



Refugee Appeals Tribunal

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Annual Report 2002

1 January 2002 to 31 December 2002
Refugee Appeals Tribunal, 6/7 Hanover Street East, Dublin 2.
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By Hand

Mr. Michael McDowell T.D.
Minister for Justice, Equality and Law Reform
Department of Justice, Equality and Law Reform
72/76 St. Stephen's Green
Dublin 2

Dear Minister,

REFUGEE APPEALS TRIBUNAL

I enclose the non-statutory Annual Report for the year ended 31 December, 2002 of the Refugee Appeals Tribunal required by my contract of appointment of October, 2000.

The primary objective of the Tribunal is to reach those people who need and deserve international protection. Accordingly, you will see from the Report that in 2002, we have focused upon:

- Strengthening the framework for a consistent and fair appeal determination process.
- Increasing the scheduling of cases for oral hearings - 5275 cases were scheduled in 2002 against 3039 in the year 2001 - an increase of 74%.
- The timely completion of 5551 appeals in 2002 compared to 3428 in 2001 - an increase of 62%.
- Reducing the length of time an appeal is within the appeal system. In substantive appeals requiring an oral hearing, the average period has been reduced to 17 weeks from a pre-establishment sample average of completed appeals of up to nine months.
- Giving administrative and legal support to the Members of the Tribunal.

I refer you to Section 7 of the Report which deals with a "*Summary of the Work of the Tribunal*".

I would like to thank the staff of the Tribunal, all of whom have been seconded from your Department, for their dedication and efficiency in achieving so much in 2002.

The Members of the Tribunal have a singularly difficult task and onerous responsibility in adjudicating upon applications for a declaration of refugee status. Their function is to decide whether a person has a well-founded fear of persecution against a background that the person might ultimately be returned to their country of origin. It is a complex task and a heavy burden. An especial thanks is due to each of them for their professional contribution to the Tribunal in 2002.

I would like to thank too Mr. Pat Folan, Assistant Secretary of the Asylum, Immigration and Citizenship Division and his team for their continuing help and co-operation.

I understand that it is intended that the reporting requirement included in my contract of appointment is to become statutory for the then current Chairperson. Accordingly, I should say that I have no difficulty in my Report for 2002 being presented to both Houses of the Oireachtas jointly with the Report of the Refugee Applications Commissioner.

Yours sincerely,

P. J. Farrell

Chairperson

Refugee Appeals Tribunal

16 January 2003

2. Introduction to the Tribunal

2.1 Commencement

The Refugee Appeals Tribunal ("the Tribunal") was established on 4 October, 2000, in accordance with Sections 14 and 15 of the Refugee Act, 1996 (as amended) ("the 1996 Act") to consider and decide appeals against Recommendations of the Refugee Applications Commissioner, that Applicants should not be declared to be refugees. The Refugee Act, 1996 was implemented on 20 November, 2000 and the work of the Tribunal commenced on that date. A number of Statutory Instruments were made to complement the procedures to be followed under the 1996 Act which are listed in Appendix 1.

2.2 Commencement of Oral Hearings and Appeals on the Papers

The Tribunal arranges hearings for 4 days a week in 7 hearing rooms. We schedule 5 cases a day for each available Member.

2.3 Operational Development

As with all growing organisations a considerable number of issues have to be dealt with. These include improving the appeal procedures with a view to establishing best practice, ongoing recruiting, training and development of staff, day to day legal issues, defending legal proceedings, redefining our key business units and their precise objectives, supporting the Members and much more. Many administrative, policy and legal issues continue to arise but we aim to take a proactive stance by developing new strategies quickly to implement the intention of the 1996 Act.

3. Task Statement and Critical Success Factors

The primary function of the Tribunal is to affirm or set aside a Recommendation made by the Refugee Applications Commissioner that a person should not be given a declaration as a refugee.

3.1 Definition of a Refugee

A “refugee” is 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: or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

In 2002, 5297 people appealed to the Tribunal representing approximately 86% of all Recommendations made by the Refugee Applications Commissioner. The Tribunal Members made 4951 Decisions.

3.2 Task Statement

The Tribunal is independent in the performance of its functions. On commencement of the Tribunal on 20 November, 2000, we adopted the following task statement:-

To establish who is a “refugee” and to do so:-

- fairly, in accordance with law
- with respect for the dignity of the people we meet during the process
- quickly
- with the highest standard of professional competence
- in a spirit of openness to change in how the appeal process is managed.

3.3 Critical Success Factors

The objective of the Tribunal is to reach those asylum seekers who need and deserve international protection.

The success of the Tribunal in achieving its task depends on close management of a number of significant factors coming together, in particular:-

- The availability of the Applicant and his/her legal representative for oral hearings.

- Experienced and available Tribunal Members to consider and decide cases.

- The availability of Presenting Officers from the Commissioner's Office whose Recommendations at first instance are being appealed to the Tribunal.

- The availability of interpreters to interpret at oral hearings.

- Trained and experienced administrative staff.

- The scheduling of a significant number of hearings which involves a complex arrangement to ensure the attendance of Members, Presenting Officers, the Applicant, legal representatives and interpreters.

- Support for the preparation and issue of the Members' Decisions.

4. Nature and Composition of the Tribunal

4.1 General

The Tribunal is a statutorily independent body created and operating under the 1996 Act and exercises a quasi-judicial function. The Tribunal consists of a Chairperson and such number of ordinary Members of the Tribunal as the Minister for Justice, Equality and Law Reform, with the consent of the Minister for Finance, considers necessary for the expeditious dispatch of the business of the Tribunal.

4.2 Chairperson

The Chairperson of the Tribunal is Mr. P.J. Farrell B.C.L., Dip. Eur. L., Solicitor who was appointed effective from 10 November, 2000. The Chairperson is not a civil servant within the meaning of the Civil Service Regulation Act, 1956.

Functions of Chairperson

Under his contract of appointment the functions of the Chairperson include: -

- The administration of the Tribunal including assigning to each division of the Tribunal the business to be transacted by it.
- Ensuring the efficient and effective operation of the appeals system under sections 16 and 22 of the 1996 Act.
- Ensuring that Decisions of the Tribunal are communicated in a timely fashion to the appropriate persons and bodies.
- Convening meetings of the Members of the Tribunal at least twice a year to review the work of the Tribunal and arranging for the provision of training programmes for Members of the Tribunal, in accordance with paragraph 12 of the Second Schedule to the 1996 Act.
- Developing systems for the purpose of setting and maintaining standards and developing suitable quality control procedures.
- Ensuring that there is readily available to Members of the Tribunal, information on Country of Origin, case law and any other national or international developments in relation to asylum which may be relevant to the conduct of appeal hearings.
- Reviewing national and international case law, with a view to revising procedures and improving standards, as appropriate.

- Advising the Minister for Justice, Equality and Law Reform on the development and modification of regulations/procedures to ensure that all appellants have the opportunity of a fair hearing with due consideration given to the relevant legal and factual issues.
- Reporting on the discharge of the general functions of the Tribunal to the Minister for Justice, Equality and Law Reform on an annual basis

4.3 Members of the Tribunal

Ordinary Members of the Tribunal are appointed by the Minister under paragraph 2 of the Second Schedule of the 1996 Act, each of whom is required to have had not less than five years' experience as a practising barrister or practising solicitor before appointment. Their appointment is on a part-time basis for a period of three years. Each Member is independent in the performance of his/her function to consider and decide appeals. There are currently 30 Members of the Tribunal, nine of whom were appointed during 2002 (details are set out in Section 6). Approval has been given by the Minister, with the consent of the Minister for Finance, to increase, as necessary, the number of Members to 32.

4.4 Staff of the Tribunal

In accordance with the Second Schedule of the 1996 Act, the Minister may appoint such and so many persons to be members of the staff of the Tribunal as he considers necessary to assist the Tribunal in the performance of its functions. The staff of the Tribunal receive remuneration and are subject to other conditions of service as the Minister, with the consent of the Minister for Finance, determines. Members of the staff of the Tribunal are civil servants within the meaning of the Civil Service Regulation Act, 1956. Staff are currently assigned to the Tribunal from the Department of Justice, Equality and Law Reform. The number of staff approved by the Government to be assigned to the Tribunal is 147.

On 31 December, 2002, the staff complement was 125. The integration of new staff, many of whom are young people, new to the Civil Service, continues to be a major management task. The Tribunal gives priority to the training of its staff in the operation of the appeal process and also, other skills and competencies such as customer care, information technology and supervisory management.

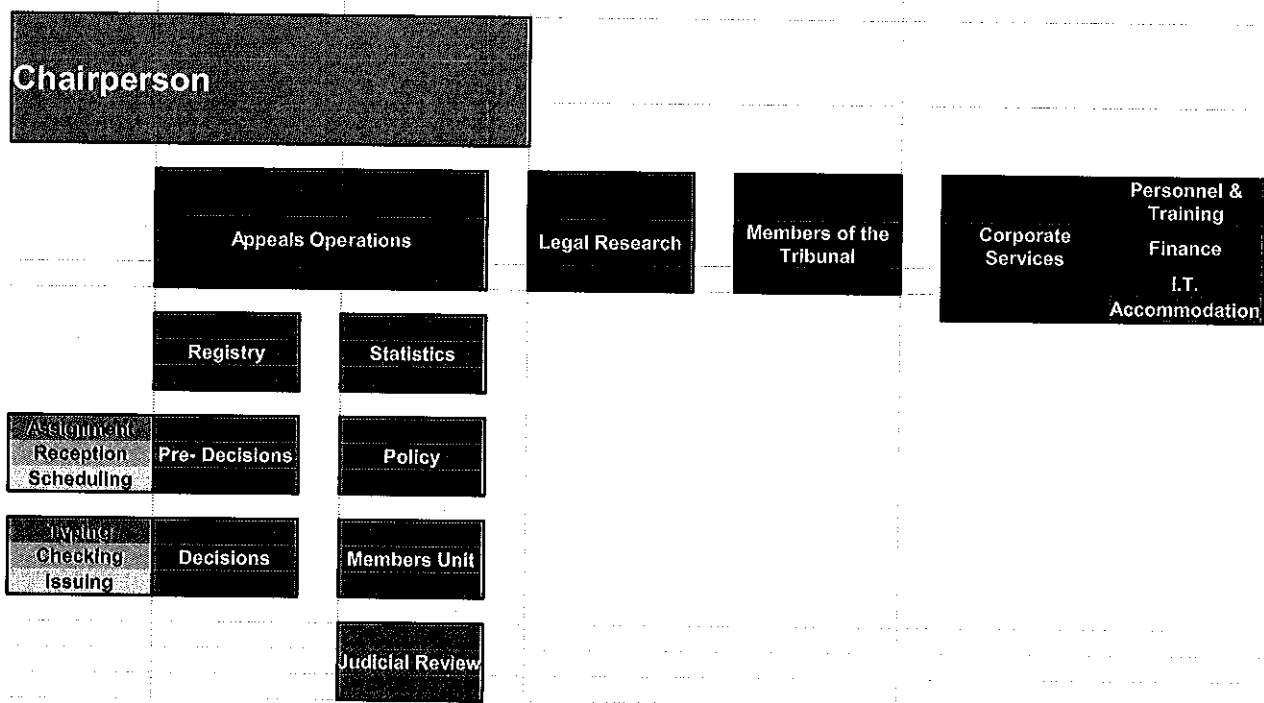
The availability of experienced trained staff and effective managers continues to be essential to the future success of the Tribunal in their support role to the Members.

5. Appeal Operations and Support

5.1 General

The Tribunal is divided into a number of business units to enable it to carry out its functions efficiently.

