

Refugee Appeals Tribunal



Annual Report

20 November 2000 - 31 December 2001

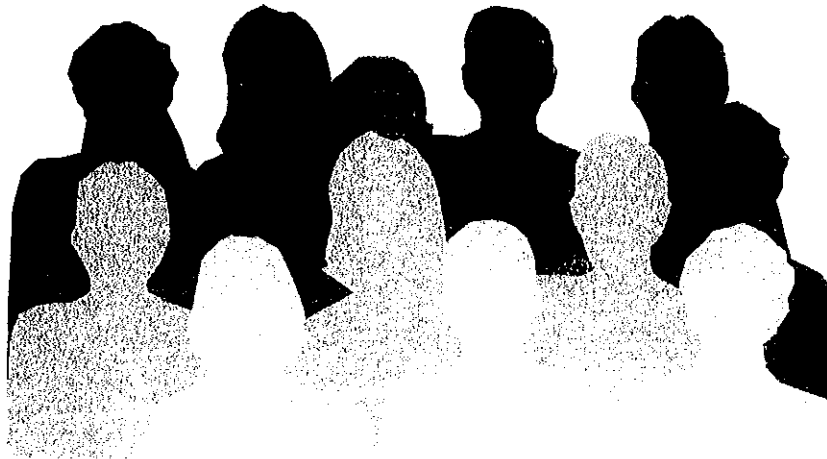


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**Refugee
Appeals Tribunal**
**Binse Achomharc
Dídeanaithe**

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

8 February 2002

Dear Minister,

Refugee Appeals Tribunal

The heart of the work of the Refugee Appeals Tribunal is to reach those people who deserve international protection. It is only through the rule of law that human rights can be realised and the nobility of humanity affirmed. You implemented the Refugee Act, 1996 on 20 November, 2000 which enshrines the principles of the 1951 Geneva Convention relating to the Status of Refugees and established the new Tribunal. You appointed me as Chairperson and I have been honoured to carry out this role for the year. I attach our annual Report, required by my present contract of appointment, which covers the extended period from 20 November, 2000 to 31 December, 2001.

The Tribunal began its work on 20 November, 2000 and since then, much effort has gone into establishing the infrastructure of the Tribunal. This has included moving to and equipping new premises and the recruitment, training and integration of many new staff. In addition, there has been the appointment and training of Members and defining best practice procedures to ensure that appeals are dealt with fairly and quickly. Little of this would have been possible without what went before - the work of the Transitional Team of your Department which was managed and led by Mr. Pat Folan, Assistant Secretary of Asylum, Immigration and Citizenship Division, ensured that there was a smooth transition from the administrative system to the new statutory regime. Many thanks to all those involved for making this possible.

You will see from the Report that in our first year we have focused on:


- Strengthening the framework for a consistent and fair appeal determination process.
- Reducing the backlog of appeals at 20 November, 2000 - the great majority of the 1806 appeals have been heard and a decision made or scheduled for a hearing - we are now down to 135 appeals. We have received 4341 new additional appeals in the period since establishment to 31 December, 2001.
- Increasing the scheduling of cases for oral hearings - 3037 cases were scheduled in 2001, against 1119 in the year 2000 - an increase of over 171%.
- Timely completion of 3472 appeals.
- 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 from 9 months to 6 months and continues to reduce for cases with an appeal date after 20 November, 2001.
- Giving administrative and legal support to the Members of the Tribunal.
- Establishing the structure of the Tribunal office and developing the appeals procedures.

It is a priority of management to continue to improve on each of these issues in 2002. 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 our establishment year and for the support given by them to me and all the Members of the Tribunal.

The Tribunal engages with many agencies but in particular, with the Office of the Refugee Applications Commissioner which makes the initial Recommendation under the 1996 Act. I am very grateful to the Commissioner, Ms Berenice O' Neill, for her personal support and the assistance which she and her staff have given in the co-ordination of the work between our two organisations.

The Members of the Tribunal have a singularly difficult task and onerous responsibility in adjudicating upon applications for a declaration for 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. An especial thanks is due to each of them for their professional contribution to the Tribunal.

Yours sincerely,



P. J. Farrell.
Solicitor.

2. Introduction

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) 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.

2.2 Transitional Arrangements

Prior to the 20 November, 2000, the asylum determination process operated under an administrative procedure drawn up by the Department of Justice, Equality and Law Reform in consultation with the Office of United Nations High Commissioner for Refugees. The Refugee Act 1996 ("the 1996 Act") now provides a statutory framework to enable the Tribunal to consider and decide appeals. A number of Statutory Instruments were made to complement the procedures to be followed under the 1996 Act which are listed in Appendix 1. A Transitional Team chaired by Mr David Costello, Principal Officer of the Department with the co-operation of Mr Gerry Rowley and Ms Pauline Moreau both Principal Officers in the Tribunal, was established to ensure that the transition from an administrative to a statutory framework would be seamless.

At the outset of the Tribunal it was necessary to establish how many of the appeals existing at 20 November, 2000 had included grounds of appeal in their notice of appeal as this was now a new requirement under to the Refugee Act, 1996 (Transitional) Regulations, 2000 The Tribunal identified nearly 800 applicants of the 1703 outstanding substantive appeals who were requested to lodge grounds of appeal. This new information had then to be analysed.

2.3 Commencement of Oral Hearings and Appeals on the Papers

Oral hearings had been suspended in October, 2000 in preparation for the new 1996 Act. Parallel with the implementation of the Transitional arrangements, we prepared for the

re-commencement of oral hearings and we did so at the end of February, 2001. Prior to the commencement of the 1996 Act oral hearings were held on 3 days a week with 3 hearing rooms. Following the implementation of the 1996 Act and the move to new premises in January, 2001, the number of hearing days has increased per week over the months to 4 (Monday to Thursday) and the number of hearing rooms has increased from 3 to 7. At present we schedule 5 cases a day for each available Member. Accordingly, this provides the Tribunal with a capacity to hear a maximum of 140 cases per week in-house.

2.4 Establishment Year

As with all new organisations a considerable number of issues had to be dealt with. These included establishing the detailed appeal procedures to be followed, recruiting and training new staff, moving to new premises, day to day legal issues, defending legal proceedings, defining our business units and their precise objectives, supporting the Members and much more. Many administrative, policy and legal issues arose and continue to arise but we aim to adopt 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 ("the 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.

Somebody who has been regularly tortured because of their political opinion or religion fairly defines the subject of the Tribunal.

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.

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:-

- 1) The availability of the Applicant and his/her legal representative for oral hearings.
- 2) Experienced and available Tribunal Members to consider and decide cases.
- 3) The availability of Presenting Officers from the Commissioner's Office whose Recommendation at first instance is being appealed to the Tribunal.
- 4) The availability of interpreters to interpret at oral hearings.
- 5) Trained and experienced administrative staff.
- 6) The scheduling of a significant number of hearings which involves a complex arrangement to ensure the presence of Members, Presenting Officers, the applicant, legal representatives and interpreters.
- 7) 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, with the consent of the Minister for Finance, considers necessary for the expeditious dispatch of the business of the Tribunal.

