

Introduction

Doras Luimní is an independent non-governmental organisation that supports the rights of asylum seekers, refugees and all migrants. Our work focuses on three core areas: direct support services, advocacy and integration planning.

Our mission is to promote and protect the rights of all migrants. Our role is to support migrants on a personal level, while engaging in advocacy with them and for their collective interests. Doras is a registered company and has charitable status. It is based in Limerick City in the Midwest of Ireland.

II. Implementation of International Human Rights Obligations

A: Statelessness

In December 2011 the UNHCR welcomed Ireland's statement to an Intergovernmental United Nations event stating:

"Ireland is fully committed to the implementation of its obligations as a party to both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness."

Four years later Ireland still lacks a formal Stateless Determination Procedure.

B: Reception conditions for asylum seekers

Ireland's system for accommodating and providing for asylum seekers, known as Direct Provision, continues to violate the basic human rights and dignity of people seeking protection, including the right to an adequate standard of living and the right to work.

C: Victims of human trafficking in Ireland

The majority of victims of human trafficking are precluded from formal identification due to their residency status. Ireland primarily views human trafficking as an issue of illegal immigration. Victims are forced to cooperate with authorities in order to access their rights, using rights as an enticement to access rights.

A: Statelessness

Doras Luimní provides legal support, information and advice to migrants on various immigration issues. A particular group of clients we assist are from Bhutan with Nepalese ethnicity. A major issue confronting this region is the presence of Bhutanese refugees residing in UNHCR camps in eastern Nepal. Whilst most refugees have claimed Bhutanese nationality, the Kingdom of Bhutan claims that they are 'voluntary emigrants' who forfeited their citizenship rights, denying their refugee status.¹ These migrants sought asylum in Ireland on the grounds of persecution arising out of a policy of discrimination as well as the passing of nationality laws, which made the position of the Nepalese minority in Bhutan untenable. Over the years we have witnessed this particular group of experiencing difficulties exceeding usual difficulties associated with the protection and residency system in Ireland. These people are the victims of statelessness.

Granting citizenship is a matter for domestic governments, however national legislation must also conform to international legal mechanisms to which that government is a signatory.

Ireland has signed and ratified the following on the issue of statelessness:

- 1954 Convention Relating to the Status of Stateless Persons;
- 1961 Convention on the Reduction of Stateless Persons.

Other international provisions covering the recognition of the right to a nationality are:

- Art. 15: 1948 Universal Declaration of Human Rights (UDHR);
- Art. 24: International Covenant on Civil and Political Rights (ICCPR);
- Art 5: International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- Art 9: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Art 7: Convention on the Rights of the Child (CRC);

¹ Stuart Northolt (2008). *Fields of Fire: An Atlas of Ethnic Conflict*. Troubador Publishing p. 5.19.

- Art 29: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)².

Ireland, having ratified the six core UN human rights treaties³ and having acceded to both conventions on statelessness has prescribed obligations under international law. Art. 1 (1) of the 1954 Convention gives the universal definition of a stateless person: “a person who is not considered a national by any State under the operation of Law”. The aim of the 1954 Convention is to give a comprehensive legal framework to avoid the creation of Statelessness and ensure Stateless persons are entitled to legal status. However, Minister for Justice, Frances Fitzgerald has stated:

“It is necessary to avoid the situation where Ireland, as a small country, could become a destination for stateless persons seeking access to a determination process. I have no immediate plans to introduce a formal determination procedure but will keep the matter under review, having regard also to developments in other jurisdictions and the nature of their determination procedures”.⁴

There exists a gap between the International obligations committed to by the State and the national reality. Without a formal determination procedure Ireland is failing in its commitment to:

- Art. 28 1954 convention: Right to a Travel Document for Stateless persons lawfully residing in the State for the purposes of travel outside the State;
- Section 16 Irish Nationality and Citizenship Act 2004: waives conditions for Stateless Persons;
- Art. 6 (3) Citizenship Act: A person born in the Island of Ireland is a citizen from birth if he/she is not entitled to citizenship in another country.

In 2014, two applicants acquired recognition of their legal status as stateless persons. However, these were made on an ad-hoc basis through the asylum, humanitarian and deportation process. Despite confirmation of statelessness in some ORAC and RAT reports during our Bhutanese clients’ asylum processes, securing their legal rights as stateless persons is not possible due to the lack of a formal determination procedure. Now granted temporary leave to remain, they face constant difficulties renewing permission and registering granted permission without a national passport. The UNHCR asserts that this lack of identification impacts on other stateless persons’ abilities to get stay permits, travel documents, and also to make representation to the Minister for Justice and Law Reform to waive the naturalisation requirements as specified in Section 16 (g) of the Irish Nationality and Citizenship Act 1956 as amended.⁵

There is, therefore, an urgent need for a legal and administrative process for the recognition of stateless persons in Ireland. As the UNHCR states, the 1954 Convention does not explicitly address statelessness determination procedures, however, there is an implicit responsibility for States to identify stateless persons in order to accord them appropriate standards of treatment under the Convention⁶. The time address this has never been more urgent as thousands of refugees flee their war-torn countries across the Middle East and North Africa. The UN has recently warned that the conflict in Syria could give rise to a new stateless population as over 50,000 babies have been born to Syrian refugee women who no longer have a country to call their home.

