerability on arrival (Irish Society for the Prevention of Cruelty to Children, 2008).

The Immigration, Residence and Protection Bill is an initiative which aims to update, integrate and also consolidate previous legislative measures and puts forward a framework of legislation in relation to managing, in Ireland, inward migration (Joyce, 2009). This Bill presented a unique opportunity in Ireland in which international obligations could be realised through the incorporation of amendments to this Bill which would lead to the CRC being implemented in full. However, there is currently no provision in the Bill for separated children in relation to an entitlement which is clear to international protection. Added to this, a definition of an unaccompanied minor or separated child is not contained within the Bill (Irish Refugee Council, 2008). Significantly, the Immigration, Residence and Protection Bill 2008 was, in 2010, withdrawn with the Immigration, Residence and Protection Bill 2010 published in June. This new Bill incorporated many amendments that were put forward in relation to the 2008 Bill (Joyce, 2010). However, in this revised Bill, a definition of separated children is still not included (Irish Refugee Council, 2010a). Moreover, the best interests of the child principle which had been provided for under the 2008 Bill in sections 73 (10), 74 (8) and 85 (9) has now, in the 2010 Bill, been removed (Irish Refugee Council, 2010b). It can be argued that if the government's aim of establishing a comprehensive and fair policy for immigration is to be achieved then the current legislation, the Immigration, Residence and Protection Bill 2010, needs further significant amendment (Charlton, 2010).

### **Issues on Arrival**

In Ireland with regard to a minor seeking entry to the state, it is official policy not to

refuse them. The best interests of the child must be given priority whether a child claims asylum or not. However, this is a policy position, not a requirement set down in domestic law (Joyce and Quinn, 2009). It has been noted that the majority of separated children are identified once inland when they present themselves for family reunification or to claim asylum. However, a number of separated children are encountered by An Garda Síochána at the ports of entry while other separated children present at the Office of the Refugee Applications Commissioner or at Dublin Airport. However, there are concerns being voiced that on occasion, at the border, minors are being refused permission to enter over disputes in age (Joyce and Quinn, 2009). While a number of separated children present without documents that identify them when entering the state, this is not uncommon as millions of children, at birth, are not registered every year (Charles, 2009). In addition to this, there are several other possibilities as to why a separated child would present without documentation. These include a trafficker confiscating the documentation, loss of documentation, or on some occasions the child may have had to flee and did not bring the documentation with them. This can often lead to the authorities being unclear in relation to the age of the individual (Charles, 2009). Subsequently, this leads to age assessments being carried out.

### **Age Assessment**

According to the SCEP, age assessment procedures should not be a routine or standard procedure, but should only be utilised when other methods to determine an individual's age have failed, such as documentary evidence being gathered or interviews, and also only when there is serious doubt in relation to the individual's age. In addition to this, age assessment procedures should balance cultural, psychological, physical, environmental and developmental factors and be carried out by a professional who is independent and has both familiarity and expertise with the child's cultural and ethnic background (SCEP, 2009). Furthermore, according to the United Nations Committee on the Rights of the Child (UNCRC), initial measures and assessments including age assessments should be carried out using the best interests principle of the CRC as a guiding principle. Added to this, the UNCRC also upholds that in cases where uncertainty remains, the benefit of the doubt should be accorded to the individual (UNCRC, 2005).