4.2 Chairperson

The Civil Service Commissioners held an open competition to independently select a Chairperson of the Tribunal and Mr PJ Farrell B.C.L., Dip. Eur. L., Solicitor, was appointed effective from 10 November, 2000. Mr Farrell was previously a partner in the law firm of McCann FitzGerald, Solicitors, which employs over 300 people in Dublin, London, Brussels and New York. 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. On the establishment of the Tribunal on 20 November, 2000 fourteen Members were appointed and eight more were appointed during the year giving a total of 22 at 31 December, 2001. 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 20 November, 2000 the staff complement was 60. In the course of 2001 this number has increased to 120 by 31 December with 49 staff joining the Tribunal in the months of June/July 2001. The integration of so many new staff has been 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 is necessary 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. These units and the day to day procedures followed by each of them are kept under constant review. The following paragraphs outline the functions of our different units. Each unit is, directly or indirectly, managed by an Assistant Principal Officer with a reporting line to a Principal Officer, Mr Gerry Rowley and to the Chairperson.

5.2 Operations

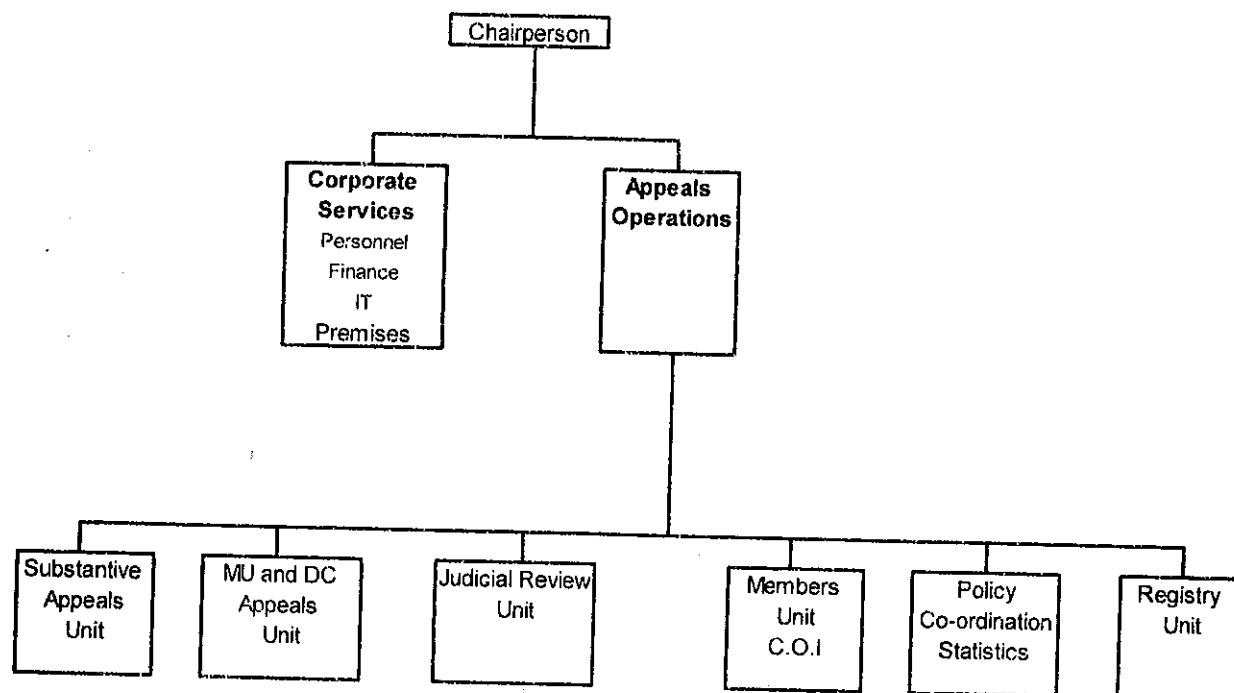
5.2.1 The Registry Unit

There are twelve staff in the Registry Unit who are 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 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.

5.2.2 Substantive Appeals Unit

This Unit is responsible for all stages in the processing of appeals against the Recommendations of the Commissioner. It is divided between Pre-Hearing and Post-Hearing, each managed by an Assistant Principal Officer. The Pre-Hearing Unit arranges for the assignment of cases to Members and also, arranges the scheduling of cases for hearing. The Post-Hearing Unit supports the Members in the preparation and issue of the Decisions in accordance with the Appeals Regulations. There are 44 staff in the Pre-Hearing Unit and 19 full time staff and two job sharers in the Post-Hearing Unit.

Organisation Chart



5.2.3 Manifestly Unfounded and Dublin Convention Appeals

This unit is responsible for all stages of appeals in these categories. There are six full time members of staff in this unit. Their primary role is to arrange for the assignment of cases to Members and the issue of Decisions in accordance with the Appeals Regulations.

5.2.4 Policy, Co-ordination and Statistics

This Unit is managed by a full time and two part-time Assistant Principal Officers. It has a staff of six and is responsible for reviewing and developing our policy and procedures with the business objective of establishing best administrative practice in the processing of appeals by the Tribunal.

In addition, it is responsible for:-

- 1) 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.

- 2) preparing a weekly and monthly statistical report for the Chairperson on the number of appeals received, cases assigned and decided.
- 3) preparing a monthly report for the Chairperson which identifies any delays in the appeals process.
- 4) liaising with the Department, the UNHCR and other external governmental and non-governmental bodies.
- 5) providing briefing information on request for the Chairperson and others, drafting replies to Parliamentary Questions and undertaking specific projects directed by the Chairperson, such as the method of assignment of cases, time and motion exercises on the speed of the appeal process, the publication of Members Decisions, the Business Plan, Role Profile Forms for staff (PMDS) and many others for the year 2002.

5.3 Support

5.3.1 Tribunal Members Unit

This Unit of two staff is responsible for acting as a liaison between the Members and the other units of the Tribunal. The primary functions of the Unit are co-ordinating the day to day backup services for the Members, arranging training of the Members, providing legal information and materials to them and monitoring the work being carried out by the Members. The Unit is also responsible for ensuring that Country of Origin information in the Library is kept up to date.

5.3.2 Judicial Review Unit

The Judicial Review unit has four staff and is responsible for the preparation of the Tribunal's response in all cases where an applicant has applied to the High Court for a judicial review of his/her case and the Tribunal is a named respondent to the proceedings. They have the task of recording and monitoring progress on all judicial reviews and consider all legal documents received and co-ordinate a robust reply with the Chairperson, the Attorney General's Office, the Chief State Solicitor's Office and the Member. In most cases, the Commissioner, the Department and the Tribunal are joined as Respondents even though the Decision of the Tribunal might not be directly challenged. This indicates too the highly integrated nature of the new asylum system and the importance of co-operation, co-ordination and information exchange

between the Reception and Integration Agency, the Commissioner, the Tribunal, the Minister and his Department and other State agencies.

6. Members of the Tribunal

6.1 Introduction

The Tribunal is grouped into divisions each of which consists of one member. At 31 December, 2001 there were 22 divisions of the Tribunal. On average seven divisions sit and hear appeals on a daily basis. 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.

As I have mentioned in my covering letter, the Members have a very difficult and responsible task. "Will the individual before me suffer a serious breach of their human rights, such as physical violence, if they are ultimately returned to their country of origin?". Members make these decisions and conduct hearings in circumstances where few facts can be proved because of the particular nature of refugee claims.