Chart 5.1 - Organisation Chart



5.2 Operations and Support

5.2.1 The Registry Unit

The Registry Unit is responsible for receiving, checking, recording and processing all Notices of Appeal. The Unit is also responsible for receiving, checking, recording and processing all correspondence including correspondence with the Refugee Applications Commissioner, the United Nations High Commissioner for Refugees ("the UNHCR"), legal representatives and Applicants. As appropriate, correspondence is then directed to the relevant business unit within the Tribunal. The Unit ensures timely receipt of the Applicants' files from the Commissioner's Office.

5.2.2 Appeals Processing Units: Scheduling and Decisions Units

These Units are responsible for the processing of all appeals against the negative Recommendations of the Commissioner - Substantive, Manifestly Unfounded and Dublin Convention appeals. The general process is divided into a number of discrete groups, the Pre-Decision Unit and the Decisions Unit. The Pre-Decision Unit arranges for the preparation of appeal case files, assignment of cases to Members by the Chairperson and also, arranges the scheduling of cases for hearing. The Decisions Unit supports the Members in the preparation and issue of their Decisions in accordance with the Appeals Regulations.

5.2.3 Co-ordination and Statistics Unit / Policy Unit

The Co-ordination and Statistics Unit is responsible for:-

- (a) establishing and managing a comprehensive statistical system to track the work of the Tribunal and for co-ordinating activity between the Tribunal, the Commissioner and other constituent parts of the asylum system
- (b) preparing a weekly and monthly statistical report for the Chairperson on the number of appeals received, cases assigned, decided and withdrawn
- (c) preparing a monthly report for the Chairperson which identifies any delays in the appeals process
- (d) liaising with the Department, the UNHCR and other external governmental and non-governmental bodies, and
- (e) providing briefing information on request for the Chairperson and others, drafting replies to Parliamentary Questions, undertaking specific projects directed by the Chairperson such as the method of assignment of cases and, time and motion exercises on the speed of the appeal process.

The Policy Unit is responsible for reviewing and developing our policy and procedures with the business objective of establishing best administrative practice in the processing of appeals.

Projects undertaken by the Policy Unit during 2002 included:

- (a) in the last quarter of 2002, a review of all operational procedures and standard process letters
- (b) a review of the Appeals Regulations and consideration of proposed amendments to the 1996 Act
- (c) documenting procedures to support all key processes and policies within the Tribunal including the integration of critical control points for performance management
- (d) preliminary drafts of the Annual Report, Business Plan and Key Performance Indicators
- (e) review of some international set-aside rates by selected country of origin
- (f) consideration of publication of Members' Decisions
- (g) consideration of regional appeal hearings.

5.2.4 Tribunal Members Unit

This Unit is responsible for acting as a liaison with the Members and with the other units of the Tribunal. In addition, the primary function of the Unit is to ensure that the Country of Origin information made available to Members is current, objective and relevant to their caseload. It co-ordinates the day-to-day backup services for the Members which involves making all practical arrangements for the Members' Training and Education programme in addition to collating the training/educational resource materials. Finally, it has an ongoing role in reviewing the contribution of Members to the Tribunal.

5.2.5 Judicial Review Unit

This Unit considers the response to judicial review proceedings. It records and monitors progress of all judicial reviews, considers all legal documents received and co-ordinates a robust reply with the Chairperson, the Attorney General's Office, the Chief State Solicitor's Office and the Member.

5.3 Unaccompanied Minors

During 2002 the number of appeals from unaccompanied minors increased and the pattern looks likely to continue. In a recent European Council on Refugees & Exile (ECRE) Country Report 2001 the number of unaccompanied minors entering the Irish asylum system increased twofold in 2001 over 2000. The total European increase was 46% and Ireland ranked ninth in a list of 20 European host countries. Many of these Applicants are now entering the appeal stage of the asylum process.

The Tribunal, in recognition of the sensitivities surrounding the processing of appeals by unaccompanied minors has prepared special procedures to deal with such appeals. Three Members have received intensive special UNHCR training to hear such cases. The Tribunal intends to have four additional Members available to hear unaccompanied minors cases and training has been arranged for these Members in January, 2003. We are in regular consultation with the Commissioner, the Department and all other agencies involved with unaccompanied minors. The procedures are currently being reviewed in the light of experience gained from hearing appeals from July 2002.

As of 31 December, 2002 there were 275 appeals from Unaccompanied Minors on hand in the Tribunal.

The Chairperson appreciates the particular assistance given by Sunniva McDonagh B.L. Rory MacCabe S.C. and Doreen Shivnen B.L. in dealing with the issues around unaccompanied minors and hearing those appeals.

5.4 Changes in Organisational Structure in 2002

In the general Business Plan for asylum prepared prior to the establishment of the Tribunal, it was envisaged that the ratio of Manifestly Unfounded cases to Substantive cases would be 40:60 respectively. As a result the Tribunal's original organisation structure reflected this mix in the allocation of staff resources. However, as time progressed it became apparent that the majority of appeals were of a Substantive nature (currently 95%). The decision was made to develop one, integrated, standard process for all appeals with controls put in place to ensure compliance with appeal-specific statutory and timing requirements.

6. Members of the Tribunal

6.1 Introduction

The Tribunal is grouped into divisions, each of which consists of one Member. At 31 December, 2002 there were 30 divisions of the Tribunal. On average, seven divisions sit and hear appeals on a daily basis, four days a week. The Members of the Tribunal are part-time and the majority of them are Barristers or Solicitors who have private legal practices. The Members are appointed by the Minister for a term of 3 years and must have been a practising Barrister or Solicitor for at least five years to qualify for appointment.

6.2 List of Members

The following is an alphabetical list of all the Members of the Tribunal and their date of appointment by the Minister.

Member	DATE OF LETTER OF APPOINTMENT
David Andrews S.C.	05/06/02
Eamonn Barnes B.L.	23/11/00
Joseph Barnes B.L.	28/05/02
Bruce St John Blake Solicitor	28/02/02
Conor Bowman B.L.	23/11/00
His Honour Judge Bernard Brennan *	10/12/01
Eamon Cahill S.C.	23/11/00
Bernadette Cronin S.C.	27/11/00
Dymphna Cusack B.L.	23/11/00
Aidan Eames Solicitor	30/11/00
Donal Egan B.L.	23/11/00
Ben Garvey B.L.	28/09/01
Veronica Gates B.L.	11/12/00
John Hayes Solicitor	14/03/02
Patrick Hurley Solicitor	27/11/00
Her Honour Judge Gillian Hussey	23/05/02
Monica Lawlor B.L. *	31/01/01
Denis Linehan Solicitor	11/03/02
Rory MacCabe S.C.	04/08/01
Sunniva McDonagh B.L.	23/11/00
Paul McGarry B.L.	29/01/02
Declan McHugh B.L.	12/10/01
Con Murphy Solicitor	23/02/01
Jim Nicholson B.L.	27/11/00
Michelle O'Gorman B.L.	27/07/01
Michael O'Kennedy S.C.	05/06/02
John Ryan B.L.	23/01/01
Doreen Shiven B.L.	23/01/01
Anne Tait Solicitor	14/03/02
Joseph Ward B.L.	06/02/01
Des Zaidan B.L.	30/11/00

* Ms. Monica Lawlor B.L. resigned in August, 2002. * Judge Bernard Brennan retired in May, 2002.

6.3 Structure of Work of the Members of the Tribunal Where an Oral Hearing is Requested

Following the commencement of the 1996 Act, cases are assigned to Members of the Tribunal by the Chairperson prior to setting the date of an oral hearing. Each case must first be examined by the Member, who establishes whether he/she believes it is necessary for further enquiries to be made of the Commissioner (under Section 16(6) of the 1996 Act) or whether the observations of the Commissioner are to be sought in relation to the grounds of appeal filed (under Section 16(7) of the 1996 Act), all this before a hearing is scheduled. Where the Notice of Appeal includes a request to the Tribunal to direct the attendance of a witness before the Tribunal, the Member must determine in accordance with Section 16(11) of the 1996 Act whether this request should be granted.

Before deciding an appeal, the Member is specifically obliged under Section 16(16) of the 1996 Act to consider:-

- the notice and the grounds of appeal including all supporting documentation and records, the report and recommendation of the Commissioner
- any observations from the Commissioner and/or the UNHCR
- the evidence adduced at the oral hearing and any representations made at the hearing
- any documents, representations in writing or other information furnished pursuant to Section 11 of the 1996 Act and any documents submitted with the appeal.

The Member then prepares a written Decision. The Decision is checked and signed by the Member. Significant administrative support is required to achieve the objective of accepting, preparing and scheduling appeals to the issuing of Decisions.

6.4 Training and Information for Members of the Tribunal

The 1996 Act requires the Chairperson to make provision for training programmes for Members. Consistent and high quality decision making, comparable to international standards, is our objective. However, each Member is independent in how they decide an individual case. We believe that consistency in the outcome of appeals is necessary to maintain the integrity of the Tribunal.

The Tribunal has appointed a Law Researcher to assist the Chairperson develop, inter alia, an internal case-reporting system for Members, initially, in Manifestly Unfounded appeals. The Tribunal has approval for the appointment of two Law Researchers and hopes to appoint a second in 2003.

The UNHCR has been involved in organising, or has actively participated in, many of the training programmes and seminars throughout the year. Many of the early training courses were introductory to the changes in procedure and requirements following the implementation of the 1996 Act. More recent training courses and seminars have tended to focus on discrete issues which are being encountered, or that may be encountered, by Members.

Four training courses for new Members were presented in 2002 by an experienced Member, Mr. Eamon Cahill S.C. The Chairperson appreciates the time and commitment of Mr. Cahill in having led these courses.

During the course of the year we provided to Members the basic textbooks and copies of the many recent Judgements of the Irish Courts on asylum issues.

6.4.1 Training Programme and Seminars for Members of the Tribunal

Topic / Location	Date
New Members Training (Mr. E. Cahill, S.C., Member of Tribunal) Venue: Dublin	21/01/02 22/01/02
"Determination Writing Skills" and "Use of Country of Origin Information in Asylum Appeals" (Speakers: Mr. James Latter, Tribunal Chairman, Immigration Appellate Authority (IAA), United Kingdom and Mr. Mungo Deans, Regional Adjudicator, IAA, United Kingdom) Venue: Dublin	22/02/02
Centre for the Care of Survivors of Torture (SPIRASI) "Seminar on Torture" (Presentation by CCST Physicians Dr. Patrick O'Sullivan and Dr. John Good) Venue: Dublin	15/03/02
New Members Training (Mr. E. Cahill, S.C., Member of Tribunal) Venue: Dublin	10/04/02 11/04/02
"Racism in Ireland" Presentation by National Consultative Committee on Racism and Interculturalism (NCCRI) (Speaker : Mr. Philip Watt, Director, NCCRI) Venue: Dublin	25/04/02
International Association of Refugee Law Judges (IARLJ) "Refugee Status Determination Workshop" (Conducted by Mr. Ralf Grunert, UNHCR, His Honour Judge David Allan, Immigration Appeals Tribunal, United Kingdom and Her Honour Judge Katelijne Declerck, Vice President IARLJ) Venue: Dublin	14/05/02 15/05/02
IARLJ European Chapter Conference "The Creation of a Common European Asylum System EU Refugee Policy / Law & Harmonisation Process" (Chairperson: Mr. Alan Mackey, Member of UK Immigration Appeals Tribunal Speakers : Mr. Friso Roscam Abbing, European Union, Mr. Johannes van der Klaauw, Representative of UNHCR to the EU, Mr. Goran Hakansson, Chairman of the Swedish Refugee Asylum Appeals Board "The Refugee Definition and the Issue of Complementary Protection" (Chairperson: Mr. Eamonn Barnes, B.L., Member of Refugee Appeals Tribunal Speakers: Mr. Friso Roscam Abbing, Mr. Johannes van de Klaauw) Venue: Dublin Castle	16/05/02 17/05/02
New Members Training (Mr. E. Cahill, S.C., Member of Tribunal) Venue: Dublin	22/05/02
"The Work of the Garda National Immigration Bureau (GNIB)" (Presentation by Detective Superintendent John O'Driscoll (GNIB)) Venue: Dublin	30/05/02
The International Institute of Humanitarian Law Refugee Law Course San Remo, Italy.	04/06/02 to 08/06/02
"UNHCR Country of Origin Information Seminar on Moldova" (Speaker: Mr. Oldrich Andrysek, Representative of UNHCR Chisinau, Moldova) Venue: Dublin	12/06/02