In Ireland, the Garda National Immigration Bureau (GNIB), Office of the Refugee Application Commissioner (ORAC) and the HSE are all involved in being arbiters of age. However, there is inconsistency present as the different authorities take a different approach to this issue of age assessment (Charles, 2009). This is further compounded by the fact that there is no existing age assessment procedure which is statutory (Charles, 2009). It has been noted that the HSE follows the 'UK Practice Guidelines for Age Assessment of Young Unaccompanied Asylum Seekers' and while these guidelines have been given to the GNIB and the ORAC, it appears, according to the HSE, that neither the GNIB or the ORAC follow these guidelines (Charles, 2009). In addition to this, age assessment procedures carried out by the ORAC involve members of staff conducting the interview with a more senior member of staff conducting the interview if an appeal is made. However, one can argue that this process is not in line the SCEP's recommendation for international best practice (Charles, 2009). The SCEP put forward, as discussed previously, that age assessment procedures should be carried out by an independent professional who has expertise in relation to the child's ethnic and cultural background, not members of staff who are available to carry out the assessment. Furthermore, one can also contend that this process does not accord with the CRC and the principle of the best interests of the child. One can argue that in Ireland at present, in relation to age assessment, there is a lack of consistency, panel expertise and independence (Charles, 2009). It must also be noted that in his report Mr. Thomas Hammarberg, Commissioner for Human Rights, brought this issue to light. The report pointed out that there was concern expressed by the UN High Commissioner for Refugees in Ireland in relation to Irish immigration officials who do not identify separated children at ports of entry which is partly due to a lack of standardised methods regarding age assessment (Hammarberg, 2008). While the GNIB contests that minors are being refused entry to the state on the basis of disputes in age arguing that any errors made in relation to age when a child presents with an immigration officer initially, these mistakes are later rectified with social work teams Therefore, the GNIB contend that this does not result in separated children being refused entry to the state (Joyce and Quinn, 2009). However, this is a significant issue which impacts on the care and protection of separated children and needs to be addressed further.

### **The United Kingdom's Obligations**

In 2009, the UK received 3,175 applications for asylum from separated children (Home Office, 2010a). The UK is bound under national law and international commitments to provide and protect separated children, a position which reflects Ireland's duties in relation to separated children. In the UK the Immigration Rules, which were developed under the 1971 Immigration Act, states that priority and particular care should be afforded to applications for asylum from children (Rice and Poppleton, 2010). In addition to this, the protection and general welfare of separated children is governed by the 1989 Children Act. This Act establishes a responsibility towards the accommodation, support and protection of all children and this is irrespective of immigration status or nationality. Therefore, separated children have an entitlement to state protection and the same rights as that of domestic children (Bhabha et al, 2007). Added to this, the Children Act 2004 provides for the needs and care of all children including children who are refugees and asylum seekers (Lane and Tribe, 2006). Furthermore, the European Convention on Human Rights and the Refugee Convention 1951 in addition to the 1967 Protocol are incorporated into domestic law in the UK (Bhabha and Finch, 2006).

The UK ratified the CRC in 1991. However, the UK entered into a reservation on the CRC regarding Article 22 (Moloney et al, 2008). This reservation was justified by a school of thought that was aimed at discouraging children arriving in the UK in order to benefit solely from children's rights under the CRC (Kralj and Goldberg, 2005). It was therefore argued that there was precedence given in relation to immigration controls rather than considerations of welfare (Crawley, 2006). This reservation received wide criticism from both parliamentary committees within the UK and by the CRC's international monitoring body (Crawley, 2006). Significantly, this reservation was lifted by the UK in September 2008 and, rather than being subordinate to immigration issues, the best interests of the child are now also a priority. Furthermore, in the Borders, Citizenship and Immigration Act 2009, under section 55, there is a requirement in which the Director of Border Revenue and the Home Secretary must make arrangements regarding the promotion of children's welfare and the need to safeguard this welfare (Rice and Poppleton, 2010).

### **Protection Issues**

Despite this progress being made in relation to separated children, concern still remains. In relation to separated children who seek asylum in the UK, it has been put forward that there is a culture of disbelief regarding this phenomenon. This culture of disbelief has numerous facets, a number of which are interlinked. It has been argued that there is an assumption which is widely held that children are an appendage to adults and therefore are not persecuted in a right of their own. In addition to this, there is a presumption that when separated children apply for asylum, this has been instigated by an adult in order for the child to gain preferment as opposed to a need for protection (Bhabha and Finch, 2006). Added to this, is a belief which is mistaken that in general, societies afford protection to their children and that treatment is not abusive but privileged. This leads to accounts of ill treatment and torture being rejected and viewed as incredible. Furthermore, there is a failure to understand that social, economic and political instability can inevitably separate families and their children and this places children at risk of persecution (Bhabha and Finch, 2006). There is therefore an assumption due to this lack of understanding that if the children who are seeking asylum return home, their family will be waiting for them, albeit hidden away (Bhabha and Finch, 2006).