6.2 List of Members

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

Eamonn Barnes B.L.	23 November, 2000
Conor Bowman B.L.	23 November, 2000
Judge Bernard Brennan	10 December, 2001
Eamon Cahill S.C.	23 November, 2000
Bernadette Cronin S.C.	23 November, 2000
Dymphna Cusack B.L.	23 November, 2000
Judge Sean Delap	23 November, 2000 (recently deceased)
Aidan Eames (Solicitor)	30 November, 2000
Donal Egan S.C.	23 November, 2000
Ben Garvey B.L.	28 September, 2001
Veronica Gates B.L.	11 December, 2000
Patrick Hurley (Solicitor)	27 November, 2000
Monica Lawlor B.L.	23 January, 2001
Peter Maguire S.C.	23 November, 2000 (retired July)
Declan McHugh (Solicitor)	12 October, 2001
Rory McCabe S.C.	4 August, 2001
Sunniva McDonagh B.L.	23 November, 2000
Con Murphy (Solicitor)	12 February, 2001
Jim Nicholson B.L.	27 November, 2000
Michelle O'Gorman B.L.	27 July, 2001
John Ryan B.L.	23 January, 2001
Doreen Shivnen B.L.	23 January, 2001
Joseph Ward B.L.	1 February, 2001
Des Zaidan B.L.	30 January, 2001

Mr. Peter Maguire S.C. retired in July, 2001. Mr. Maguire S.C. was one of the senior and most experienced Members of the Tribunal and made a significant contribution to the work of the Tribunal and, also, as an Appeals Authority prior to the implementation of the 1996 Act. Judge Sean Delap died in December, 2001 and will be sadly missed (see Section 13).

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

Prior to the commencement of the 1996 Act, cases were assigned to the Appeals Authorities following the setting of the date of an oral hearing. After the hearing, their decision was submitted to the Appeals Unit in the Department of Justice, Equality and Law Reform and sent to the applicant. Procedures were changed following the commencement of the 1996 Act. Cases are now 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 they believe 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 and Article 9(3) of the Refugee Act 1996 (Appeals) Regulations, 2000 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 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. It is then sent to the applicant and his/her Solicitor. As you will see from Section 5, significant administrative support is required to achieve this objective .

6.4 Training and Information for Members of the Tribunal

Refugee Law is a relatively new area of law for legal practitioners in Ireland. The United Kingdom, Canada, New Zealand and Australia have been dealing with these issues for many years and have highly developed status determination structures and jurisprudence.

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. Shortly, we expect to appoint two law researchers to assist the Chairperson develop, inter alia, an internal case reporting system for Members.

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 might be encountered by Members.

In addition, two training courses for new Members were presented 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 material, copies of recent judgements of the Irish Courts on asylum issues and some letters of guidance on the conduct of hearings.

The Tribunal maintains an extensive Country of Origin information database which is regularly updated. Members also have desktop internet access to all relevant Country of Origin web sites.

A list of seminars and training courses organised for Members during the first year of the Tribunal is set out in Appendix 2.

6.5 Statutory Meetings

The Chairperson convened a meeting of the Members on 7 December, 2000 to introduce himself and to outline the operating principles of the Tribunal and his functions as Chairperson.

Further, the 1996 Act requires the Chairperson to convene a meeting of Members at least twice a year to review the work of the Tribunal. He convened two meetings during the first year, on 14th June, 2001 and 15th November, 2001. As an indication of the items discussed, we attach an extract from the Agendas for both meetings at Appendix 3.

6.6 Ad-Hoc Committees

In September/October, the Chairperson established two Ad-hoc Committees of Members. These are the Committee on Training and Education and the Committee on Practice and Procedure. Each committee has met once. The purposes of the Committees are first, to develop the principle of collegiality among the Members of the new 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.

6.7 Committee on Training and Education

The Committee comprises Mr Donal Egan S.C., Ms Doreen Shiven B.L., Mr Gerry Rowley and Mr PJ Farrell. The Committee met on 25 September, 2001 and discussed a number of issues which may be of interest to Members including:-

1. European Convention on Human Rights Bill.
2. Country of Origin Information.
3. Visit of Chief Trainer in United Kingdom.
4. Judicial Review.
5. Garda National Immigration Bureau
6. Reception and Integration Agency.
7. "Social Group" definition.
8. Torture Seminar.

9. Family Unity.
10. Migration Trends.
11. UNHCR Training.
12. Legal Support/Researchers (2).
13. Unaccompanied minors training and policy document.

6.8 Committee on Practice and Procedure

The Committee comprises Ms Sunniva McDonagh B.L., Mr Jim Nicholson B.L., Mr John Ryan B.L., Mr. Declan Rothwell and Mr PJ Farrell.

The Committee met on 23 October, 2001. The Committee discussed some practical issues that are arising in relation to the conduct of hearings and the making of Decisions including:-

1. Adjournment and postponement experience.
2. Safe First Country Principle.
3. Change of Identity and Nationality of Applicant.
4. Country of Origin Information.
5. (a) Nature of Appeal - progress of draft document for circulation.
(b) Relationship with Refugee Applications Commissioner/Presenting Officers.
6. Ulhaq/Sankara cases.
7. Conduct of hearings - "last say".
8. Grounds of Appeal - too general/specific.
9. Palestinians - UNRWA.
10. Security issues.
11. Legal Support/Researchers (2).
12. Ad-Hoc Committee on Training and Education.
13. New EU draft Directives and Regulations.

6.9 Management of Appeals Caseload/Country of Origin

The Chairperson believes it would be of assistance to the management of the caseload of the Tribunal to ensure, inter alia, consistency in decision making, if we could give priority of hearing to certain Countries of Origin or particular types of appeals with similar grounds of appeal. At present, an appeal is assigned and listed for hearing in accordance with the principle of priority in point of time to the oldest appeals filed, irrespective of the Country of Origin or the factual or legal issue or principle involved and its importance perhaps, to other applications. We note with interest that under Section 10 (4) ¹ of the 1996 Act the Tribunal is required to "fast track" appeals of persons in detention and again, under Section 5 of the Illegal Immigration (Trafficking) Act, 2000 the High Court may give priority to certain asylum matters.

6.10 Members Availability

Member availability to take on oral hearings is critical to the successful scheduling of appeals. However, Members are part time and 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. Preliminary reviews of contributions to the work of the Tribunal have been made available to Members. Of course, it is understandable that 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, it is, however, consistent and fair Decisions of the Tribunal that are paramount to maintain the confidence of the public and the integrity of the asylum system.

6.11 Members Fees

There is attached as Appendix 4 an outline of the fee structure for Members . This structure was established prior to the commencement of the Tribunal and to appointment of the Chairperson. The Chairperson is participating in discussions with Members about the level of fees and

¹ The Tribunal has in place a procedure in the event of this kind of urgent hearing being required.

travelling expenses having regard to the competitive environment for legal services at present and the need of the Tribunal for the frequent availability of Members and timely Decision making.

7. Appeals Process: Procedures

7.1 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. Administrative procedures for accepting and processing appeals were initially drafted by the Transitional team. Many 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. We refer to Appendix 5 which sets out the detailed appeals procedure. The following is a note of the salient features.

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, 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.

7.2 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).

7.3 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/solicitor is notified in writing that the appeal has been rejected. The Tribunal has no general discretion to admit a late appeal into the process but the Tribunal will try to find practical solutions to difficulties which might create an unfair prejudice to applicants. If it is on time, receipt of the

Notice of Appeal is acknowledged to the applicant and his/her solicitor. 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 has a complete set of the documents available to the Tribunal, for the purposes of the hearing.

7.4 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. Similar procedures apply for Dublin Convention appeals.

7.5 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. 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.

7.6 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.