6.4.1 Continued: Training Programme and Seminars for Members of the Tribunal.

Topic / Location	Date
New Members Training (Mr. E. Cahill, S.C., Member of Tribunal) Venue: Dublin	25/06/02 to 27/06/02
Country of Origin Information (Presentation by Mr Roger Rooney, Senior Researcher in the Australian Refugee Review Tribunal) Venue: Dublin	27/06/02
UNHCR Dublin "Membership of a Particular Social Group" Seminar (Presenter: Ms. Ciara Smyth, UNHCR Protection Assistant, Liaison Office for Ireland) Venue: Dublin	06/09/02
UNHCR Dublin Country of Origin Information Seminars on "Russian Federation" and "Ukraine" (Speakers : Ms. Pia Prutz Phiri UNHCR, Head of Liaison Office, Dublin, Mr. Torgny Hinnemo, Special Adviser for CIS, Ministry for Foreign Affairs, Stockholm, Sweden, Mr. Dmytro Groysman, Project Co-ordinator of Podilskij Service Centre for Refugees and Asylum Seekers, Mr. Bayisa Wak-Woya, UNHCR Geneva, Senior Legal Officer) Venue: Dublin	08/10/02 09/10/02
Refugee Documentation Centre / Refugee Appeals Tribunal, Dublin Presentation on Country of Origin Information Websites, Internet & Query / Research Service Venue: Dublin	18/10/02
<i>International Association of Refugee Law Judges (IARLJ) Conference</i> "Stemming the Tide or Keeping the Balance - The Role of the Judiciary" (Chairpersons: Prof. James Hathaway, University of Michigan, Mr. Peter Showler, Chairman, Immigration and Refugee Board, Canada, Her Honour Judge Katelijne Declerck, Belgium, Sir Rodger Haines, QC, New Zealand RSAA Deputy Chairman, The Rt. Hon. Justice Sir Kenneth Keith, Court of Appeal, New Zealand, Speakers: various "An Examination of Post Traumatic Stress Disorders as Experienced by Asylum-seekers / Medical Reports / Credibility issues arising out of Medical Investigations" (Chairperson: Mr. Geoffrey Care, President, IARLJ Speakers: Ms. Karen Zwaan, The Netherlands, Dr. John Good and Dr. Patrick O'Sullivan of Irish Centre for the Care of Survivors of Torture, Mr. Jui Antoine Quintyn, Clinical Psychologist, Asylum and Refugee Divisions, Ministry of the Interior, Belgium, Dr. Joes H.M. Van Willigan, Refugee Health Care Consultant, The Netherlands).	21/10/02 to 25/10/02
UNHCR Dublin "Refugee Status Determination of Pre-Adolescent Children" (Speakers : Ms. Marie Hesse, Director, Municipal Mental Welfare Service for Children and Young People, Stockholm, Sweden, Ms. Ann-Sofie Holm, Asylum Office, Swedish Migration Board) Venue: Dublin	31/10/02 to 1/11/02
<i>The International Institute of Humanitarian Law</i> Refugee Law Course Venue: San Remo, Italy.	05/11/02 to 09/11/02
<i>ELENA (The European Legal Network on Asylum)</i> International Introductory Course on Refugee & Asylum Law (Lecturers : Professor James Hathaway, University of Michigan, Prof. Walter Kalin, University of Bern) Venue: Sintra, Portugal	28/11/02 to 01/12/02

6.5 Ad-Hoc Committee of Members

There is an Ad Hoc Practice and Procedure Committee made up of Members which meets when appropriate. The purpose of the Committee is first, to develop, in conjunction with our lunch meetings, the principle of collegiality among the Members of the Tribunal and secondly, to share knowledge and experience of the appeal process and to bring to all Members suggestions of best practice in how we go about the status determination process, so that it is consistent and fair. The discussions focused on a range of matters relating to Members' ongoing training and educational needs in addition to practice and procedural issues. The Ad Hoc Committee Members include: Donal Egan B.L. Doreen Shivnen B.L. Jim Nicholson B.L. John Ryan B.L. Sunniva Mc Donagh B.L. and the Chairperson, who is grateful for the contribution of these Members.

The Chairperson has recently established an Ad Hoc Committee to discuss drafting a Code of Conduct for Members in 2003. Patrick Hurley, Solicitor and Bruce St. John Blake, Solicitor have agreed to join this Committee which is much appreciated by the Chairperson.

6.6 Lunch Meetings

The Chairperson held regular lunch meetings with Members in 2002. The purpose of such lunches is to share general knowledge and experience of the appeals process and procedure between Members.

6.7 Country of Origin Information

The Tribunal maintains a bank of primary sources of Country of Origin Information (COI) for the use of the Members. This is updated on an ongoing basis. In addition, the Members have Internet access and the most frequently used Websites have been set up as "favourites" for them.

The Refugee Documentation Centre maintains a collection of objective, verifiable and up-to date COI, to which the Members have access. The Centre also operates a query service, which the Members are encouraged to use.

In addition to the COI training courses attended by Members, as outlined in Section 6.4.1, staff of the Tribunal attended two COI meetings during the year viz.:

(a) ACCORD COI Seminar in Vienna on 28 and 29 June, 2002

ACCORD - the Austrian Centre for Country of Origin and Asylum Research and Documentation is co-funded by the European Refugee Fund. The aim of the Seminar was to provide well-documented, up-to-date and accurate country of origin information on Armenia, D.R. Congo, Nigeria and the Russian Federation and to offer a forum for exchange and co-operation among governmental and non-governmental experts in the area of COI research, documentation and dissemination.

(b) Inter Governmental Conference (IGC) COI Working Group and Workshop in Geneva on 13 and 14 November, 2002

The IGC is an informal, non-decision making forum for inter- governmental information exchange and policy debate on all issues of relevance to the management of international migratory flows. In its current configuration, the IGC brings together the following participating States: Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States of America. UNHCR, IOM (International Organisation for Migration), and the European Commission also participate in the IGC process.

6.8 Law Researcher

The Work Programme of the Law Researcher (appointed in the Summer of 2002) includes (under the direction of the Chairperson):-

Review and categorisation of Manifestly Unfounded Decisions of Members - 1 January 2001 to 31 December, 2001.

Practice Information Sheet to Members.

Establishment of a "minimum" library.

Draft Position Papers on such matters as Internal Relocation / Internal Flight.

Develop "grounds of appeal" database.

Judicial Review - summary of High Court and Supreme Court Judgements.

The demands upon us in developing a consistent and fair determination process require more resources and the hope is to have an additional Law Researcher in 2003.

6.9 Members Availability

Availability of Members to take on oral hearings is critical to the successful scheduling and completion of appeals. However, Members are part time and the majority have private legal practices to be managed and their own client demands to be fulfilled. Discussions are occurring to encourage greater availability among all the Members and the more timely return of draft Decisions after an oral hearing has occurred. Reviews of contributions to the work of the Tribunal have been, and will continue to be, made available to Members. Of course it is understandable, in the current social circumstances where there is a large number of asylum applications and appeals, that availability of Members and timeliness of Decisions are very important. But, consistent and fair Decisions of the Tribunal are paramount to maintain the confidence of the public and the integrity of the asylum system.

6.10 Members Fees

There is attached as Appendix 3 an outline of the fee structure for Members which was revised during 2002 with the consent of the Minister for Finance. The Chairperson appreciates the contribution of Eamonn Barnes B.L. and Eamon Cahill S.C. in advancing this issue.

6.11 Statutory Meetings

As required by the 1996 Act, the Chairperson convened two meetings during the course of the year, on 26th September, 2002 and 5th December, 2002. Summarised Agendas for both meetings are attached at Appendix 4.

6.12 Issue of Positive Decisions

The Minister for Justice, Equality and Law Reform signed new Appeal Regulations in December, 2002 which enables the Tribunal to issue positive Decisions to Applicants.

7. Summary of the Work of the Tribunal

7.1 Introduction

This Section of the Report outlines the work of the Tribunal from 1 January, 2002 to 31 December, 2002 and how we achieved our objectives of first, reducing the backlog of appeals, secondly, increasing the number of cases scheduled on a monthly basis, thirdly, increasing the number of Decisions made and issued to Applicants and fourthly, reducing the time taken to deal with an appeal from the date of receipt of a Notice of Appeal to the date a Decision issues. The information is set out broadly in the order of the appeals process, as follows:

- Appeals Received
- Cases scheduled for hearing
- Appeals Completed
- Appeals Outstanding

7.2 Executive Summary for 2002

5297 Appeals Received	-	an increase of 31% over 2001
5275 Cases Scheduled	-	an increase of 74% over 2001
4951 Decisions Issued	-	an increase of 76% over 2001
5551 Completed Appeals ¹	-	an increase of 60% over 2001
5291 Substantive Appeals Completed	-	an increase of 112% over 2001

7.3 Appeals Received

Table 7.3.1 sets out the number of Substantive, Manifestly Unfounded and Dublin Convention appeals received in each of the years 2000, 2001 and 2002.

¹ Completed appeals includes decided appeals, withdrawals and "no shows".

Table 7.3.1 Total Appeals Received**Substantive/Manifestly Unfounded/Dublin Convention**

Month	2000	2001	2002
January	392	206	361
February	233	412	438
March	333	301	405
April	225	211	423
May	377	302	535
June	379	254	443
July	404	222	528
August	457	300	504
September	351	300	390
October	347	481	475
November	233	451	543
December	158	593	252
Total	3889	4033	5297

Table 7.3.1 shows that a total of 5297 appeals were received in 2002. This is an increase of 31% on the previous year and 36% on the figures for 2000 (under the former administrative system).

7.4. Number of Appeals Scheduled

The preparation of the weekly schedule of hearings is complex. Cases can only be scheduled for oral hearings when an examination of the file has been completed by a Member of the Tribunal. An appeal file is extensive and includes the initial application for asylum, a detailed Questionnaire (84 sections/questions) which has been completed by the Applicant, written notes of an Interview between the Applicant and an officer of the Commissioner's Office, Section 11 and Section 13 reports on the questionnaire and interview notes prepared by the Commissioner's Office, the Recommendation of the Commissioner, the Notice of Appeal itself, country of origin information and other miscellaneous documents.

The number of parties involved in each oral hearing varies but generally, includes the Applicant, his/her legal representative, an interpreter, the Presenting Officer of the Commissioner and the Member of the Tribunal. Sometimes witness(es) attendance must be assessed and also, if requested, the UNHCR may be in attendance. The arrangements for every case are made about three to four weeks in advance.

Table 7.4.1 Number of Hearings Scheduled in 2000, 2001 and 2002

Month	2000	2001	2002
January	126	Nil	391
February *	126	75 *	426
March	108	195	402
April	129	135	416
May	168	333	477
June	125	227	421
July	133	225	558
August	30	235	351
September	130	406	492
October	44	427	460
November	Nil	448	521
December	Nil	333	360
Total	1119	3039	5275

Table 7.4.1 shows that a total of 5275 hearings were scheduled for 2002. This is an increase of nearly 74% on 2001.

7.5 Conduct of Appeals outside Dublin

In August 2002, the Policy Unit of the Tribunal completed a second review of conducting regional appeal hearings. It was concluded that given the current geographical spread of Applicants we could not justify the application of resources at the present time to regional hearings.

7.6 No shows, Adjournments, Postponements and Withdrawals

7.6.1 No Shows and Withdrawals

If the Applicant does not attend for a scheduled hearing without reasonable cause the Tribunal will affirm the Recommendation of the Commissioner made at first instance. However, the Applicant has 3 working days to show reasonable cause for his/her non attendance.

