

Introduction:

I will in this short paper chart the background to the establishment, and the subsequent development of the Refugee Legal Service (RLS) in the context of the dramatically increased demand for legal services by asylum seekers in the late 1990's. I will also provide a short outline of the asylum system itself before describing the services provided by the RLS and the specific delivery model in place. Finally, I will outline the engagement of the RLS with other national state organisations involved in the asylum process as well as with International bodies and NGOs and the voluntary sector.

1. Background to Establishment of the Refugee Legal Service (RLS)

1.1 Growth in Demand for Services.

Applications for asylum in the Republic of Ireland grew dramatically in the mid 1990s. In 1993, 91 applications were made for asylum. In 1994 and 1995 the figures were 362 and 424 respectively. In 1998 the first full year before the establishment of the RLS 4,626 applications for asylum were made.

The table below shows the growth in applications for asylum since then and the extent to which the RLS has provided legal aid and advice to asylum seekers.

Year	New Asylum Seekers	RLS Clients	% increase on previous Year	% of New Asylum Applicants
1999	7,724	1,636		21%
2000	10,938	3,424	109%	31%
2001	10,325	4,520	32%	44%
2002	11,634	5,713	26%	49%
2003	3,490	2,232		64%

(to 1/5/03)

The increase has generally been due to increased political and economic disruption in a number of areas of the world but particularly Africa and Eastern Europe. At the same time there was a corresponding and well reported increase in all areas of economic activity in Ireland with increased levels of income and employment. There are now, however, indications of a tapering off of the rate of increase in applications.

1.2 Country of Origin of Asylum Applicants in Ireland

An interesting aspect of Ireland's asylum experience is the country of origin of asylum seekers. In recent years – the proportion of total asylum seekers from Nigeria has ranged from 34 percent in 2001 and 2002 to 41 per cent to date in

2003. The proportion from Romania has been around 11 to 12 per cent, while that from Moldova has ranged between 3 per cent in 2003 and 7 per cent in 2001. The information is summarised in the following table.

Top 5 countries of origin in 2003

41% Nigeria
 11% Romania
 4% DR Congo
 3% Moldova
 3% Iraq
 38% Other

Top 5 countries of origin in 2002

34% Nigeria
 12% Romania
 7% Moldova
 5% Zimbabwe
 5% Poland
 37% Other

Top 5 countries of origin in 2001

34% Nigeria
 12% Romania
 5% Moldova
 4% Ukraine
 3% Russia
 42% Other

This pattern contrasts with that for other industrialised countries. In the first quarter of 2003 – the main country of origin for asylum applicants in 27 industrialised countries were Iraq, Serbia, Montenegro and Turkey, and this was the case also for 22 European countries (UNHCR).

1.3 Cost of providing support to asylum seekers in Ireland

In 2002 a total of some €340 million was spent by the State on support services to asylum seekers including €40 million for the cost of determining asylum claims.

1.4 Establishment of the RLS.

In November 1998, an agreement was reached between the Legal Aid Board and the Department of Justice, Equality and Law Reform (DJELR) on the provision of a comprehensive legal service for asylum seekers. Under this agreement, the Legal Aid Board established the Refugee Legal Service which provides a legal information, advice and representation service to asylum seekers at all stages of the asylum process.

The Legal Aid Board is an independent statutory body providing legal services in civil matters in accordance with the terms of the Civil Legal Aid Act 1995. The Act allows for the provision of legal aid and advice in civil cases to persons who satisfy the statutory financial eligibility and other requirements.

The Refugee Legal Service was established in February 1999, with approval for a total of 32 temporary posts. Approval for further posts was granted in 2000 arising from a significant increase in the resources allocated by the Government to the processing of asylum applications in the state. The allocation of additional resources also permitted the RLS to expand its services by opening up new regional offices in Cork and Galway and providing an outreach service for asylum seekers.

Because of the specialised nature of legal work undertaken by the RLS it was envisaged from its inception that it would operate on a different scale and on a different model to that in operation in the 30 law centres already in existence throughout the state. The key elements of the RLS model of service delivery are that the service would:

- Operate with a more intensive use of paralegal staff working under the supervision of solicitors.
- Provide an immediate service to those seeking it without the operation of a waiting list procedure.