7.7 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 solicitor (if any) for both substantive and manifestly unfounded appeals. The original file, with a copy of the Decision where that Decision affirms the Recommendation of the Commissioner, 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 solicitor and the application is returned to the Commissioner for examination. Where the Tribunal affirms a Determination of the Commissioner, it sends a copy of the Decision to the applicant and the original file to the Minister for further action.

8. Summary of Work of the Tribunal

For the period 20 November, 2000 - 31 December, 2001

8.1 Introduction

This Section outlines the work of the Tribunal from the date of its establishment on 20 November, 2000 to 31 December, 2001, and how we achieved some of 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, a reduction in 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
- Decisions Completed
- Appeals Outstanding

8.2 Appeals On Hand at 20th November 2000

1703 Substantive appeals were on hand on 20 November, 2000 and 103 manifestly unfounded appeals. This constituted the "backlog" of 1806 cases the Tribunal inherited at its establishment. 135 appeals (relating to 81 files) of the "backlog" have yet to be completed, and of these, 55 appeals have been scheduled and Decisions are pending, 48 appeals are ready for scheduling and the remaining 32 appeals are at pre-scheduling stages.

8.3 Appeals Received

Since the establishment of the Tribunal on 20 November, 2000 to 31st December, 2001 the Tribunal has received 4341 appeals (149 appeals received between 20 November and 31 December, 2000 and 4192 received from 1 January 2001 to 31 December 2001, Table 8.3.1)

Table 8.3.1 Total Appeals Received

Substantive/Manifestly Unfounded/Dublin Convention

Month	2000	2001
January	383	137
February	229	542
March	324	274
April	230	175
May	377	303
June	359	322
July	391	209
August	432	331
September	349	378
October	293	492
November	235	395
December	100	634
Total	3702	4192

8.4 Nature of Appeals / Oral Hearings or Decision on the Papers

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 60:40 respectively. A processing target of completing 1000 appeals per month set for the Tribunal prior to its establishment was based on this ratio. However, in the first year of operation of the Tribunal this expectation was not realised and latest trends indicate a ratio of 5% Manifestly Unfounded, 5% Dublin Convention to 90% Substantive (Tables 8.4.1,2 and 3).

This change in the nature of appeals has obvious implications for the application of the Tribunal's staff resources, both administrative and professional (Members), given that 90% of personnel resources of the Tribunal are expended on Substantive appeals (full oral hearings involving all parties / witnesses / submissions), contrasted with 10% of personnel resources on Manifestly Unfounded/ Dublin Convention appeals where the appeal is decided on the papers and no oral hearing is required.

Table 8.4.1 Total Substantive Appeals Received in 2000 and 2001

Month	2000	2001
January	369	80
February	198	414
March	275	187
April	161	152
May	218	294
June	167	172
July	168	123
August	171	270
September	146	313
October	103	425
November	72	366
December	10	595
Total	2058	3391

Table 8.4.1 indicates that the number of substantive appeals received increased by 1333 appeals or nearly 65% in the year 2001 which has a significant impact for our business planning and the availability of experienced administrative resources and Members to hear the appeals.

Table 8.4.2 Manifestly Unfounded Appeals Received in 2000 and 2001

Month	2000	2001
January	14	57
February	31	128
March	49	87
April	69	23
May	159	9
June	192	89
July	223	61
August	261	27
September	203	55
October	190	25
November	163	19
December	90	12
Total	1,644	592

Table 8.4.2 indicates that the number of manifestly unfounded appeals decreased by 1052 or nearly 64% in the year 2001.

Table 8.4.3 Dublin Convention Appeals Received in 2001

Month	2001
January - June	61
July	25
August	34
September	10
October	42
November	10
December	27
Total	209

The processing of Dublin Convention appeals commenced in early 2001 and was first recorded for statistical purposes in June 2001. The number of these appeals is not significant at this stage of the development of the Tribunal.

8.5. 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 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 final Recommendation of the Commissioner 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 a month in advance.

Table 8.5.1 sets out the number of hearings scheduled in 2000 and 2001

Table 8.5.1 Number of Hearings Scheduled in 2000 and 2001

Month	2000	2001
January	126	Nil
February *	126	75 *
March	108	195
April	129	135
May	168	333
June	125	227
July	133	225
August	30	235
September	130	406
October	44	427
November	Nil	448
December	Nil	333
Total	1119	3037

Table 8.5.1 shows that a total of 3037 hearings were scheduled for 2001. This is an increase of over 171 % on the previous full year under the former administrative system.

8.6 No shows, Adjournments, Postponements and Withdrawals

1) No Shows

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.

2) Adjournments and Postponements

We are continuously analysing the reasons for adjournments and postponements. The number of adjournments and postponements is of concern at present. Of course, in the interests of natural justice and fair procedures, adjournments and postponements must be granted as circumstances require.

* 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.

3) Withdrawals

An applicant may withdraw his/her appeal at any stage in the process for a variety 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.

Table 8.6.1 Number of No Shows at Hearings, Adjournments, Postponements and Withdrawals in 2001

Year	2001
No Shows	286
Adjournments	275
Postponements	470
Withdrawals	655
Total	1686

Table 8.6.1 sets out the statistics in relation to No Shows, Adjournments, Postponements and Withdrawals for the year 2001.

8.7 Appeals Completed and Decisions of Members

Oral hearings were deferred on 5 October, 2000 and recommenced under the new statutory procedures of the Tribunal on 20 February, 2001. During October and November, 2000 just prior to the setting-up of the Tribunal, all staff resources were directed to clearing over 1600 decisions of the Appeal Authorities - cases which were heard over the previous six/nine months. It was essential that written decisions be prepared, finalised and issued prior to the establishment of the Tribunal.

The Tribunal completed 3472 appeals in the 10 months since the recommencement of oral hearings in February, 2001 to 31 December, 2001 (Table 8.7.1).

Table 8.7.1 Total Appeals Completed

Month	2000	2001
January	178	73
February*	129	76 *
March	170	241
April	148	174
May	125	435
June	227	289
July	305	201
August	254	376
September	340	355
October	733	468
November	904	540
December	28	244
Total	3541	3472

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

Table 8.7.2 Completed Substantive Appeals

Month	2000	2001
January	155	42
February*	116	22 *
March	146	72
April	128	105
May	111	286
June	141	207
July	132	136
August	148	253
September	101	271
October	350	404
November	526	497
December	28	228
Total	2082	2523

Table 8.7.2 indicates that the total number of substantive appeals completed in 2001 increased by over 21% on the full year figure for 2001.

Appeals completed include withdrawals and "no shows".

* 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 8.7.3 Completed Manifestly Unfounded Appeals

Month	2000	2001
January	23	31
February	13	54
March	24	169
April	20	69
May	14	149
June	86	33
July	173	48
August	106	85
September	239	68
October	383	47
November	378	18
December	0	15
Total	1459	786

Table 8.7.3 indicates that the number of manifestly unfounded appeals completed in the year 2001 decreased by over 46 % on the previous year. This reflects the significant change in the nature of appeals received referred to in paragraph 8.4 above.

Table 8.7.4 Completed Dublin Convention Appeals

Month	2001
January to June	49
July	17
August	38
September	16
October	17
November	25
December	1
Total	163

The processing of Dublin Convention appeals by the Tribunal commenced in early 2001 and were first recorded for statistical purposes in June, 2001.