### **Issues on Arrival**

The UK operates a system of pre-entry controls. In order for separated children to apply for asylum, they have to be able to arrive in to the UK. In recent years further barriers have been put in place in order to prevent this. Immigration officers are now placed at Eurostar Stations in Belgium and France in addition to ports to check those travelling to the UK and their immigration status. A similar role is carried out by Airline Liaison Officers at various airports (Bhabha and Finch, 2006). Consequently, as there is no way to travel to the UK which is legal, for the purpose of making a claim for asylum, this forces refugees to travel irregularly in mixed flows. Such procedures differ from Ireland where pre-entry restrictions are not imposed. While these controls at pre-entry are put into effect in order to reduce applications which are unfounded, Crawley (2010a) argues that these controls are not sensitive to protection and therefore, there is no differentiation between those who are in need of protection and those who are not. There are currently no statistics on the numbers of separated

children who are refused entry in this manner. This practice is in breach of the United Nations Committee on the Rights of the Child (UNCRC) recommendation in General Comment No. 6, paragraph 20, which states ‘A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs’ (Bhabha and Finch, 2006, p.26). Bhabha and Finch (2006) argue that a child being allowed access to territory is therefore a prerequisite for this initial assessment. This practice also runs contrary to the principle of the best interests of the child stipulated in the CRC.

### **Age Assessment**

In similar vein to Ireland, many separated children arrive without documentation in which age is established in the UK, or they arrive with documentation that is regarded as being suspect (Lane and Tribe, 2006) Therefore, at the screening process, an initial assessment is made regarding age by an immigration officer (Rice and Poppleton, 2010). This practice of an immigration officer making an initial age assessment runs contrary to the recommendations put forward by the SCEP. In policy terms, the stipulation applied on the first encounter with a person, is that ‘The claimant should be treated as an adult if their physical appearance/demeanour very strongly suggests that they are over 18 years of age’ (Home Office, 2010, p.4). It then states that ‘All other cases should be processed in the first instance as though the applicant were a child, in accordance with the Asylum Instruction ‘Processing Asylum Claims form Children’’ (Home Office, 2010, p.4). This Processing Asylum Claims for Children is a policy which was designed in order for the welfare of children to be safeguarded. However, it states that the claimant being processed as a child is not an indication of the age that is claimed being accepted, it will be taken into consideration with other evidence and the local authority’s view (Home Office, 2010). In recent years there has been an increasing number of age disputed cases. In 2004, there were 2,345 age disputed cases in the UK and in 2005 there were 2,425 applications for asylum that were age disputed (Crawley, 2007). In addition to this, there were 1,400 age disputed cases in 2008. While this shows a decrease in the numbers of age disputed cases, it should be noted that there has been a substantial decrease in the overall number of people claiming asylum in the UK. In addition, there is still concern that these

numbers are as a consequence of separated children not being afforded the benefit of the doubt as stipulated in the policy of the Home Office (Crawley, 2007). Therefore, one can argue that this is also not in line with recommendations made by the UNCRC as discussed previously.

Social workers within local authority areas also carry out age assessments and use the 'Practice guidelines for age assessment of young unaccompanied asylum seekers', which were developed by the London boroughs of Croydon and Hillingdon, for guidance. In addition to this, in use for age assessments, there are guidelines from the case *B v London Borough of Merton* and the judgement from this case (Dorling, 2009). It is the policy of the UKBA to accept decisions which are Merton compliant that have been completed by a social worker (Rice and Poppleton, 2010). However, there is no statutory procedure or guidance regarding age assessments processes and this has led to considerable variations in relation to formal assessments. There are also significant inconsistencies in relation to the assessment process and its quality. Furthermore, there are concerns over lack of training for this process. This has considerable implications for separated children (Crawley, 2010b). There is also growing concern in relation to tensions arising regarding the social workers role in the system of asylum where central government utilises access to welfare as a means of delivering immigration controls. One can argue that the utilisation of social workers in practises, such as age assessments, can be deemed to be at odds to the principles inherent in the profession of social work. It can also be argued that there are potential conflicts which can arise from this in relation to immigration control and social care (Crawley, 2007). It has been highlighted that in some instances, social work managers have either put pressure on or instructed staff to assess children in age disputed cases as being over the age of 16 or 18 (Crawley, 2010b). There are financial pressures to consider which can potentially produce a conflict of interests (Crawley, 2010b) and this can place a burden of cost on social workers when conducting an age assessment. Therefore, this is clearly not in the best interests of the child and these issues need to be addressed further.