The Refugee Legal Service now provides 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. The RLS currently publishes information leaflets in 8 languages in addition to English (i.e. Albanian, Arabic, Czech, French, Polish, Portuguese, Romanian and Russian).

2. Delivery of Service.

2.1 Dublin RLS, Cork RLS and Galway RLS offices.

The RLS currently employs 22 solicitors and 42 paralegals (total staff 140) located in Dublin, Cork and Galway offices. Paralegals assist solicitors in the taking of instructions from clients, preparation of standard correspondence, briefing counsel where engaged and attending counsel at hearings of the RAT (Refugee Appeals Tribunal) as necessary.

A person who makes an application for legal services will be furnished, without any delay, with assistance which is provided in the following ways:

- Generally in applications for asylum by providing advice before submission of the applicant's questionnaire to the Office of the Refugee Applications Commissioner or before the applicant attends for interview in the Office of the Refugee Applications Commissioner.
- Written submissions to the Office of the Refugee Applications Commissioner in support of an application for asylum.
- Representation before the Refugee Appeals Tribunal.
- Where refugee status is refused, submission of applications pursuant to the Immigration Act 1999 and matters arising therefrom.
- Advice and aid in relation to deportation orders and Judicial Review procedures.

Procedures in this relatively new service are continuously under review and as a result of this process two specialised units have been established in Dublin as follows:

- A Judicial Review & Immigration Unit,
- A Children's Unit for unaccompanied minors.

2.2 Representation by Private Solicitors and Barristers

In March 2000, a Private Practitioners Panel was established to assist the RLS by engaging private solicitors who represent applicants on appeal, on behalf of the RLS. In 2001 and 2002 1,541 and 970 cases respectively were referred to private practitioners by the RLS .

In April 2001 a programme was introduced whereby barristers could represent asylum seekers, on behalf of the RLS, before the Refugee Appeals Tribunal, in a similar manner to solicitors on the RLS Private Practitioners' Panel. The number of cases dealt with by barristers in 2001 and 2002 were 877 and 2395 respectively.

The service, as currently structured, provides a good mix of control and flexibility. Control is provided through the RLS retaining overall responsibility for each case. Using private solicitors and barristers during the appeal process, where tight deadlines are in operation, ensures the availability of the required flexibility in the provision of services.

2.3 Timing of Applications

The percentage breakdown of new clients registering with the RLS up to end April 2003 at each stage of the asylum process compared to the equivalent period in 2002 is as follows:

Contact Reason	Average - To April 2003	Average - To April 2002
Completion of Questionnaire	16.1%	4.6%
Pre-Interview with ORAC	53.4%	69.5%
Post Interview with ORAC	6.7%	2.9%
Substantive Appeal to RAT	15.5%	16.1%
Manifestly Unfounded Appeal to RAT	1.1%	0.0%
Leave to Remain	1.9%	3.4%
Dublin Convention	0.8%	0.6%
Deportation Order	1.0%	1.1%
Other Asylum Issues	3.3%	1.1%
Immigration	0.2%	0.6%
Total	100%	100%

3. The legal basis and general principles of Refugee Law in the Irish Republic

The following International and national instruments form the basis for Asylum and Refugee law in the Republic of Ireland.

- The Geneva Convention 1951 and New York Protocol 1967; [www.unhcr.ch]
- The Aliens Act 1935 (as amended); [www.bailii.org/ie/legis]
- Bunreacht na hÉireann [Constitution][www.taoiseach.gov.ie]
- The Civil Legal Aid Act 1995; [www.bailii.org/ie/legis]
- The Irish Nationality and Citizenship Acts, 1956, 1986, and 1994; [www.bailii.org/ie/legis]
- The Refugee Act 1996, as amended (“the Refugee Act”) [www.bailii.org/ie/legis]
- The Immigration Act 1999; [www.bailii.org/ie/legis]
- The Illegal Immigrants (Trafficking) Act 2000; [www.bailii.org/ie/legis]
- The Dublin Convention (Implementation) Order 2000 S.I. 343/2000.

Section 2 of the Refugee Act 1996 defines a refugee as :

“a person who, owing to a well founded fear of being persecuted, for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear is unwilling to avail himself or herself of the protection of that country....” . In this Ireland adopts the definition set out in Article 1A of the Geneva Convention

The European Convention on Human Rights [ECHR] which has yet to be incorporated into Irish domestic law will have an as yet to be determined effect on the practice of refugee and asylum law.