In 2002, the number of "No Shows" was 381 which represented 7% of the total number of cases scheduled. However, in 137 cases (36% of "no shows") Applicants were able to demonstrate to the Tribunal reasonable cause for not attending and were rescheduled.

* Oral hearings were deferred on 5 October, 2000 prior to the implementation of the 1996 Act on 20 November, 2000 and recommenced under the new statutory procedures on 20th February, 2001.

An Applicant may withdraw his/her appeal at any stage in the process for a number of reasons, for example, Irish Born Child (IBC), marriage to an Irish or EU national or voluntary repatriation to their country of origin. In the event of a withdrawal, the original Recommendation of the Commissioner stands. In 2002, 600 applicants withdrew their appeals.

The number of “No-Shows” and “Withdrawals” represents 18.6% of all scheduled cases. This is an issue of concern to the Tribunal having regard to the time and resources of staff and Members applied in scheduling and preparing for an appeal.

Table 7.6.2 sets out the number of No Shows, Adjournments, Postponements and Withdrawals for the year 2002.

Table 7.6.2 Number of No Shows at Hearings, Adjournments, Postponements and Withdrawals in 2001 and 2002

Year	2001	2002
No Shows	286	381
Adjournments	275	578
Postponements	470	678
Withdrawals	655	600
Total	1686	2237

7.6.3 Adjournments and Postponements

It will be noted that nearly 24% of scheduled cases are either postponed or adjourned. An analysis of the reasons why adjournments and postponements are granted is being undertaken. Of course, in the interests of natural justice and fair procedures an adjournment should be granted in appropriate circumstances.

7.7 Appeals Completed and Decisions of Members

The Tribunal completed 5551 appeals from 1 January, 2002 to 31 December, 2002 (Table 7.7.1) an increase of 62% on the 2001 figure.

Table 7.7.1 Total Completed Appeals

Month	2000	2001	2002
January	183	88	575
February*	133	78*	481
March	176	253	400
April	148	187	366
May	126	445	481
June	233	248	506
July	313	201	431
August	270	383	418
September	321	289	577
October	764	468	472
November	898	545	509
December	28	243	335
Total	3593	3428	5551

Appeals completed include Substantive, Manifestly Unfounded, Dublin Convention Decisions and withdrawals and “no-shows”.

Table 7.7.2 Substantive Completed Appeals

Month	2000	2001	2002
January	161	57	520
February*	120	10*	431
March	150	79	393
April	127	115	345
May	113	284	473
June	143	194	485
July	141	136	415
August	164	261	410
September	90	231	543
October	370	404	468
November	513	498	487
December	28	227	321
Total	2120	2496	5291

Table 7.7.2 indicates that the total number of Substantive appeals completed in 2002 increased by **112%** on the full year figure for 2001.

*

Oral hearings were deferred on 5 October, 2000 prior to the implementation of the 1996 Act on 20 November, 2000 and recommenced under the new statutory procedures on 20th February, 2001.

Table 7.7.3 Manifestly Unfounded Completed Appeals

Month	2000	2001	2002
January	22	31	27
February	13	53	35
March	26	170	3
April	21	71	14
May	13	152	5
June	90	32	8
July	172	49	9
August	106	86	7
September	231	44	13
October	394	47	0
November	385	18	15
December	0	15	2
Total	1473	768	138

Table 7.7.3 indicates that the number of Manifestly Unfounded appeals completed in the year 2002 decreased by over **82%** on the previous year.

Table 7.7.4 Dublin Convention Completed Appeals

Month	2001	2002
January		28
February	15	15
March	4	4
April	1	7
May	9	3
June	22	13
July	16	7
August	36	1
September	14	21
October	17	4
November	29	7
December	1	12
Total	164	122

Table 7.7.4 indicates that the number of Dublin Convention appeals completed in the year 2002 decreased by over 26% on the previous year.

7.8 Appeals on Hand at 31st December, 2002

A total of 2,456 live appeals were on hand as at the 31st December, 2002.

Table 7.8.1 gives a summary of the status of the appeals filed with the Tribunal as at 31st December, 2002 within the appeals process.

Table 7.8.1 Summary of “live appeals” in the Tribunal at 31st December 2002

Total Number of Appeals on Hand	2456
Post-hearing cases (Total number of substantive appeals heard and Members Decisions in preparation for issue)	726
Cases scheduled for hearing	408
Awaiting scheduling (files cleared for hearings by the Members)	555
Manifestly Unfounded appeals	8
Dublin Convention appeals	25
Number of appeals being actively processed	1722
Registry	66
Pre-hearing stage (in preparation for scheduling)	668
Total number of appeals on hand at the Tribunal on 31 December, 2002	2456

Table 7.8.1 indicates that of the 2,456 “live appeals”, 1722 (70%) are at an advanced stage of review and processing while the majority of the balance of “live appeals” were received in the Tribunal in November and December, 2002.

7.8.2 Live Appeals by Year of Appeal

Table 7.8.2 shows the “live appeals” by year of receipt of appeal.

Table 7.8.2 Live Appeals by Year of Appeal

Year of Appeal	Number of Live Appeals
1999	10
2000	37
2001	203
2002	2206
Total	2456

The non-completion of appeals for the years 1999, 2000 and 2001 is due primarily to cases being adjourned.

7.9 Length of Appeal Process

7.9.1 Substantive appeals

A priority for the Tribunal is to reach those people in need of international protection quickly. The average length of “time taken” by the Tribunal to process and complete Substantive appeals received between 1 January and 31 December 2002 is approximately 17 weeks based on a sample of 1,623. Under the administrative procedures (Hope Hanlan), prior to the establishment of Tribunal, a sample of Substantive appeals took on average 36 weeks to complete. For the first year of the Tribunal, a sample based on 500 cases took on average 24 weeks. Tracking appeals through the appeal system and calculating “time taken” is being developed on an ongoing basis in tandem with IT development of the appeals database. The objective of the Tribunal is to reduce the time taken between 14 to 16 weeks to process and complete Substantive appeals. However, high quality, consistent and fair decision making is our priority.

7.9.2 Manifestly Unfounded Appeals - The average length of time taken to process and complete Manifestly Unfounded appeals in 2002 was seven weeks.

7.9.3 Dublin Convention Appeals - In general Dublin Convention appeals are processed and completed within six weeks. The objective of the Tribunal is to process both Manifestly Unfounded and Dublin Convention appeals within six weeks of receipt.

7.10 Country of Origin of Applicants 2002

- Nigerian nationals represented the highest proportion of Applicants in the case of Substantive appeals. The other highest representations were from Romania, Moldova, Croatia, Russia and DR Congo respectively.
- In Manifestly Unfounded appeals the highest representations of Applicants were from Nigeria, Romania, Sierra Leone and Poland respectively.
- In Dublin Convention appeals the majority of Applicants were from Nigeria, Romania, Poland and Sierra Leone respectively.

Table 7.10.1 Substantive, Manifestly Unfounded and Dublin Convention appeals received in 2002 by country of origin.

Nationality	Total Appeals Received	%	Substantive	%	Manifestly Unfounded	%	Dublin Convention	%
Nigeria	1393	26	1354	27	26	27	13	13
Romania	488	9	446	8	32	33	10	10
Moldova	286	5	285	5	0	0	1	1
Croatia	210	4	209	4	0	0	1	1
Russia	187	4	186	4	1	1	0	0
DR Congo	187	4	185	4	0	0	2	2
Poland	182	3	175	3	1	1	6	6
South Africa	147	3	147	3	0	0	0	0
Sierra Leone	148	3	138	3	4	4	6	6
Angola	136	3	136	3	0	0	0	0
Other*	1933* ₁	36	1838* ₂	36	33* ₃	34	62* ₄	61
Total	5297	100	5099	100	97	100	101	100

*

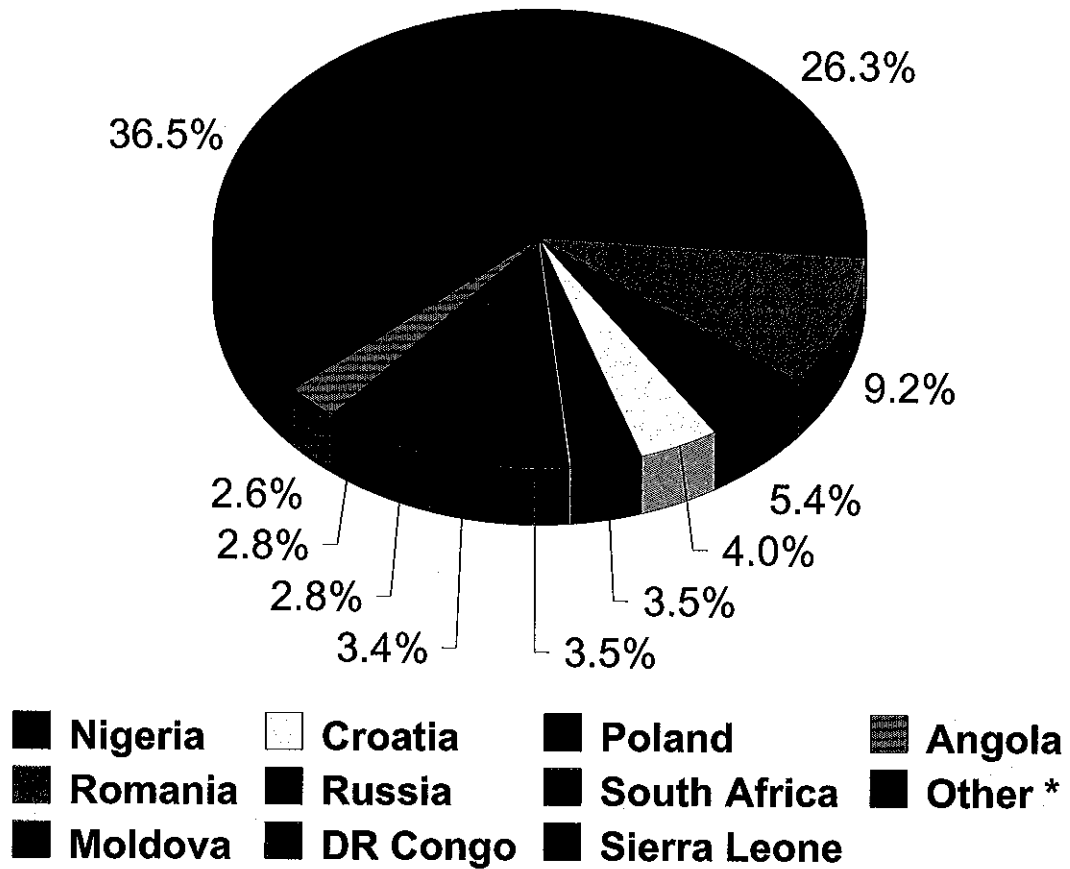
₁ Other includes Algeria, Zimbabwe, Ukraine, Czech Republic and Cameroon.

₂ Other includes Algeria, Zimbabwe, Ukraine, Czech Republic and Cameroon

₃ Other includes Czech Republic, Ukraine, Kosovo, Estonia, China

₄ Other includes Slovakia, Poland, Algeria, Israel, Iraq

**Chart 7.10.2 Substantive, Manifestly Unfounded and Dublin Convention
Current Appeals by Country of Origin Received in 2002**



* Other includes Algeria, Zimbabwe, Ukraine, Czech Republic and Cameroon

7.11 Outcome of Appeals/Recommendations of the Commissioner

75% or three out of four Recommendations made by the Commissioner, which were appealed by way of oral hearing, were upheld by the Tribunal. *25% or one out of four* appeals were overturned.

Tables 7.11.1, 2 and 3 show the number of Recommendations made by the Commissioner which were upheld or set aside on appeal (excluding withdrawals).