8.8. Appeals on Hand at 31st December, 2001

Table 8.8.1 gives a summary of the status of the appeals filed with the Tribunal as at 31 December, 2001 within the appeals process.

Table 8.8.1 Summary of "live appeals" in the Tribunal at 31 December 2001

Total Number of Appeals on Hand in the Tribunal	2641
Post-hearing cases (Total number of substantive appeals heard and Members Decisions in preparation for issue)	890
Cases scheduled for hearing	229
Awaiting scheduling (files cleared for hearings by the Members)	599
Manifestly Unfounded cases	12
Dublin Convention cases	2
Number of Appeals being actively processed	1732
Registry (awaiting file from Commissioner)	181
Pre-hearing stage (in preparation for scheduling)	728
Total number of appeals on hand at the Tribunal on 31 December, 2001	2641

Table 8.8.1 indicates that of the 2641 "live appeals" 1732 (66%) 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, 2001.

8.8.2 Live Appeals by Year of Appeal

Table 8.8.2 shows the "live appeals" by year of receipt of appeal.

Table 8.8.2 Live Appeals by Year of Appeal

Year of Appeal	Number of Live Appeals
1998	13
1999	68
2000	246
2001	2,314
Total	2,641

8.8.3 Appeals more than 6 months in the Appeal System

Table 8.8.3 outlines the appeals in the appeal system for more than 6 months. However, of the 883 appeals in this category, 65% are in the final stages of processing, for example, case scheduled, appeal heard or Members' Decision being prepared for issue.

**Table 8.8.3 Outstanding Substantive and Manifestly Unfounded Appeals
more than 6 Months in the Appeals Process**

Year of Appeal	Number of Live Appeals
1998	13
1999	68
2000	246
2001	556
Total	883

8.9 Processing Times for Appeals

8.9.1 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 post-20 November, 2000 is approximately 24 weeks. Under the administrative procedures (Hope Hanlan) prior to the establishment of Tribunal, a substantive appeal took on

average 36 weeks to complete. 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. More reliable indicative information will be extracted from the database when a full year of hearings has been completed (20 February, 2001 to end February, 2002). In addition, when we have a full complement of experienced trained staff and Members there will be, as there has been in 2001, a gradual incremental reduction in the processing time of appeals. The objective of the Tribunal is to reduce the time taken to between 12 to 16 weeks to process and complete substantive appeals.

8.9.2 Manifestly Unfounded Appeals

The average length of time taken to process and complete Manifestly Unfounded cases prior to the establishment of the Tribunal was approximately 10 weeks. Over the year the processing time has improved incrementally such that we now see a trend in October, November and December 2001, of these appeals being completed in 7 weeks.

8.9.3 Dublin Convention Appeals

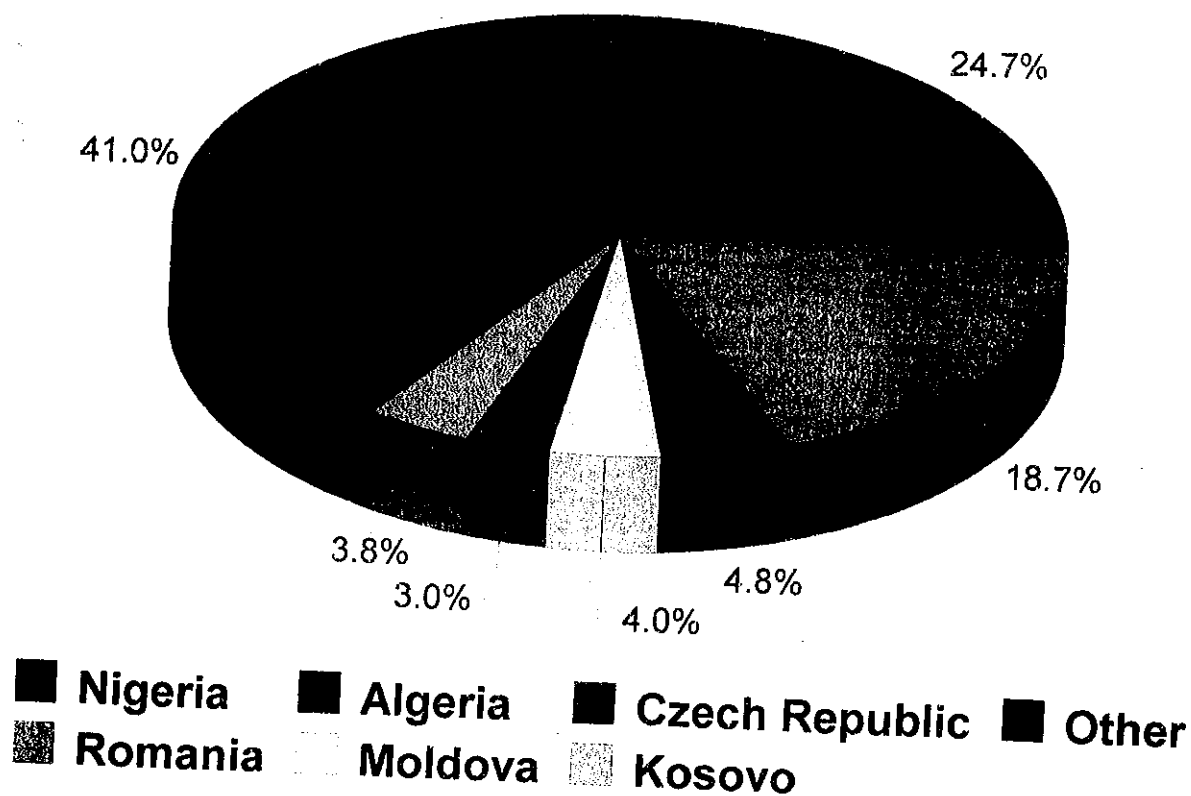
In general Dublin Convention appeals are processed and completed within six weeks. All Dublin Convention appeals are less than 6 months in the system.

The objective of the Tribunal is to process both manifestly unfounded and Dublin Convention appeals within six weeks of receipt.

8.10 Country of Origin of Applicants 2001

- Nigerian nationals represented the highest proportion of applicants in the case of substantive appeals. The other representations were from Romania, Algeria, Moldova, the Czech Republic and Kosovo respectively.
- In manifestly unfounded appeals the highest representations of applicants were from Nigeria, Romania, Moldova and Poland respectively.
- In Dublin Convention appeals the majority of applicants were from Romania, the Czech Republic, Nigeria, the Ukraine and Kosovo respectively.

**Chart 8.10.1 Substantive, Manifestly Unfounded and Dublin Convention
Current Appeals by Country of Origin 2001**



8.11 Outcome of Appeals/Recommendations of the Commissioner

Tables 8.11.1. 2 and 3 show the number of Recommendations made by the Commissioner which were upheld or set aside on appeal (excluding withdrawals). Three out of four Recommendations made by the Commissioner were upheld by the Tribunal in respect of both substantive and manifestly unfounded appeals.

**Table 8.11 .1 Analysis of Substantive Decisions
Recommendations of Commissioner Affirmed and Set-Aside**

Year	Set-Aside	%	Affirmed	%	Total
2000	394	25%	1,153	75%	1547
2001	478	25%	1,460	75%	1938

**Table 8.11.2 Analysis of Manifestly Unfounded Decisions
Recommendations of Commissioner Affirmed and Set-Aside**

Year	Set-Aside	%	Affirmed	%	Total
2000	116	8%	1333	92%	1449
2001	175	24%	548	76%	723

**Table 8.11.3 Analysis of Dublin Convention Decisions
Recommendations of Commissioner Affirmed and Set-Aside**

Year	Set-Aside	%	Affirmed	%	Total
2001	1	0.6%	150	99.4%	151

The processing of Dublin Convention appeals commenced in early 2001.