The Immigration Bill 2002 is currently before the legislature and proposes several substantive amendments to current law and procedure detailed below (see 10 below).

4. RLS services in the European context

The services provided by the RLS are among the more comprehensive state funded legal services provided in the countries surveyed by the European Council on Refugees and Exiles (ECRE) in 2000 and 2003 . In the UK [2000] state funded legal advice and representation are available at all stages, including representation at appeals, subject to meeting financial eligibility and legal merit criteria.. In Switzerland on the other hand ‘ almost no applicant is granted free legal aid in first instance cases, and very few during the appeal procedure. In most cases, applications for free legal aid are rejected on the grounds that the case lacks the chance of success, or because it does not involve complex legal issues’ **(2003 ECRE report)**.
[www.ecre.org].

5. Asylum Process

Convention status is the only refugee status granted in Ireland and Section 2 of the Refugee Act contains the same definition of a refugee as Article 1A of the Geneva Convention.

An individual can make an application for asylum at a port of entry and under Section 9 of the Refugee Act, he or she shall be allowed to enter the country and to remain there until:

- his/her application is transferred to another country under the provisions of the Dublin Convention;
- the application is withdrawn or deemed to be withdrawn; or
- the application is rejected.

5.1 Initial interview and questionnaire Office of Refugee Applications Commissioner (ORAC)

The Refugee Applications Commissioner, is responsible for investigating applications for asylum under Section 11 of the Refugee Act 1996. An asylum seeker is, in accordance with Section 8 of the Refugee Act 1996, given a brief initial interview by the Office of Refugee Applications Commissioner to establish, inter alia, the general grounds upon which the application is based; the asylum seeker's identity, nationality and country of origin; and the legal basis for their presence in Ireland. A written record of the interview is kept and the interviewee is entitled to a copy.

Asylum seekers are given a very detailed questionnaire (introduced in June 2002) by ORAC which is required to be returned with 14 days. The RLS provides general advice to asylum seekers in relation to the completion of the questionnaire and more detailed assistance where the applicant is a minor. If ORAC form the view that the applicant has previously applied for asylum in another EU country they will request the authorities in that country to confirm whether or not they have a match of the applicant's fingerprints. In the event that the Dublin Convention procedures are invoked legal aid and advice is provided by the RLS. Few cases are, however, processed under this provision.

Where the asylum seeker is a minor, the RLS will always seek to attend the interview with ORAC. An asylum seeker has 7 working days after the substantive interview to make written submissions and legal assistance is available from the RLS in relation to this process.

5.2 Decision of the Refugee Applications Commissioner

After seven working days ORAC proceeds to make a decision as whether to recommend (to DJELR) that an applicant be declared a refugee or otherwise. In making the decision the Refugee Applications Commissioner must consider the statutory definition of a refugee. If ORAC recommends that an applicant should not be declared a refugee he/she will have either ten (10) or fifteen (15) working days from the date of the letter advising the decision to appeal. The ten working days time limit applies in those case where ORAC determines the application is manifestly unfounded. In all other cases the fifteen working day limit will apply. The RLS provides asylum seekers with advice on all of the options open to them if they receive a negative decision.

5.3 Appeal to the Refugee Appeals Tribunal (RAT)

Under Section 13(3)(b) of the Refugee Act an asylum seeker can appeal a negative decision of the Refugee Applications Commissioner, to the Refugee Appeals Tribunal.

An appellant from a negative decision by ORAC may elect for either an oral appeal or an appeal on the papers only. In practice the vast majority of those

who seek legal assistance from the RLS to appeal a decision of ORAC elect for an oral appeal.

5.4 Decision of the Refugee Appeals Tribunal

The Refugee Appeals Tribunal will normally issue a decision within a number of weeks of the hearing. If an appellant is refused refugee status on appeal to the RAT the decision of the Tribunal is considered by the RLS and the client is advised of his options including whether or not these are grounds for an application for judicial review. Other options include the following:

- making an application to the Minister for Justice, Equality and Law Reform for permission to remain in the State under Section 3 of the Immigration Act 1999 ('Leave to Remain Applications'),
- voluntarily repatriation,
- consenting to a Deportation Order.

5.5 Leave to remain under the Immigration Act 1999

Section 3(6)(h) of the Immigration Act, 1999 provides that the Minister shall have regard, *inter alia*, to "humanitarian considerations", in deciding whether to make a deportation order in relation to a person. Such "*humanitarian considerations*" are not defined in the legislation.