Table 7.11 .1 Analysis of Substantive Decisions

Recommendations of Commissioner Affirmed and Set-Aside

Year	Total	Affirmed	% Affirmed
2000	1,547	1,153	75%
2001	1,942	1,462	75%
2002	4703	3606	76%

Table 7.11.2 Analysis of Manifestly Unfounded Decisions

Recommendations of Commissioner Affirmed and Set-Aside

Year	Total	Affirmed	% Affirmed
2000	1,449	1,333	92%
2001	723	548	76%
2002	130		62%

Table 7.11.3 Analysis of Dublin Convention Decisions

Recommendations of Commissioner Affirmed and Set-Aside

Year	Total	Affirmed	% Affirmed
2001	151	150	99%
2002	118	110	93%

Table 7.11.4 Summary of Substantive Appeals by Nationality Affirmed and Set Aside

Substantive Affirmed and Set Asides by Nationality - January 2002 to December 2002				
Nationality	Affirmed	Set Aside	Total	Total Set Asides as % of Total Decisions
Nigeria	1068	131	1199	11%
Romania	538	109	647	17%
Moldova	173	56	229	24%
Algeria	147	55	202	27%
Russia	134	65	199	33%
Dr Congo	109	67	176	38%
Angola	69	80	149	54%
Other*	1368	534	1902	28%
Total	3606	1097	4703	23%

* Other includes Croatia, Kosovo, Czech Republic, Poland, and Sierra Leone.

8. Judicial Review and Other Legal Proceedings

8.1 Legal Proceedings

A Decision made by the Tribunal may be reviewed by the High Court. This is by way of an application to the High Court for judicial review and, in principle, is directed at the process of decision making of the Tribunal in a particular application rather than with the merits of the actual Decision under review. The function of the Judicial Review Unit is to co-ordinate a robust response on behalf of the Tribunal to all legal proceedings under the direction of the Chairperson. The legal advisers to the Tribunal are Mr. David O'Hagan, the Chief State Solicitor and the Attorney General's Office. The Tribunal appreciates the help and assistance received from them and their teams lead by Mr. Ronan Boylan, Solicitor, and Mr. Christopher Doyle B.L., respectively, in 2002.

8.2 Stages in Judicial Review

An application for judicial review involves **two** stages:

Leave - The first stage in the process is leave to apply for judicial review and which **must be made within 14 days of the Decision** of the Tribunal under (Section 5 of the Illegal Immigration (Trafficking) Act, 2000) on notice. The period may be extended by the Court if it considers that there is good and sufficient reason to do so.

Substantive Hearing - The second stage commences if leave is granted by the High Court and a hearing occurs.

An appeal may be made to the Supreme Court but only where the High Court certifies that its decision involves a point of law of exceptional importance and that it is desirable in the public interest, that an appeal should be taken to the Supreme Court.

8.3 Summary of Judicial Review Proceedings to 31 December, 2002

Since commencement of the Tribunal, we are named in 203 judicial reviews. The Tribunal currently has 79 judicial review cases on hand in which we are named as a Respondent, 9 of which relate to the year 2001. There are heavy demands upon the Judicial Review Unit in dealing with so many cases on a daily basis and the hope is that in 2003 the Tribunal will be able to engage an internal solicitor.

8.4 Outline of Asylum Law Jurisprudence - High Court and Supreme Court

A considerable body of caselaw has emerged in relation to asylum and immigration matters, much of it helpfully affecting the Tribunal and developing its procedures and jurisprudence. We have selected a number of Judgements grouped together under broad topical headings to facilitate a contextual understanding of each Tribunal Decision.

8.4.1 Test for Judicial Review

The principles set out in O'Keeffe -v- An Bord Pleanala were affirmed in a number of cases as the applicable standard when a decision on asylum is challenged by way of judicial review.

In Ruslan Salimov -v- The Minister for Justice, Equality and Law Reform, James Nicholson sitting as the Appeals Authority Ireland and the Attorney General, (HC) 8th April 2002, at pages 3 - 4 of the Judgement, Judge Finnegan gave a clear outline of what he determined as the correct standard:

“[t]he principles of law applicable to these grounds are clear. The test was laid down in The State (Keegan) -v- Stardust Victims Compensation Tribunal (1986) I.R. 642 - “the decision sought to be impugned must be so unreasonable that no reasonable decision maker could ever have come to it”.

Again in O'Keeffe -v- An Bord Pleanala 1993 1 I.R. 39 at p.72:

“I am satisfied that in order for an Applicant for Judicial Review to satisfy a court that the decision making authority has acted irrationally in the sense which I have outlined above so that the court can intervene and quash its decision it is necessary that the Applicants should establish to the satisfaction of the court that the decision making authority had before it no relevant material which would support its decisions.”

More recently, in Rebecca Ebun Oke -v- The Refugee Appeals Tribunal, Ben Garvey, The Minister for Justice, Equality and Law Reform and The Attorney General (HC) 25th October, 2002, Judge Finlay-Geoghegan confirmed the standard of proof to be met at the leave stage:

“The meaning of substantial grounds is well established and insofar as applies to refugee cases, the statement of Ms. Justice Carroll in McNamara-v-An Bord Pleanala,

which is reported in the 1995 2 ILRM at 125 in relation to a similar phrase on the planning side that the phrase is equivalent to reasonable, arguable and weighty and the grounds must not be trivial or tenuous was approved by the Supreme Court in the reference under Article 26 of the Illegal Immigrants Trafficking Bill of 1999."

8.4.2 The Nature of the Appeal Hearing

The nature of an appeal hearing before the Tribunal was considered in a number of cases this year.

*In Afrim Hoti -v- John Ryan, sitting as the Refugee Appeals Tribunal (HC) 24th April, 2002, Judge Smyth was of the view that the appeal is not a *lis inter partes*, but rather an inquiry, wherein the Tribunal Members are entitled to ask questions to elicit the facts and to clarify matters or resolve ambiguities. Judge Smyth expressed his view in the following terms:*

*"[i]t is not *lis inter partes*, much less a criminal trial - it is an inquiry or an official investigation and its function is to inquire or search into matter (sic), in that sense it is properly referred to as an inquisition...The hearing...is not simply a rehearing of the Applicant's claim for refugee status but it is a full and investigative hearing of the Tribunal."*

Judge Smyth reiterated this view in Hamid Yacef -v- The Minister for Justice, Equality and Law Reform and Dymphna Cusack (HC) 4th October 2002:

*"The scheme both under the Hope Hanlan Procedures and now under the Acts is inquisitorial in nature - it is a process of enquiry not a *lis inter partes*."*

Earlier in this Judgement, he had commented generally on the nature of an appeal hearing, in the context of its function in the asylum process:

"The Appeals Authority (now the Refugee Appeals Tribunal) was empowered to carry out an independent investigation as if the application had been made to it at first instance. The appeal is not limited to or by what has gone before in terms of evidence or decision, neither is it to ignore such, much less is it obliged to ignore what has gone before."

8.4.3 Standard of Proof when Determining Appeal

The standard of proof which must be met by the Appellant, was identified in Cyprian -v- The Refugee Applications Commissioner, The Refugee Appeals Tribunal, The Minister for Justice, Equality and Law Reform and The Attorney General (HC) 2nd October 2002.

Judge Smyth at page 8 of the Judgement stated that the correct standard to be applied is that as laid down in the case of R -v- Secretary of State for the Home Office, Ex Parte Sivakumaran [1988] 1 AC 958, namely that the Applicant must demonstrate “a reasonable degree of likelihood” of persecution for one of the reasons as expressed in the Refugee Act 1996 or the Geneva Convention.

This approach was affirmed in James Jite Akipotor -v- The Minister for Justice, Equality and Law Reform (HC) 4th October 2002.

8.4.4 Adjournments

The issue of adjournments was considered in Mihalescu -v- The Refugee Appeals Commissioner sic. and Mr. Sean Delap, (HC) 25th June 2002. The Applicant’s duty when seeking an adjournment from the Tribunal was discussed.

Judge Smyth stated at page 10 of the Judgement:

“An adjournment application must be considered having regard to all the circumstances disclosed that exist at the time of the application. While Applicants before the Tribunal must always be dealt with fairly, it cannot be that the Applicants can delay the course of consideration of an application for what may be objectively perceived as ‘strategic reasons’ or without providing some reasonable indication as to a probable date of readiness to proceed. If matters were otherwise, Applicants would or could be tempted to effectively dictate or try to dictate when their application would be considered. It is no answer in the circumstances of the instant case to say that the Respondent is not prejudiced by the adjournment.”

8.4.5 Cross-Examination of the Commissioner / Sections 11 and 13 Reports

The issue of whether the Commissioner may be called as a witness at a hearing arose from a decision in a leave application that the Commissioner be available for cross- examination.

In Boza -v- The Refugee Applications Commissioner, The Chairperson of the Refugee Appeals Tribunal and The Minister for Justice, Equality and Law Reform (HC) 25th April 2002, Mr. Justice Smyth stated at page 15 of the Judgement:

“Even if the Commissioner or his/her representative did not tender any evidence, an Applicant or his or her representative may request the Tribunal to be allowed to question the Commissioner - in which event the Tribunal must allow such questioning. In such event the Tribunal before permitting such questioning may reasonably enquire what is the purpose of such intended questioning to be satisfied as to its relevance and admissibility.”

Subsequently in Nicolaev -v- The Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform (HC) 8th July 2002, an application for leave was refused on the basis that the Tribunal could not be compelled to call the original interviewer as a witness. Mr. Justice Smyth stated at page 10 of the Judgement:

“There is no injustice to an Applicant, who, prior to the appeal hearing, has all the appropriate documentation which his application has generated, including the S.11(2) and S.13(1) reports and recommendation, in not having an opportunity to cross-examine the interviewer. The appeal hearing is an independent, de novo investigative process and it is for the member of the Tribunal to make his/her own assessments (including the matter of credibility) no matter what view or view/s the original interviewer for the Refugee Applications Commissioner may have formed.”

In the most recent case to deal with this point, OKAFU -v- The Refugee Appeals Tribunal and the Refugee Applications Commissioner and The Minister for Justice, Equality and Law Reform (HC) 4th October 2002, Judge Smyth stated that there may be cases of exceptional circumstances where it is preferable to allow an interviewer to be cross-examined. He also highlighted the fact that it is within the Tribunal’s discretion to refuse such a request but not without offering a “reasoned judgement” on such a decision.

8.4.6 The Conduct of the Appeal Hearing

In *Afrim Hoti -v- John S. Ryan, sitting as the Refugee Appeals Tribunal, (HC) 24th April 2002*, leave was sought on the basis that throughout the course of the hearing there had been frequent interruptions and unnecessary questioning by the Respondent such as to deprive the Applicant of a fair hearing. In refusing the application, it was held that the test was, whether the conduct of the Tribunal reasonably gave rise in the mind of an unprejudiced observer to the suspicion that justice was not seen to be done.

The court found that the test was not satisfied on the facts of the case and pointed to the inquisitorial nature of the appeal hearing, and to the Respondent's entitlement to ask questions to elicit the facts of the case.

In *Said Mahmood Said -v- The Minister for Justice, Equality and Law Reform and The Refugee Appeal Authority, Ireland [sic. Refugee Appeals Tribunal] and the Attorney General, (HC) 11th April 2002*, leave was again sought on the basis that the Applicant had been deprived of a fair hearing. In this case the languages spoken by the Applicant had been an issue at the appeal hearing and were later deemed to be relevant to the credibility of the Applicant. Leave was refused on the basis that the queries raised by the Tribunal were fair and reasonable, Judge Smyth stating at page 8:

"The debate that ensued in the hearing on the fair or proper test to be used to ascertain information from the Applicant is not a matter for court dictation. The queries were reasonable and basic intelligence and common sense, not any degree of special skill or abstruse information was called for."

The Court commented that the Tribunal had considered all relevant matters and did not show any evidence of institutional bias or a fixed policy.