8.12 Grounds of Appeal

In October, 2001 the Tribunal established a database to identify and record the grounds of appeal of applicants. The Tribunal is interested in establishing the nexus between a well founded fear of persecution and the five reasons listed in Section 2 of the 1996 Act - race, religion, nationality, membership of a particular social group and political opinion. This information will assist us in a number of ways but particularly, in identifying any special preparation and training needs for our staff and Members. This is a long term project and requires considerable input from our Information Technology group and the development of meaningful software.

9. Judicial Review and Other Legal Proceedings

9.1 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. It is the function of our Judicial Review Unit to co-ordinate a robust response on behalf of the Tribunal to all legal proceedings under the direction of the Chairperson.

9.2 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.

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

In recent practice, the High Court have been treating the application for leave/extensions and the hearing as one, in many cases.

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.

9.3 Summary of Judicial Review Proceedings to 31 December, 2001.

91 judicial review cases were issued during 2001. Of these, 30 were resolved leaving 61 cases for decision .

The 91 Judicial review cases received included the following issues:-

- Late appeals - appeals not received within the time limit **(15 cases)**.
- Absence of an oral hearing in Manifestly Unfounded cases **(6 cases)**.
- Tribunal Decision said to have failed to take account of relevant evidence **(48 cases)**.
- Tribunal Decision provided that persecution must be from the State and not rebels or other groups or individuals within the State **(3 cases)**.
- Transitional cases involving the change from the administrative procedures under Hope Hanlan to the 1996 Act **(12 cases)**.
- Issues in first stage of the Recommendation of Refugee Applications Commissioner **(1 case)**.
- Section 11(2) and 13(1) reports completed by same person in the Commissioner's Office **(5 cases)**.
- Applicant (parent) claims that her children were not issued with a deportation letter - Section 3(3)(a) of the Immigration Act, 1999 **(1 case)**.

Many of the issues raised go to an interpretation of parts of the 1996 Act and the Regulations made under it.

9.4 Some High Court Decisions relevant to the Tribunal in the period 20 November, 2000 to 31 December, 2001.

(a) Zgnatiev V The Minister for Justice, Equality and Law Reform.

The absence of an oral hearing for an applicant in manifestly unfounded cases is not contrary to natural and constitutional justice.

(b) Stefan V The Minister for Justice, Equality and Law Reform, Refugee Appeals Authority and the Attorney General.

An alleged insufficiency of fair procedures at first instance is not cured by a sufficiency on appeal.

(c) Camara V The Minister for Justice Equality and Law Reform, Refugee Appeals Authority and the Attorney General.

A Recommendation of an Appeals Authority may only be overturned on the substantive grounds where it is irrational or where there was no material before the Authority to justify the decision. An applicant's credibility is always a relevant issue to be assessed by the examiner.

(d) Ahmed and Ten V The Minister for Justice, Equality and Law Reform, The Refugee Applications Commissioner and the Refugee Appeals Tribunal.

Section 11(2) of the 1996 Act provides that the Refugee Applications Commissioner shall direct an "authorised officer or officers to interview the applicant concerned and furnish a report in writing in relation to the application concerned to the Commissioner". Similarly Section 13(1) of the 1996 Act provides that where the Commissioner carries out an investigation under Section 11 he or she shall prepare a written report of the results of the investigation and such a report shall set out the findings of the Commissioner together with his or her recommendation as to whether or not a declaration of status should be granted.

The Court held that it was not necessary for two different people in the Commissioner's Office to prepare the separate Reports provided for in Sections 11(2) and 13(1).

(e) Popa V Governor of Training Unit, The Minister for Justice, Equality and Law Reform and others.

The State has not failed in its obligation to notify the applicant of a deportation Order if it is sent to the address where applicant no longer residing and the applicant has not notified authorities of a change of address.

(f) Pop, Ludusan, and Barbu V the Minister for Justice, Equality and Law Reform.

Sections 3(3) (a) and (b) of the Immigration Act, 1999, refer to the "proposal to deport" and "removal" letters which were challenged on the basis that they gave insufficient reasons and were universally applied to all asylum seekers. Section 3(6) was challenged on the basis that the Minister placed too much emphasis on "public policy and the common good" and failed to consider other reasons, such as the particular circumstances of the applicant. The Supreme Court upheld the procedure and form of letter adopted by the Minister.

9.5 High Court Hearings

A judge of the High Court (Mr. Justice Thomas Smith) has been dedicated to asylum law matters for the last number of months and considerable progress has been made in dealing with outstanding proceedings against the Tribunal. A large number of written judgements have been and are about to be given and the Tribunal expects them to be of particular assistance in conducting the business of the Tribunal in the future.

10. Contact with Other Organisations

10.1 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. 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 10.8.

10.2 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. If a recommendation by the Commissioner that a declaration of refugee status be refused the applicant may appeal to the Tribunal.

The Tribunal had regular meetings and discussions (at Commissioner/Chairperson level and at official level) throughout the year to discuss administrative issues of co-ordination and procedure to ensure that appeals are dealt with fairly and quickly.

10.3 United Nations High Commissioner for Refugees (UNHCR)

There is ongoing contact and co-operation with the UNHCR Dublin Office. For example, the UNHCR are provided, on a daily basis, with details of appeals received and Decisions taken. In addition, arrangements are in place to enable the UNHCR to attend as observers at hearings, as permitted by the 1996 Act. The Tribunal has met with the UNHCR on a number of occasions during the year to discuss matters of mutual interest. In particular, the UNHCR are the lead trainers of Members and staff of the Tribunal (see Appendix 2). Also, the UNHCR inform the Tribunal of developments in refugee issues and particularly, specialised Country of Origin Information. The UNHCR Liaison Office in Dublin is headed by Ms. Pia Prutz Phiri. The Tribunal wishes to record the great assistance and support that the Chairperson, the Members of

the Tribunal and staff have received from Ms. Pia Prutz Phiri and her team. Ms Pia Prutz Phiri is always available to us to exchange views on any issues relevant to the determination process.

10.3 East Coast Area Health Board/Unaccompanied Minors

The Tribunal has consulted and met with representatives from the East Coast Area Health Board in developing procedures for dealing with unaccompanied minors.

The Tribunal is aware of the particular sensitivities that come with dealing with an application from unaccompanied minors within the asylum process and that they should be dealt with promptly. These sensitivities relate to issues such as age and mental development, communication skills and capacity to recall past events.

The Tribunal has finalised special internal procedures for the processing of appeals of unaccompanied minors. The Tribunal has designated three Members to hear such appeals and these Members attended specialised UNHCR training in December, 2001 to equip them with the particular skills needed to conduct oral hearings for unaccompanied minors and to assess the evidence at a hearing.

10.4 Refugee Legal Service (RLS)

The Refugee Legal Service provides a State funded legal service to applicants for refugee status. The vast 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 issues of mutual interest and we have done so on four occasions in 2001. In addition, the Chairperson met the newly appointed Solicitor in Charge of the RLS, Mr Frank Caffrey, in November, 2001. We wish him well in his new position.