There is a strict time limit of 15 working days within which any applications for leave to remain must be made. Legal assistance is provided by the RLS to those who wish to make an application under Section 3 of the Immigration Act 1999. In 2001, 70 applicants were granted temporary leave to remain.

The RLS is currently reviewing the legal services provided in relation to such applications.

6. Judicial Review

6.1 Substantial Grounds

An applicant must show that there are substantial grounds rather than simply an arguable case for seeking relief. The total number of legal aid certificates which issued in 2002 for Judicial Review purposes was 39, including two Habeas Corpus applications. In 2003, up to the end of April, 16 legal aid certificates have been granted for judicial review proceedings.

6.2 Cases

The RLS have acted as solicitors in a number of cases of general importance to the development of Irish Jurisprudence in asylum law including most recently the Supreme Court decision in ***Lobe -v- Minister for Justice, Equality & Law Reform*** [2003] IESC 1 (www.baillii.org/ie/cases).

This case related to a particular feature of the recent Irish experience with asylum and immigration and relates to what has become known as the “ Irish born child “ issue.

The Irish Constitution, in article 2, confers the right of Irish citizenship by birth. This right is regulated by legislation - The Irish Nationality and Citizenship Act, 1956. As part of the agreement reached in relation to the Northern Ireland Peace Process, this legislation was amended in 2001 to provide that every person born on the island of Ireland is entitled to be an Irish citizen.

The provision applies equally to children born in Ireland to non-Irish national parents. In addition, the Supreme Court, in its decision in the Fajujonu case (Fajujonu V Minister for Justice [1990] IR151) in 1989, held that non-Irish nationals who had resided for an appreciable time and become a family unit within the State with children who are Irish citizens, have a strong claim to be allowed to remain in the State. An unexpected outcome of this legislation, combined with the Supreme Court judgment, has been a sharp increase in the number of applications from current or former asylum seekers for permission to remain in the State on the basis of having an Irish born child. In 2002, there were 6,549 such applications compared with 11,634 asylum applications in the same year.

The Fajujonu decision has now been varied by the recent Supreme Court judgment - in the cases of Lobe v Minister etc. On 23 January, 2003 a full Supreme Court bench, by a five-two majority, decided that non-national parents or siblings, of Irish born children were not entitled to reside in Ireland by virtue of the particular child’s citizenship. The judgment also provided for the de facto deportation of their citizen children if it was in the best interest of those children. In this case, the families involved had been in the state for a considerably shorter period than in the earlier case (Fajujonu). Since that judgment, the processing of applications to remain in the State on the basis of having an Irish born child was suspended and the responsible Government Department – Justice, Equality and Law Reform, ceased accepting such applications. There are currently some 11,000 cases on hand of which over 9,500 are asylum related. The implications of the judgment are being assessed with the intention of proposals being brought to Government in the near future.

7. Interaction with External Bodies.

The RLS meets regularly with UNHCR and International Organisation for Migration (IOM) representatives. The UNHCR provides training modules to RLS staff and solicitors joining the Private Practitioner panel. In addition, the RLS maintains regular contact with the principal NGO’s providing information and

support to Asylum seekers. The UNHCR is now also closely involved with the development of the Refugee Documentation Centre (RDC), see 8 below.

The RLS regularly participates in information seminars organised by other bodies and also regularly makes presentations to interested parties. Recent presentations , with follow up discussions, have included presentations to social workers, senior prison staff, church asylum networks and accommodation centre providers.

In addition the RLS has sought to maintain links with the University sector and in 2002 hosted student placements from both the University of Michigan Law School and University College Cork. In the current year four students, are joining the service for placements, from the University of Tulsa.

8. Refugee Documentation Centre

In September 2000, the Legal Aid Board took over the responsibility of operation of the Refugee Documentation Centre (RDC), which had originally been established and run by UNHCR.

The RDC, which is funded from the budget provided for the RLS, provides an independent service supplying essential material in relation to the asylum process, such as up to date country of origin information, for the preparation of submissions at all stages of the asylum process. This service is provided to the RLS as well as the UNHCR, the Department of Justice, Equality and Law Reform, the Refugee Applications Commission, the Refugee Appeals Tribunal, the Appeals Authorities, Private Solicitors and Barristers on the Board's panel and others involved in refugee work.