8.4.7 The Benefit of the Doubt

In *Manuel Rose -v- The Minister for Justice, Equality and Law Reform and James Nicholson sitting as the Refugee Appeals Tribunal (HC) 2nd October 2002*, Judge Smyth stated at page 12:

"The benefit of the doubt argument, in this as in so many other cases, is advanced without reference to its place in the asylum process. It is best expressed at paragraph 204 of the UNHCR Handbook, as follows:

"204. The benefit of the doubt should, however, only be given when available evidence has been obtained and checked and when the examiner is satisfied as to the Applicant's general credibility. The Applicant's statement must be coherent and plausible, and must not run counter to generally known facts."

8.4.8 Persecution

Though there is no Judgement of the High Court considering the meaning of "persecution" in detail, helpful comments have been made in the case of *Abdullah Ali Khamis-v-The Minister for Justice, Equality and Law Reform and The Refugee Appeals Tribunal (HC) 24th June 2002*.

In refusing an application for leave, Judge Smyth commended the Tribunal Member's consideration of the well foundedness of the Applicant's claim. He went on to quote the following passage from the Tribunal Decision, the subject of the Review:

"The term 'persecution' has not been defined by the Convention. It was defined in Canada (Attorney General -v- Ward) as 'sustained or systemic violation of human rights demonstrative of a failure of State protection'. At page 102 of his book on 'Refugee Law', Prof. Hathaway refers to a finding on the definition of persecution from a Canadian case, Gladys Maridel Hernandez, as 'the criteria to establish persecution is harassment, harassment that is so constant and unrelenting that the victim feels deprived of all hope of recourse, short of flight from government oppression'. This requires proof that there is systematic risk and not just an isolated incident of harm. In his book on 'Refugee Law', Guy Goodwin-Gill, on page 66, refers to persecution as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person'. He continues that 'the core meaning of persecution readily includes the threats of deprivation of life or physical freedom'. This requires an analysis of the degree and proportion of the fear. Mr. Goodwin-Gill suggests that one should consider the nature of the freedom threatened, the nature and extent of the restriction, and finally the likelihood of the restriction eventuating in the individual case. Hathaway suggests that refugee law ought to concern itself 'with actions which deny human dignity, in any key way, and that the sustained or systematic denial of core

human rights is the appropriate standard...not just physical torture alone, but any act intended to deny a person's fundamental rights. These rights are, inclusive of such non-derogable rights as freedom from arbitrary deprivation of life, persecution against torture and freedom of conscience'. A fear of persecution is well founded when it can be reasonably anticipated that remaining in the country of origin may result in a form of serious harm which government cannot or will not prevent. Persecution may also consist of either failure or inability of the government effectively to protect the basic human rights of its people."

8.4.9 Reasoning

The High Court has considered the manner in which a decision on an asylum application should be reached and has emphasised that when a determination is being made the question of whether a person is at risk of persecution should be looked at 'in the round'², so that all the circumstances in a particular case should inform the decision making process.

This approach was referred to in the case of T.A.-v-The Minister for Justice, Equality and Law Reform (HC) 15th January 2002, and again in Manuel-Rose-v-The Minister for Justice, Equality and Law Reform and James Nicholson sitting as the Refugee Appeals Tribunal (HC) 2nd October 2002.

The manner in which a Tribunal Member had come to a Decision was challenged in Abdullah Ali Ali Khamis-v-The Minister for Justice, Equality and Law Reform and The Refugee Appeals Tribunal (HC) 24th June 2002. Leave was refused on the basis that the Decision was one properly reached, Judge Smyth having been satisfied that the Tribunal Member had taken the following steps in making the determination:

- "(i) The Member of the Tribunal had regard to all the relevant facts.*
- (ii) He stated the facts upon which he founded his decision in his decision.*
- (iii) He gave the reason why he considered the facts did not give rise to a well-founded fear of persecution."*

² The Court considered R-v-Secretary of State for the Home Department XP Ravichandran [1996] Imm. A.R. 97 at 109, where it was decided that for a determination on an asylum matter to be properly reasoned all the evidence before the decision-maker must be looked at 'in the round'.

8.4.10 Internal Flight/Relocation

A detailed Judgement on the issue of internal relocation has yet to be delivered in this jurisdiction. A recent certification of a question on the issue for consideration by the Supreme Court may give clarity to the issue.

In both Manuel Rose -v- The Minister for Justice, Equality and Law Reform and James Nicholson sitting as the Refugee Appeals Tribunal, (HC) 2nd October, 2002 and Olawale -v- The Office of the Refugee Applications Commissioner and the Minister for Justice, Equality and Law Reform, (HC) 3rd October 2002, Judge Smyth expressed his support for the view taken in Zgnat'ev -v- The Minister for Justice, Equality and Law Reform, wherein the Horvath principle of *surrogacy* was followed and quoted with approval from the Judgement of Judge Finnegan in Zgnat'ev, at pages 4-5 where he stated:

"Where an Applicant relies upon non-state persecution, the position is correctly stated in Horvath -v- The Secretary of State for the Home Department [2000] WLR 379 at 387, per Lord Hope, as follows:

'I consider the obligation to afford refugee status arises only if the person's own state is unable or unwilling to discharge its own duty to protect its nationals. I think that it follows that in order to satisfy the fear test in a non-state agent case, the Applicant for refugee status must show that the persecution which he fears consists of acts of violence or ill treatment against which the State is unable or unwilling to provide protection. The Applicant may have a well-founded fear of threats to his life due to famine or civil war or due to isolated acts of violence or ill treatment for a Convention reason, which may be perpetrated against him. But the risk, however severe, and the fear however well-founded, do not entitle him to the status of a refugee. The Convention has a more limited objective, the limits of which are identified by the list of Convention reasons and by the principle of surrogacy.'

It is however, as a consequence of two more recent Judgements that a question on the issue was certified to the Supreme Court. In the first of these, Rebecca Ebun Oke -v- The Refugee Appeals Tribunal, The Minister for Justice, Equality and Law Reform and the Attorney General, (HC) 25th October 2002, Judge Finlay-Geoghegan acknowledged the divergent views regarding when in the determination process a consideration of effective state protection should take place and granted leave to apply for judicial review on this basis:

“I recognise that there are two arguments as to how and at what stage a consideration of whether persecution, which is meted out by local groups or family groups, are tolerated by the national authorities or whether the authorities refuse or prove unable to offer effective protection. It seems to me that there are arguments suggesting that that should be taken into account within the definition of persecution and there are also arguments that it should take place at a second stage. However it is unnecessary for me to resolve this at this stage because, in my view, there are arguments certainly which are reasonable or weighty to suggest that they take place at a second stage.”

Subsequently, the certification of a question on the issue of internal flight/relocation for consideration by the Supreme Court arose as a consequence of Judge Finlay-Geoghegan’s refusal to grant leave to apply for judicial review in Hippolitus Iwuala-v-The Minister for Justice, Equality and Law Reform (HC) 11th October 2002. The question will be considered in the following form:

“Is the Refugee Appeals Tribunal acting intra vires if it takes into account the possibility of the Applicant relocating within his country when determining whether or not the Applicant is a Refugee within the meaning of Section 2 of the Refugee Act 1996 (as amended)”.

8.4.11 European Convention on the Protection of Human Rights

In the case of Gabriel Dobos and Mariana Dobos-v-The Minister for Justice, Equality and Law Reform, James Nicholson sitting as the Appeals Authority Ireland and The Attorney General, (HC) 16th April 2002, Judge Smyth stated that the European Convention on the Protection of Human Rights and Fundamental Freedoms does not at present form part of our domestic law. Consequently, the Tribunal is not obliged to consider its provisions in the course of a determination.

8.4.12 Dublin Convention

In Rostas -v- The Minister for Justice, Equality and Law Reform and The Refugee Appeals Tribunal (HC) 9th May 2002, it was decided that it was not unconstitutional to deny an

Applicant an oral appeal hearing when a Decision had been made to deny them refugee status under the terms of the Dublin Convention.

In Delia Ioana Savin-v- The Minister for Justice, Equality and Law Reform (HC) 7 May 2002, it was decided that Article 3(4) of the Dublin Convention confers a right but not a duty to examine an application for asylum and that the Refugee Applications Commissioner was not obligated to interview the Applicant where it was obvious from the application form that the Dublin Convention applied.

9. Contact with Other Organisations

9.1 Introduction

On commencement of the Tribunal, we made it a specific objective to make contact with and have good working relations with all those organisations who engaged with the Tribunal during the appeal process generally or pursuant to a statutory requirement and we have continued this policy in 2002. It is an essential principle of the management of the Tribunal that the Members, management and staff are sensitive to the particular environment in which we do our work and provide a public service. Every month we send details of the number of cases appealed and decided to a wide group of Governmental and non-Governmental agencies listed in paragraph 9.7.

9.2 The Office of the Refugee Applications Commissioner

The 1996 Act provides that the first stage of an asylum application is dealt with by the Commissioner, an asylum application is made, a detailed questionnaire is completed by the Applicant and then an interview of the Applicant takes place. The Commissioner then makes a Recommendation and if it is negative, the Applicant may appeal to the Tribunal.

The Tribunal had regular meetings at official level throughout the year to discuss administrative issues of co-ordination between the two bodies to ensure that appeals are dealt with fairly and quickly. The Chairperson is grateful to the Commissioner, Berenice O'Neill, for her co-operation and that of her staff in 2002.

9.3 United Nations High Commissioner for Refugees (UNHCR)

There is ongoing contact and co-operation with the UNHCR Dublin Office. The UNHCR are notified, on a daily basis, with details of the number of appeals received and Decisions issued. In addition, arrangements are in place to enable the UNHCR to attend as observers at hearings, as permitted by the 1996 Act. The UNHCR are the lead trainers of Members and staff of the Tribunal. Also, the UNHCR inform the Tribunal of developments in refugee issues and particularly, specialised Country of Origin Information. The Chairperson and Members much appreciate the help and assistance given by Ms. Pia Prutz Phiri, the Head of the UNHCR Liaison Office in Dublin.

9.4 The Immigration Appeals Authorities (IAA) and the Immigration Appeals Tribunal (IAT), United Kingdom

In June 2002, the Tribunal sent a focus group on a familiarisation trip to the Immigration Appeal Authorities (IAA) and Immigration Appeals Tribunal (IAT) in the UK. The purpose was twofold - to identify possible areas of best practice and / or measures for benchmarking performance which might help improve the Irish appeal process and to share experience. Our group noted a number of practical considerations which could lead to greater efficiencies in the operations of the Tribunal including: scanning Notices of Appeal; review of current allocation of resources to processing Members' Decisions to include typing and proof-reading; document retention policy; teleconferencing and different clerical work practices.

9.5 Refugee Legal Service (RLS)

The Refugee Legal Service provides a State funded legal service to Applicants for refugee status. The majority of all Applicants are represented at appeal by the RLS. The Tribunal and the RLS have agreed to meet on a regular basis to discuss administrative issues of mutual interest and we have done so on three occasions in 2002.

9.6 European Union - EURASIL and ACCORD

9.6.1 The Tribunal participated in the CIREA Working Group Meeting (a sub-committee of the Asylum Working Group dealing with appeals) in May 2002. This was the last meeting of this group and it has now been replaced by EURASIL (European Union Network for Asylum Practitioners) following a decision by COREPER in consultation with the Danish Presidency (June - Dec. 2002). The first instance decision-making authorities and appeal bodies will now meet jointly under the responsibility of the EU Commission. The transfer to the Commission of these responsibilities is set against the background of the gradual establishment of the Common European Asylum System. The implementation of a series of new Directives on Asylum will facilitate the establishment of this new Common Asylum System.

9.6.2 In May 2002, the Tribunal submitted data for the Commission's *'Public Annual Report on Statistics in Asylum & Migration'* which seeks to harmonise the nature of statistics / indicators collated by Member States which should lead to more meaningful analysis and a supply of useful benchmarks.