10.5 European Union - Centre for Information, Reflection and Exchange on Asylum (CIREA)

The Tribunal participated in the CIREA working group in February and October, 2001. The group was set-up at the suggestion of Germany to provide a forum for appeal bodies to come together and discuss issues of mutual interest at EU level.

Discussions included considering :-

- the proposal for an EU Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status,
- the proposal for an EU Directive on minimum standards on the reception of applicants for asylum in Member States and
- the proposal for an EU Directive on standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, or as persons who otherwise need international protection.

10.6 The Law Society

We met with the Family Law and Civil Legal Aid Committee of the Law Society chaired by Mr David Bergin to discuss scheduling procedures and other administrative issues of mutual concern to solicitors who appear before the Tribunal. One item of importance which affects the attendance of country solicitors before the Tribunal is that no payment is made to them under the State funded scheme for travelling expenses. The Chairperson of the Tribunal would welcome some reflection on this issue by the Department/Legal Aid Board and that there be, at least, similar arrangements to those comparable to the Members of the Bar.

10.7 Other Organisations and Agencies

In addition to the above, we have also met with the following organisations to exchange views:

- Irish Refugee Council
- Equality Authority
- Director of Equality Investigations
- Spiritan Asylum Services Initiative
- Refugee and Immigration Lawyers Association
- Mr. James Latter, Deputy Chief Adjudicator (now Tribunal Chairman) UK
Immigration and Appellate Authority
- Mr. Michael Kingsley - Nyadh, UNHCR London - Trainer.
- Representatives of the Private Practitioners Panel

We have established a list of other organisations with a mutual interest in the nature of the work of the Tribunal and we would hope to meet with some of these during 2002.

10.8 Agencies Who Receive Tribunal Statistics

Our monthly statistics are circulated to the following:

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
Apart of Ireland Now
Refugee Language Support Unit
Spiritan Asylum Services Initiative
Vincentian Refugee Centre
Refugee Project Irish Commission for Justice and Peace
Irish Congress of Trade Unions
National Consultative Committee on Racism and Interculturalism
Eastern Regional Health Authority
Comhlamh, (Return Development Workers)

11. Corporate Services

11.1 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 be 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, the number of staff assigned to the Tribunal has increased to 120, of which six hold job-sharing posts. The majority of these additional staff were recruited atypically into the Asylum Division of the Department of Justice, Equality and Law Reform and assigned to the Tribunal during the summer months of 2001. These staff then underwent induction training within a few weeks of their arrival. The current breakdown of staff by grade is now as follows:

Grade	Number of Posts
Chairperson	1
Principal Officer	1
Assistant Principal Officer	4 (1 job sharing post)
Higher Executive Officer	9
Administrative Officer	1
Executive Officer	20
Staff Officer	5
Clerical Officer	71 (47 Permanent (2 Job sharing posts) & 26 Contract)
Services Officer	5

On appointment, new staff received 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.

11.2 Training

Since its establishment in January 2001, the Tribunal's Training Unit has provided or facilitated in excess of 400 days of training, exclusive of the Performance Management and Development System (PMDS) training undertaken by eligible staff. Training courses availed of by administrative staff included, Induction training, IT and Keyboards Skills training, Supervisory Management training, "Bullying and Harassment" in the Workplace, Equipment training, Effective Communications, Career Development training and Document Layout training and Health and Safety training.

11.3 Performance Management and Development System (PMDS)

The Tribunal staff participated in phases I & II of the training for PMDS 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 and its agencies. The Tribunal's own Training Unit has undergone training so that they can participate in future delivery of PMDS training to Tribunal staff.

Staff of the Training Unit participated in an Irish Management Institute 'Training for Trainers' course. Attendance at this course facilitated them in designing and delivering an Induction Training course for newly recruited clerical staff. Additionally, the Tribunal's IT Unit has undergone extensive training which assisted them in developing an IT training programme for newly recruited staff.

A new comprehensive Training and Development Programme for all grades of staff is being developed. 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.

11.4 Accommodation

We moved from our temporary accommodation in Timberlay House, Mount Street to our current premises at 6/7 Hanover St East Dublin 2 on 15 January, 2001. This purpose built building is 38,000sq.ft in size. In addition to workspace for administrative staff there are purpose built hearing rooms for appeals, consultation rooms for clients and their representatives, a members room and canteen facilities for staff and members. The Chairperson would particularly commend the Corporate Services Unit headed by Ms Pauline Moreau (Principal Officer) on the efficient transfer to our new building and having it ready to commence oral hearings in February, 2001.

11.5 Finance

The Tribunal is funded by monies voted by the Dail through the Vote for the Office of the Minister for Justice, Equality and Law Reform. During the year we 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 our statutory requirements in 2002. The provision for 2001 was settled at £3,253,000 (€ 4,130,457.97), excluding salaries, and was made up as follows:-

<u>Expenditure Heading (Non Pay)</u>	<u>Provision (£)</u>	<u>Provision (Euro €)</u>
Translation/Interpretation	460,000	58,4079.52
Legal Costs /Members	975,000	1,237,994.63
Travel/Subsistance	50,000	63,486.90
Training	57,000	72,375.07
Office Equipment	233,000	295,848.97
Equipment Supplies/Maintenance	227,000	288,230.54
Office Premises Expenses	345,000	438,059.64
Furniture/Fitting	830,000	1,053,882.61
Miscellaneous	76,000	96,500.09
Total	3,253,000	4,130,457.97

Expenditure actually incurred amounted £1,692,785.70 (Euro € 2,149,394.46)

11.6 Freedom of Information

The Tribunal is not named as a public body under the Freedom of Information Act 1997 but it is a management objective to do so as soon as practicable.

11.7 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 exercise fairness, courtesy and be efficient in dealing with all our customers from diverse cultures.

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 9.15am and 5.30pm Monday to Friday. A telephone enquiry service is provided daily from 9.15am to 5.30pm, (5.15pm on Fridays).

11.8 Information Technology

The IT section of the Tribunal are responsible for all matters related to Information Technology, electronic communications, swipe card security within the building and developing and enhancing the IT infrastructure. This infrastructure will see many changes in the next six months and the staff in the section will be fully trained to keep up to date with all the intended changes. Finally, the section has developed an IT training programme for newly recruited staff, thus helping them to become familiar with the desktop products used by the organisation.

11.9 Web Site

The Tribunal has a website (www.gov.ie/refappeal) which is under construction at present and staff will receive training in the new year to ensure the site is maintained to the highest possible standards. In time, we hope to publish our annual reports, legal judgements and selective

Tribunal Decisions on the web site. Our IT unit will review web sites of other organisations both domestic and international which conduct business similar to the Tribunal.

11.10 Data Protection Act 1988.

The Tribunal is registered with the Data Protection Commissioner.

11.11 Prompt Payments Act 1997

The Tribunal is not covered by the Act but we operate as if we are. We incurred interest payments of £172.92 (Euro 219.56) 2001. Procedures will be improved to keep interest payments to a minimum.

11.12 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 staff committee and the security measures at the Tribunal's premises which are continuously under review.

11.13 Ethics in Public Office Act, 1995

The Chairperson is subject to the requirements of the 1995 Act and completed appropriate statements of interest in 2001.

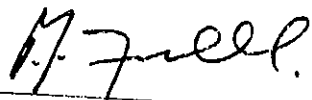
12. The Future - 2002

2001 was our establishment year and I believe that we have made good progress in developing the infrastructure of the Tribunal both administratively and legally.