The Legal Aid Board has now initiated a process to develop a fully computerised library/knowledge management system for this service. This project is being undertaken in co-operation with the other public bodies in the system and the UNHCR.

9. Monitoring of the RLS Service

The Legal Aid Board is committed to the provision of a quality, professional service in all cases and has formal arrangements in place to handle any complaints from asylum seekers. A copy of the complaints procedure is available in all RLS offices or from the Board's head office or any law centre.

In addition there is a separate independent committee established to monitor the quality and availability of the legal services being provided by the Board to asylum seekers. The Independent Monitoring Committee for the Refugee Legal Service prepares an annual report for the DJELR and meets with the senior

management of the RLS approximately 4 times a year and receives a formal report on the operation of the service.

In general, and after some teething problems, the service is seen as successful. The UNHCR have commented favorably on the service and the resources made available. In addition Amnesty International recommended the service to asylum seekers on the basis of its independence.

10. Amendments to the Refugee Act 1996

Reflecting concern at the number of asylum applications being received, and also the nature of many of these claims, as determined by the applications and appeals process, the Government has recently introduced legislation to make a number of changes to the operation of immigration and asylum laws in Ireland. This legislation is currently making its way through the Oireachtas (legislature). The changes are motivated primarily by the following factors:

- A concern that the State's present asylum processing arrangements make the state attractive, relative to other EU Member States as a destination for those who wish to better their living conditions i.e. economic migrants rather than genuine asylum applicants;
- The continuing increase in the numbers of applications and the high proportion of applications from EU candidate countries (around 25% of the total);
- The high percentage of withdrawn claims or those simply abandoned by applicants who fail to respond to a request to attend for a first instance interview (in excess of 50% of claims in 2002); and
- The low rates of recognition after independent investigation and an independent appeal process. Recognition rates overall are in the region of 10%.

The more significant legislative provision being considered are outlined below.

Withdrawal and abandonment of asylum claims: this sets out the circumstances where non co-operation with the asylum determination process is to lead to an application being deemed withdrawn. It also sets out the consequences of withdrawal of an asylum application the chief of which is the refusal of a declaration that an applicant is a refugee.

Carrier Liability: The legislation will provide for carrier liability to ensure to the greatest extent possible, that when people arrive in the State, from places other than the UK, they have proper documentation. Similar legislation exists in other EU Member states.

Agreements with UNHCR on reception of displaced persons: This provision will strengthen existing provisions regarding the acceptance of programme refugees by adding an explicit provision that the Minister may enter into agreements with the UNHCR regarding the reception of persons recommended by the High Commissioner for resettlement on the basis of their fear of persecution.

Prioritisation of certain types of cases by the Office of the Refugee Application Commissioner and Refugee Appeals Tribunal: The legislation provides that the independent Applications and Appeals authorities may prioritise certain types of cases.

Further amendments

It is also proposed to introduce further amendments to the legislation to facilitate a number of developments as follows:

- **Fast track processing:** Provisions for a fast-track system for dealing with applications meeting certain criteria including those where there are clear indications that the claim is abusive;
- **Safe Country of Origin list:** Provisions to designate certain countries, in particular, countries of central and eastern Europe (EU applicant states) as safe countries of origin and to fast track applications from these countries through the asylum process;
- **Safe Third Country provisions:** Provisions to deal more effectively with applicants who have had the opportunity to avail themselves of protection in safe countries through which they have travelled;
- **Burden of proof:** Provisions dealing with the burden of proof in asylum cases and the factors which are to be taken account of when assessing the credibility of an applicant;
- **Removal process:** Provision for a procedure, parallel to the existing deportation process, which will be better adapted to the removal from the State of those who have not been long in the State and have no continuing basis for being in the State. This process will be subject to the non-refoulement provision of the existing Refugee Act 1996.

These provisions are aimed at asylum applications deemed to be abusive while at the same time ensuring that those who need the protection of this State will get it as soon as possible.

11. The Future

While recent and proposed developments should serve to reduce the number of applicants entering the country, for the foreseeable future demand for the services of the RLS will remain strong. This continuing level of demand arises from an increase in the number of asylum seekers requiring legal services at an earlier stage in the process and a dramatic decrease in the number of applicants withdrawing their applications from the asylum process.