9.7 Other Organisations and Agencies

We have also met with the following organisations to exchange views:

- Irish Refugee Council
- Director of Equality Investigations
- National Consultative Committee on Racism and Interculturalism
- Vincentian Refugee Centre
- Refugee Project, Irish Commission for Justice and Peace
- Mr James Latter, Chairman, Immigration Appeals Tribunal, UK
- Mr Henry Hodge, Chief Adjudicator, Immigration Appellate Authority, UK
- Mr Mungo Deans, Regional Adjudicator, Immigration Appellate Authority, UK
- Mr Roger Rooney, Researcher, Refugee Review Tribunal, Australia.

9.8 Agencies Who Receive Tribunal Statistics

Our monthly statistics are presently circulated to:

- The Department of Justice, Equality and Law Reform
- The Office of the Refugee Applications Commissioner
- Reception and Integration Agency
- FAS Asylum Seeker Unit
- Refugee Legal Service
- United Nations High Commissioner for Refugees
- Irish Refugee Council
- A Part of Ireland Now
- Refugee Language Support Unit
- Spiritan Asylum Services Initiative
- Vincentian Refugee Centre
- Irish Commission for Justice and Peace – Refugee Project
- Irish Congress of Trade Unions
- National Consultative Committee on Racism and Interculturalism
- Eastern Regional Health Authority
- Comhlamh, (Returned Development Workers)
- The Department of Foreign Affairs
- The Department of Social and Family Affairs
- The Department of the Environment and Local Government
- Amnesty International

10. Corporate Services

10.1 Personnel / Staffing

When the Tribunal was established on 20 November, 2000, 62 staff had been appointed. Many of these staff were newly promoted civil servants or newly recruited to the Civil Service. Consequently, priority was given to training to familiarise them with the business of the Tribunal and also, to equip them with the skills required for their grade. Since that date, a number of staff were promoted or transferred out of the Tribunal or left for other employment. The number assigned to the Tribunal as at 31st December 2002 is 125, of which 11 work share. The current breakdown of staff by grade is now as follows:

Grade	Number of Posts
Chairperson	1
Principal Officer	1
Assistant Principal Officer	5 (2 work share)
Higher Executive Officer	9
Administrative Officer	1
Executive Officer	19 (3 work share)
Staff Officer	5 (2 work share)
Clerical Officer	78 (4 work share)
Services Officer	6

On appointment, new staff receive a comprehensive information pack dealing with:

- Overviews of the Civil Service, the Department of Justice, Equality and Law Reform, the Asylum Division and the Refugee Appeals Tribunal.
- Presentation by a representative of the UNHCR of the work undertaken by them.
- Guidance on Customer Care.

10.2 Training

Since January, 2002, the Tribunal's Training Unit has provided or facilitated in excess of 515 days of training. Training courses availed of by administrative staff included, Induction training, IT and Keyboard Skills, Supervisory Management and Senior Management training, "Bullying and Harassment" in the Workplace, Equipment, Effective Communications, Career Development and Document Layout training and Health and Safety. The Tribunal's Training Unit staff have participated in a "Training for Trainers" course, facilitated by the Department of Justice, Equality and Law Reform Training Unit for agencies attached to the Department.

10.3 Performance Management and Development System (PMDS)

The Tribunal staff participated in phases I, II & III of Performance Management Development System (PMDS) training delivered by the Organisation and Development Unit of the Department of Justice, Equality and Law Reform. PMDS is an outworking and implementation of the Strategic Management Initiative which is ongoing throughout the Civil Service, Departments and Agencies.

During 2002 the Tribunal's own Training Unit underwent training in preparation for delivering PMDS training to the Tribunal's staff. When responsibility for PMDS training was transferred from the Department's Training Unit, the Tribunal's Training Unit completed the delivery of PMDS training within the Tribunal and will continue to provide this to all newly recruited staff.

A comprehensive Training and Development Programme for all grades of staff has been developed by the Tribunal's Training Unit. The intention of this programme is to achieve the dual goals of accomplishing the business objectives of the Tribunal to the highest professional standard, while simultaneously facilitating the personal and career development of each staff member.

10.4 Accommodation

The premises at 6/7 Hanover St. East, Dublin 2 was purpose built and the Tribunal occupies a substantial part of it. In addition to workspace for administrative staff, there are Hearing Rooms for appeals, Consulting Rooms for clients and their representatives, a Members' Room and canteen facilities for staff and Members. Throughout 2002, we continued to upgrade our facilities. We have developed a private interview room for the general public and established a file storage room.

10.5 Finance

The Tribunal is funded by monies voted by the Dáil through the Vote for the Office of the Minister for Justice, Equality and Law Reform. We have established financial procedures and systems suitable to an organisation of the nature and size of the Tribunal. We will continue to develop our systems in the light of experience and Departmental requirements. The provision for 2002 was settled at 4,560,938 (excluding salaries) and was made up as follows:-

<u>Expenditure Heading (Non Pay)</u>	<u>Provision (EURO)</u>
Translation/Interpretation	913,829
Legal Costs /Members	1,669,297
Travel/Subsistence	208,703
Training	227,474
Office Equipment	264,335
Equipment Supplies/Maintenance	208,703
Office Premises Expenses	542,836
Furniture/Fitting	208,703
Miscellaneous	214,160
Library & Legal Research/Support	102,898
Total	4,560,938

Expenditure incurred during 2002 amounted to circa 2,900,000.

10.6 Customer Service Action Plan

Our aim is to contribute to the current Government initiative on Customer Service. The focus of the current initiative is on equality and diversity, the internal customer and the Irish Language. The theme of equality and diversity is particularly appropriate to the Tribunal and provides special challenges in the formulation of a Customer Service Action Plan. The role of the Tribunal clearly requires us to be efficient, fair and respect the diverse cultures we engage with in our day-to-day work.

The Tribunal provides services to the public at 6/7 Hanover Street East, Dublin 2. The office is open 5 days a week including lunchtime and is open to personal callers between the hours of 9.15 a.m. and 5.30 p.m. Monday to Friday. A telephone enquiry service (tel. 01-4748400) is provided daily from 9.15 a.m. to 5.30 p.m. (5.15 p.m. on Fridays).

10.7 Information Technology

The I.T. Unit of the Tribunal is responsible for all matters related to Information Technology, electronic communications, swipe card security within the building and developing and enhancing the I.T. infrastructure. This infrastructure has seen many changes over the last year including placement on the Department's backbone link which ensures that the Tribunal can communicate more directly with other agencies of the Department. The I.T. Unit has responsibility for monitoring the external e-mail sent/received to/from the Tribunal via its own Firewall. Another I.T. feature which came on stream during the course of 2002 was the provision of desktop Internet access, this allows relevant staff to use the Internet, as appropriate, at their own desks. Finally, the Unit has developed an I.T. training programme for newly recruited staff, thus helping them to become familiar with the desktop products used by the organisation. Nearly all staff have received Lotus 123 Training.

Finally, the Tribunal is participating fully with the Department of Justice, Equality and Law Reform and relevant agencies in the development of a high level Information Management and Information Technology Strategic Plan for asylum services generally in Ireland which is being conducted by Accenture.

10.8 Web Site

The Tribunal's web site (www.gov.ie/refappeal) was completed in 2002 and staff will receive training in 2003 to ensure that it is maintained to the highest possible standards. In time, we hope to publish our Annual Report, the Executive Summary of our Business Plan and selective Tribunal Decisions on the web site. Our I.T. unit will be reviewing web sites of other organisations which conduct business similar to the Tribunal.

10.9 Taping of Appeal hearings

During the course of the year it was decided to establish a small pilot project to audio tape appeals hearings in one hearing room from time to time. The purpose of doing so is to assist in the conduct of judicial reviews proceedings. When we have identified any administrative and legal issues arising with this new procedure, we will consider extending it to all hearing rooms.

10.10 Data Protection Act 1988

The Tribunal is registered with the Data Protection Commissioner and had a meeting with his office during the year to ensure that the Tribunal was meeting its obligations under the Act in full. The Tribunal is reviewing the new Data Protection (Amendment) Bill, 2002, which gives effect to Directive 95/46/EC to establish whether it has any implications for it.

10.11 Prompt Payments Act 1997

The Tribunal is not covered by the Act but we operate as if we are. During the course of the year the Act was amended reducing the number of days credit from 45 to 30 days. We incurred interest payments of 32.24 in 2002. Our administrative procedures will be improved to keep interest payments to a minimum.

10.12 Health and Safety

It is the policy of the Tribunal to ensure, in so far as is reasonably practicable, the safety, health and welfare of all its employees and those who have business on its premises. Health and safety issues are a priority for the Tribunal - this is reflected in the training provided to staff, the establishment of a Health and Safety Committee and the security measures at the Tribunal's premises which are continuously under review. During the course of 2002 a number of new Health & Safety initiatives were introduced.

10.13 Ethics in Public Office Act, 1995

The Chairperson is subject to the requirements of the 1995 Act and he completed appropriate statements of interest in 2002. All relevant staff holding prescribed positions have been made aware of their obligations under the Ethics in Public Office Acts 1995 to 2001.

10.14 Projects Promoted by Corporate Services in 2002

During the year the Tribunal promoted the Health and Safety Authority's project 'Dignity in the Workplace'. Awareness of the project was created by displaying posters in public areas and issuing promotional leaflets to staff. In addition, the Equality Authority's 'National Anti-Racism Awareness Programme' was promoted.

11. Primary Objectives - 2003

In 2003, we propose to concentrate upon:-

- Continuing to develop systems to ensure a consistent and fair status determination process having regard to the early stage of development of the Tribunal.
- Maintaining the appeals scheduling level at around 5000.
- Maintaining the number of Decisions of Members made (subject to consistency and fairness) at around 5,500 so that we can reach people in genuine need of international protection.
- Shortening the time taken to deal with an Appeal from the time of receipt by the Tribunal to the point of issue of a Decision of a Member to the Applicant.
- Implementing amendments to the Refugee Act, 1996 which might be made during 2003.
- Developing further systems for the review of the contribution of Members to the work of the Tribunal including their availability to take on cases and the number and timeliness of Decisions made by them.
- Encouraging the full participation of staff in the Performance Management and Development System (PMDS) and a deeper appreciation of the Strategic Management Initiative.
- Learning from foreign jurisdictions how they deal with similar issues in the asylum area.

The success of the Tribunal in 2003 will substantially depend upon the availability of experienced staff, Members and financial resources.

P. J. Farrell

Chairperson

Refugee Appeals Tribunal

16th January, 2003

Appendix 1:

Legislation/ Statutory Instruments Relevant to the Tribunal

- Refugee Act, 1996 (as amended by the Immigration Act, 1999 and Illegal Immigrants (Trafficking) Act, 2000).
- Refugee Act, 1996 (Section 14 and 15 and Second Schedule) (Commencement) (No. 2) Order 2000, S.I. No. 308 of 2000.
- Refugee Act, 1996 (Section 23) (Commencement) (No. 3) Order, 2000, S.I. No. 341 of 2000.
- Refugee Act, 1996 (Appeals) Regulations, 2002, S.I. No. 571 of 2002.
- Dublin Convention (Implementation) Order 2000, S.I. No. 343 of 2000.
- Refugee Act, 1996 (Transitional) Regulations, 2000, S.I. No. 348 of 2000.
- Refugee Act, 1996 (Commencement) Order, 2000, S. I. No. 365 of 2000
- United Nations Convention Relating to the Status of Refugees, 1951 (Geneva) and the 1967 Protocol (New York).
- Handbook on Procedures and Criteria for Determining Refugee Status, under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Re-edited, Geneva, 1992).
- European Community Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities (Dublin Convention), 1990.