### **Effect on Separated Children**

In light of the above discussions, it can be argued that the practise of immigration policy taking precedence over welfare policy can have a significant effect on separated children. It can be argued that in relation to Ireland and the UK, there is a commonality between these countries in relation to a conflict between immigration policy and welfare policy. In Ireland reports of separated children being refused permission to enter the state over disputes in age (Joyce and Quinn, 2009) is an area which warrants significant concern in relation to the impact on separated children's rights and their protection. Similarly, reports of separated children not being allowed access to the UK resulting from the UK's system of pre-entry controls (Bhabha and Finch, 2006) is also an area which raises significant issues of child protection. This has a considerable impact on the full realisation of separated children's rights. In addition to this, in both Ireland and the UK, issues of child protection play a significant role if a child is wrongly assessed as an adult or when an adult is wrongly assessed as a minor and is subsequently placed with other minors in accommodation centres (Charles, 2009). Age assessments in the UK can have a considerable effect on the level of care afforded to separated children. It has been highlighted that age disputes have implications which are significant in relation to an individual's access to supports and services and how an individual's application for asylum is dealt with (Wade et al, 2005). If a child applying for asylum is incorrectly identified, from the age assessment process as an adult, the child will not have an entitlement to international law and its full protection. In addition to this, the child will not benefit from child protection procedures and as a consequence of this, the best interests of the child principle will be undermined. Furthermore, a child whose age is disputed may also be placed in detention, with other adults, in an immigration removal or reception centre (Crawley, 2007).

In both Ireland and the UK, there are no statutory guidelines in relation to conducting age assessments and therefore this has led to an inconsistency in how they are carried out. It can be argued that the manner in which age assessments are conducted are not in line with the UNCRC's recommendations for conducting age assessments and are also not in line with the SCEP recommendations on age assessments. One can also argue that from this practice of conducting age assessments, there is an apparent lack of trust in separated children and they may also be subject to repeated questioning which can serve to undermine them and their experiences. This therefore has a

significant impact on the realisation of separated children's rights and on their care and it is important to remember that separated children are children first and foremost and migrants second (Ostrom, 2007).

### **Conclusion**

In conclusion, it can be argued that the challenges that separated children face on arrival in their country of asylum can have a significant impact on them. The practice of immigration policy taking precedence over welfare policy is one which raises considerable concerns. It can have both a significant and consequential effect on separated children in relation to the full realisation of their rights as they are entitled to under the CRC and also in relation to the levels of care and protection afforded to separated children. This can be seen in both Ireland and the UK, where despite obligations under national law and international commitments such as the CRC to protect and care for separated children, this conflict between immigration policy and welfare policy is notable in relation to entry to the state and in the practice of conducting age assessments. There is concern being voiced in relation to minors being refused entry to both Ireland and the UK over disputes in age. In addition to this, separated children face many considerable challenges once in Ireland and the UK in relation to age assessments being conducted. There is no statutory age assessment procedure in either country and as a result, concern over training and inconsistency in relation to the assessment process and its quality has been highlighted. Furthermore, issues of child protection come to fore if a child is wrongly assessed as an adult and this can have a significant impact on the levels of care provided to separated children. These challenges faced by separated children raise significant concerns and need to be addressed urgently if separated children's entitlement to rights under both national law and international commitments are to be fully realised.

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