In 2002, we propose to concentrate upon:-

- Developing systems to ensure a consistent and fair status determination process. Your Department, with the consent of the Minister for Finance, have agreed to the employment by the Tribunal of two Law Researchers to assist me. The primary tasks of these Law Researchers would include a review and categorisation of the Decisions of the Members; establishing an internal selective reporting system for Members Decisions; establishing a database on relevant refugee law issues, "know-how" files, a library and a first class Country of Origin information system.
- Increasing the appeals scheduling level.
- Increasing the number of Members Decisions made (but subject to consistency and fairness).
- 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.
- Developing a debate around the tendency of the appeal process to be adversarial rather than inquisitorial with those parties who engage in the status determination system.
- 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.

- Ensuring that the staff fully participate in the Performance Management and Development System (PMDS) and assist them in becoming leaders who manage and bring along the people on their team.
- Learning from foreign jurisdictions how they deal with similar issues in the asylum area.
- Considering amendments to primary and secondary legislation in Ireland in relation to refugee law.



PJ Farrell

Solicitor

Chairperson

Refugee Appeals Tribunal

8th February, 2002

13. In Memorium

Tributes to Ian Taplin and Judge Sean Delap

Ian Taplin

Mr. Ian Taplin died suddenly on 12th November, 2001. He was a senior member of the Tribunal Registry staff and brought to bear his mature experience not only on appeal issues but as a mentor to our young people. He was a friend to many and of constant good humour. He will be missed. May he rest in peace.

Judge Sean Delap

Judge Delap was an Appeal Authority before the establishment of the Tribunal. On commencement of the Refugee Act, 1996 he was appointed by the Minister as a Member of the new Tribunal. He played an active part not just as an adjudicator of appeals but in the life of the Tribunal office. His gentle presence, his characteristic smile and his practical wisdom in deciding appeals will be missed by all of us. He died on 12th December, 2001. May he rest in peace.

Appendix 1:

Legislation/ Statutory Instruments Relevant to the Tribunal

- a) Refugee Act, 1996 (as amended by the Immigration Act, 1999 and the Illegal Immigrants (Trafficking) Act, 2000).
- b) Refugee Act, 1996 (Section 14 and 15 and Second Schedule) (Commencement) (No. 2) Order 2000, S.I. No. 308 of 2000.
- c) Refugee Act, 1996 (Section 23) (Commencement) (No. 3) Order, 2000, S.I. No. 341 of 2000.
- d) Refugee Act, 1996 (Appeals) Regulations, 2000, S.I. No. 342 of 2000.
- e) Dublin Convention (Implementation) Order 2000, S.I. No. 343 of 2000.
- f) Refugee Act, 1996 (Transitional) Regulations, 2000, S.I. No. 348 of 2000.
- g) Refugee Act, 1996 (Commencement) Order, 2000, S. I. No. 365 of 2000
- h) United Nations Convention Relating to the Status of Refugees, 1951 (Geneva) and the 1967 Protocol (New York).
- i) 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).
- j) 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

Training Programmes and Seminars for Members of the Tribunal

Date	Organised by	Location	Content
7 December 2000	Refugee Appeals Tribunal	Dublin	Introduction by Chairperson to work of the Tribunal and the functions of the Chairperson.
15 February 2001	Refugee Appeals Tribunal	Dublin	Refugee Law: James Latter, Deputy Chief Adjudicator UK, (now Tribunal Chairman) UK Immigration and Appellate Authority, Michael Kingsley Nyadh, UNHCR, Maeve Stokes, Eastern Health Board, Eileen Barrington BL, Judicial Review.
21 March 2001	EU - Centre for Information Reflection and Exchange on Asylum	Brussels	Attended by PJ Farrell, D. Rothwell (Refugee Appeals Tribunal)
6 April 2001	European Refugee Academy	Trier, Germany	Conference on Asylum Law in Europe - attended by Judge Delap (Member), E. Cahill (Member), G. Rowley (Refugee Appeals Tribunal).
11 April 2001	UNHCR / National Consultative Committee on Racism and Interculturalism	Dublin	Mainstreaming Refugee Rights/European Convention on Human Rights.
25-27 April 2001	European Institute of Public Admin.	Maastricht	The Dublin Convention on Asylum - attended by J. Nicholson (Member), D Marron (Refugee Appeals Tribunal).
19,20,26,27 April 2001	UNHCR London Office	Dublin	Four day Seminar for "Refugee Law Judges" for Members of the Tribunal.
14 June 2001	Refugee Appeals Tribunal	Dublin	First Statutory Bi-Annual meeting of Members.
4,5 July 2001	Refugee Appeals Tribunal - E. Cahill S.C.	Dublin	General Training for New Members.

8, 9 October 2001	Council Of Europe	Strasbourg	Conference on Nationality, attended by Sunniva McDonagh (Member), Therese Hand (Refugee Appeals Tribunal).
24-25 October 2001	UNHCR Dublin Office	Dublin	Country of Origin Seminars on Nigeria and Romania.
2-3 November 2001	Refugee Legal Service	Dublin	James Hathaway: "Refugee Law" Seminar.
8 November 2001	Refugee Applications Commissioner	Dublin (Refugee Appeals Tribunal)	Country of Origin briefing given by the Manager of the Research Unit in the RAC and the Librarian and Senior Researcher of the Documentation Centre in Mount Street.
19-20 November 2001	Refugee Appeals Tribunal - E.Cahill S.C.	Dublin	General Refugee Law Training for New Members.
11-12 December 2001	UNHCR Dublin Office	Dublin	Unaccompanied minors and the Appeals Process, S Mc.Donagh, D. Shivnen, M. Lawlor and S. Delap.

Appendix 3:

Agendas for Statutory Meetings

Members First Statutory Bi-Annual Meeting, 14 June, 2001

- 1) Recommencement of Hearings, Transition Arrangements and Decisions made - Review.
- 2) Summary and discussion of Practice Issues.
- 3) Judicial Review Proceedings past and present.
- 4) Members Training Seminars attended and future proposals.
- 5) Discussion of matters of interest and/or concern to Members.
- 6) Corporate Services - establishment.
- 7) Draft EU Directive on Minimum Standards on Procedures in Member States for granting and withdrawing refugee status.
- 8) A.O.B
- 9) Date of next statutory meeting - November, 2001.

Members Second Statutory Bi-Annual Meeting, 15 November, 2001

- 1) Hearings, Transition Arrangements and Decisions made - Review.
- 2) Practice Issues.
- 3) Judicial Review Proceedings since 20th November, 2000.
- 4) Members Training Seminars attended and future proposals.
- 5) Discussion of matters of interest and/or concern to Members/Members Fees.
- 6) A.O.B.

Appendix 4:

Members Fees

Substantive Appeal

with oral hearing	£200.00
on papers	£150.00
with oral hearing husband and wife cases similar	£300.00
with oral hearing husband and wife cases different	£400.00
for no show at Hearing	£30.00

Manifestly Unfounded Appeal

Manifestly Unfounded Appeal	£100.00
Husband and wife with cases similar	£150.00
Husband and wife with different cases	£200.00

Dublin Convention Appeal

Dublin Convention	£100.00
Husband and wife with cases similar	£150.00
Husband and wife with different cases	£200.00

Appendix 5

Refugee Appeals Tribunal Information Leaflets

- Substantive Appeals.
- Manifestly Unfounded Appeals.
- Dublin Convention Appeals.