Appendix 2

Appeals Process: Procedures

2.1 Introduction/Oral Hearings / On the Papers

The Tribunal deals with three types of appeals - Substantive, Manifestly Unfounded and Dublin Convention. The type of appeal is determined at first stage by the Commissioner.

More legal issues arose on the interpretation of the 1996 Act and the Regulations throughout the year. As a result, the procedures have been amended in the light of our experience and will continue to be adjusted. The following is a note of the salient features of the appeals procedures.

Substantive - Oral Hearing

A Substantive appeal is one where the Applicant may seek an oral hearing. The hearing occurs before a Member and generally involves the Applicant and his/her legal representative (if any), an interpreter and a Presenting Officer from the Commissioner's office. Witnesses may also attend subject to the agreement of the Tribunal. Experience to date shows that on average an oral hearing takes 1½ hours. Section 16(14) of the 1996 Act requires that an oral hearing is held in private. However, the UNHCR can attend for the purposes of observing the proceedings (Section 16 (15) of the 1996 Act). In the event that an oral hearing is not sought, the Substantive appeal will be decided on the papers by a Member.

Manifestly Unfounded - No Oral Hearing

The principle is that the application for a declaration of refugee status is so obviously unfounded it may be dealt with under an accelerated procedure. The grounds on which such applications are considered to be Manifestly Unfounded are set out in Section 12(4) of the 1996 Act. Manifestly Unfounded appeals are dealt with on the papers only and no oral hearing is afforded to the Applicant.

Dublin Convention - No Oral Hearing

Dublin Convention appeals arise under the Dublin Convention (Implementation) Order, 2000. The Dublin Convention is an agreement between the Member States of the European Communities which determines the State responsible for examining applications for asylum

lodged in one of the Member States of the European Communities. In Dublin Convention cases the Tribunal decides on appeals against a determination of the Commissioner that an application should be dealt with in another EU country.

2.2 Procedure for Lodging an Appeal

When an Applicant receives a Recommendation from the Commissioner s/he is informed of the right to appeal and the requirement to do so within specific statutory time limits depending on the type of appeal:-

- **Substantive** appeal cases - Applicants have **15 working days** to complete and lodge the **Notice of Appeal**. These Applicants have the option of an oral hearing which they must request on the Notice of Appeal Form.
- **Manifestly Unfounded** appeal cases - Applicants have **10 working days** to complete and lodge the **Notice of Appeal**. They do not have the choice of an oral hearing.
- **Dublin Convention** appeal cases - Applicants have **5 working days** to complete and lodge the **Notice of Appeal**. They do not have the choice of an oral hearing.

The Applicant must specify the grounds of appeal in the Notice of Appeal Form, attach any supporting documentation, the submissions to be made and the authorities to be relied upon. The Tribunal has a discretion to direct the attendance of witnesses (if requested).

2.3 Procedure for Accepting Appeals

On receipt of the Notice of Appeal, the Tribunal considers whether it is within the prescribed time limit for the particular appeal type. If it is outside the time limit, the Applicant and his/her legal representative (if any) are notified in writing that the appeal has been rejected.

The Notice of Appeal is acknowledged to the Applicant and his/her legal representative (if any). The Commissioner and the UNHCR Dublin are notified by e-mail on the same day of receipt of the appeal, distinguishing the appeal type. The Commissioner is also requested to furnish to the Tribunal the Applicant's original file. Copies of the Notice of Appeal and all associated documents submitted to the Tribunal are furnished to the Commissioner in order

that the Commissioner's Presenting Officer has a complete set of the documents available to the Tribunal, for the purposes of the hearing.

2.4 Procedure for Assigning Cases to Members for Decision Making

The Chairperson assigns a case to a Member of the Tribunal as soon as possible after the appeal is accepted and the file received from the Commissioner. The Member examines each case to establish if any additional information is required and, in particular, whether further enquiries should be made under Section 16 (6), which we have previously referred to in part 6.3 of this report. The Member may, under Section 16 (7) of the Act, seek the Commissioner's observations on matters arising in the Grounds of Appeal. Similar provisions exist for Dublin Convention appeals.

2.5 Procedure in relation to Oral Hearings

Where an Applicant has requested an oral hearing, the Tribunal must give at least 7 working days notice of the date of oral hearing to both the Applicant and his/her legal representative (if any). In practice, the notice given exceeds the statutory requirement and the aim of the Tribunal is to give 3 weeks' notice to all Applicants. The Commissioner, UNHCR and witnesses (if any) are notified at the same time as the Applicant. The hearing is held in private and conducted through an interpreter, where necessary and possible. The hearing is intended to be conducted without undue formality and in such a manner as to ensure that the proceedings are fair and transparent and proceeds with due expedition.

2.6 Procedure in Relation to Withdrawals

At any stage during the process, an Applicant may withdraw an appeal by sending a notice of withdrawal to the Tribunal. In the event of a withdrawal, the original Recommendation of the Commissioner stands.

2.7 Procedure for issuing Decisions

In accordance with Section 16(17) of the 1996 Act, the Decision of the Tribunal is communicated to the Applicant and his/her legal representative (if any) for both Substantive and Manifestly Unfounded appeals. Following the implementation of the Refugee Act 1996 (Appeals Regulations), S.I. No. 571 of 2002, Applicants now receive a copy of the Member's Decision recommending a declaration of refugee status given at the appeals stage. The original file, with a copy of the Decision is transmitted to the Minister. The UNHCR receives a daily list of Decisions, for all Substantive and Manifestly Unfounded cases.

Where the Member decides to set-aside the Recommendation of the Commissioner in a Substantive case, the Tribunal recommends to the Minister that the Applicant be given a declaration as a refugee. In a Manifestly Unfounded case when the Recommendation of the Commissioner is set aside, the Commissioner is notified and the file is remitted to the Commissioner for further investigation under Section 11 of the 1996 Act.

A Dublin Convention appeal is determined in accordance with the criteria set out in Articles 4 to 8 of the Dublin Convention. Where the Tribunal sets-aside a Determination of the Commissioner, a notice in writing is sent to the Applicant and legal representative (if any) and the application is returned to the Commissioner for examination. Where the Tribunal affirms a Determination of the Commissioner, a copy of the Decision is sent to the Applicant and the original file is sent to the Minister for further action.

All Applicants receive a copy of the Tribunal's 'Information Leaflets for Applicants on Appeals Procedures - (one document for each type of appeal)' from the Office of the Refugee Applications Commissioner (ORAC) with the issue of the Commissioner's Determination on their case.

Copies are also available in 24 languages on request from the Refugee Appeals Tribunal, 6 / 7 Hanover Street East Dublin 2.

Alternatively, this information can be downloaded from the Tribunal's web site at the following address: www.refappeal.ie.

Appendix 3:

Members Fees Structure 2002

Substantive Appeal

with oral hearing	385.00
with oral hearing husband and wife cases similar	580.00
with oral hearing husband and wife cases different	770.00
on papers	240.00
on papers husband and wife cases similar	360.00
on papers husband and wife cases different	480.00
for no show at Hearing/Adjournment/Withdrawal	150.00

Manifestly Unfounded Appeal

Manifestly Unfounded Appeal	150.00
Husband and wife with cases similar	225.00
Husband and wife with different cases	300.00
Withdrawal	150.00

Dublin Convention Appeal

Dublin Convention	150.00
Husband and wife with cases similar	225.00
Husband and wife with different cases	300.00

Appendix 4

Summarised Agendas for Bi-annual Statutory Meetings

First Statutory Meeting of 2002

26 September, 2002

Hearings Scheduled and Decisions made to August, 2002

Judicial Review since November, 2000

A Consistent and Fair Determination Process

Members Fee Structure

Administrative Procedures

A.O.B / next meeting.

Second Statutory Meeting of 2002

5 December, 2002

Amended draft EU Directive on Minimum Standards (June 2002)

Freedom of Information Act, 1997

Appeal Decisions to end November, 2002

A.O.B.

Appendix 5

Organisation of Staff

<u>Unit Name</u>	<u>Ext</u>	<u>Unit Name</u>	<u>Ext</u>
Chairperson			
Farrell PJ	8450		
Appeals Operations		Reception	
Rowley Gerry	8452	Casey Donna	8584
		Flood Lorraine	8494
Substantive		Gilmartin Sinead	8482
Maguire May	8455	Kane Caroline	8509
		Mangan Pamela	8505
		Stokes Eleanor	8571
Pre Hearing		Members Decisions	
Miller Dermot	8497	McLoughlin Pamela	8457
Atkins Paul	8544	Doyle Tom	8456
Atkinson Mary	8466	Adderley Lynn	8472
Bourke Johanna	8503	Brereton Sarah	8552
Cowan Mary	8578	Carthy Aoife	8577
Day Georgina	8572	Clarke Jacinta	8483
Doody Noelle	8579	Corley Aileen	8576
Guirao Claudia	8569	Durkan Michael	8490
Healy Maire	8575	Delaney Willie	8460
Johnson Dick	8447	Fayne Ann	8492
Keeling Siobhan	8560	Fitzpatrick Aidan	8524
Keenan Francis	8489	Greene Helen	8580
McGrath Phillip	8491	Kerrane Valerie	8437
McMahon Sheena	8515	Lynch John	8462
Mullan Alice	8500	Lynch Kay	8484
Nuttall Tim	8496	Madigan Marie	8475
O'Brien Celine	8574	McBride Edel	8474
O'Regan Bill	8476	McGuinness Ailish	8481
Reidy Maureen	8584	McKenna Fiona	8488
Stapleton Aileen	8436	McMahon Frances	8511
		Meacle Sharon	8438
Scheduling		Moffatt John	8448
Rohan Mary	8470	Mulligan Niall	8568
Beirne Caitriona	8473	Mulvey Charlotte	8429
Brown Siobhan	8525	Murphy Bridie	8484
Cooney Laura	8583	Murray Linda	8514
Cullen Lorraine	8435	Noonan Karen	8581
Doherty Thomas	8507	O'Brien Roisin	8530
Dollard Gerry	8502	Quinn Brendan	8543
Flynn Elaine	8542	Rahill Mary	8486
Foster Anne Marie	8539	Rehill Caroline	8567
Gillogley Shane	8510	Roche Anne	8547
Kelly Stephen	8512	Ryan Sandra	8513
Murray Colm	8601	Sherry Carmel	8529
Noone Catherine	8441		
Plunkett Brendan	8508		
Smith Seamus	8566		

Registry, Co-Ordination, Stats & Judicial Review		
O'Shea	Angela	8485

Registry

Moran	John	8465
Brennan	Kieran	8546
Cashin	Emma	8558
Hayes	Sean	8540
Healy	Joan	8504
Keating	Carol	8520
Maher	Jo-Anne	8535
Mc Kenna	Peter	8534
Meany	Nodhlaig	8516
O'Doherty	Aidan	8495
O'Farrell	Phyllis	8519
Salmon	Delia	8559
Tierney	Paul	8537
Wren	Annie	8536

Corporate Services

Bailey	Fergus	8454
Brady	John	8459
Chawke	Catherine	8487
Mooney	Lisa	8498
Moloney	Denise	8493
Quarry	Ann Marie	8469
Rothwell	Paul	8463
Ryder	Sara	8493
Sargent	Catherine	8526
Valentine	Amy	8531

IT

Walsh	Tom	8464
Costello	Una	8467
Sherry	Shane	8468

Co-Ordination & Statistics

Jones	Suzanne	8471
O'Connor-Nally	Mary	8479
Hartigan	Patrick	8449
Beglan	Brid	8499

Judicial Review

English	John	8461
Harte	Roisin	8562
MacCarthaigh	Seosamh	8521
Mahn	James	8582

Legal Support

O'Regan	Maria	8527
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Members Unit

Hand	Therese	8453
Celmalis	Gabrielle	8561
Crowley	Lisa	8565
Fitzpatrick	Graeme	8434

Policy

Rothwell	Declan	8456
Bodkin	Deirdre	8563
Tuohy	Mark	8523