Recommendations

A. Statelessness:

- Ireland must introduce a formal legal and administrative determination procedure for stateless persons immediately;
- Individuals must have access to a stateless persons’ determination procedure regardless of their immigration status. No requirement exists in either the 1954 or 1961 Convention that applicants are lawfully in the State. Such a requirement would be particularly inequitable given that the lack of nationality

² Human Rights and the arbitrary deprivation of nationality, Report of the Secretary General, Human Rights Council, Thirteenth Session, United Nations, General Assembly, 14 December 2009, A/HRC/13/34, Division of International Protection, 2010, UNHCR Action to Address Statelessness: A Strategy Note, International Journal for Refugee Law, Vol. 22, (Pg. 300).

³ Ratification of International Human Rights Instruments, Department of Foreign Affairs, <http://www.dfa.ie/home/index.aspx?id=318>

⁴ [25048/14]

⁵ <http://www.unhcr.ie/statelessness.html>

⁶ UN High Commissioner for Refugees (UNHCR), *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/33b676aa4.html>

denies many stateless persons the very documentation that is necessary to enter or reside in the State lawfully.

B: Reception conditions for asylum seekers and refugees

Ireland's system for accommodating and providing for asylum seekers, known as Direct Provision, violates a number of Ireland's human rights obligations including:

- (i) *The right to an adequate standard of living (Article 11, ICESCR⁷);*
- (ii) *The right to work (Article 6, ICESCR⁸).*

The system is administered by regulations put in place by the Reception and Integration Agency (RIA)⁹, under the Department of Justice and Equality. In system of Direct Provision, people seeking protection are accommodated in unregulated residential institutions, managed by private contractors throughout the country, known as Direct Provision centres (DP centres). Due to lengthy delays in the asylum determination process the average length of stay is over 4 years.

Over 30% of all residents of Direct Provision are children, some whom were born and raised in DP centres. A recent inspection report, carried out by HIQA¹⁰, showed evidence or claims of physical or mental illness of parents, exposure to domestic violence, physical abuse, and neglect of children.

The impact of the Direct Provision system on the lives of asylum seekers has been heavily criticised by UN bodies in the past, including the UN Human rights Committee who stated that the Committee have "grave concerns" about the Direct Provision system¹¹. The Committee on the Elimination of Racial Discrimination (CERD) expressed its concern at "the negative impact that the policy of 'direct provision' has had on the welfare of asylum seekers, particularly in light of the inordinate delay in the processing of their applications"¹². CERD and other UN bodies have made similar recommendations throughout the past 10 years.¹³

Key features of Direct Provision system:

- Asylum seekers do not have the right to seek employment while their applications are being processed;
- Average length of time living in Direct Provision is over 4 years (60% of asylum seekers);
- Residents of DP centres receive a weekly allowance of €19.10 per adult and €9.60 per child;
- Three meals are provided at set times each day, with no facilities to cook for themselves;
- Bedrooms are shared, with up to 8 people sharing a room in some instances;
- Families often share one bedroom;
- No or limited communal living space;
- No independent complaints mechanism¹⁴;
- No independent inspections;
- Remit of Ombudsman does not extend to people living in DP;
- No standards for accommodation or reception conditions;
- No vulnerability assessment of asylum seekers;
- No on-site support services.

⁷ Article 11, International Covenant on Economic, Social and Cultural Rights

⁸ Article 6, International Covenant on Economic, Social and Cultural Rights

⁹ Reception and Integration Agency, House Rules, January 2011. Available here:

<http://www.ria.gov.ie/en/RIA/House%20Rules%20Nov%202009%20%28A4%29%20%28Amended%20Jan%202011%29.pdf/Files/House%20Rules%20Nov%202009%20%28A4%29%20%28Amended%20Jan%202011%29.pdf>

¹⁰ Health Information And Quality Authority, "Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1) (c) of the Health Act 2007", May 2015. Available here: <http://www.hiqa.ie/press-release/2015-05-25-findings-hiqa-inspection-child-protection-and-welfare-services-provided-chi>

¹¹ UN Human Rights Committee, Concluding observations on the fourth periodic report of Ireland, August 2014, CCPR/C/IRL/CO/04

¹² Concluding observations of the Committee on the Elimination of Racial Discrimination, Ireland, March 2011, CERD/C/IRL/CO/3-4

¹³ Concluding observations of the Committee on the Elimination of Racial Discrimination, Ireland, November 2005, CERD/C/IRL/CO/2

¹⁴ A recent judgement in the High Court found aspects of the Direct Provision system to be disproportionate and unlawful, including the lack of an independent complaints mechanism and unannounced room inspections. No action by the State has been made by the State to implement the findings of this case. See: C.A. and T.A v The Minister for Justice and others, 14 November 2014.

The Direct Provision system was introduced in Ireland in April 2000 as a temporary emergency measure, in response to the increase in asylum applications at that time. It was originally envisaged for no longer than 6 months while long-term solutions and policies were developed. No significant changes have been made to the system since. Asylum seekers currently spend an average of over 4 years in Direct Provision, with 20% spending over 7 years. Some residents have been living in Direct Provision for over a decade¹⁵.

Under section 9(4)(b) of the Refugee Act 1996¹⁶, those seeking protection in Ireland are prohibited from working while their claim is being considered. Due to the lengthy delays in the Irish asylum application process, people are being excluded from employment for up to ten years while living in Direct Provision and face considerable challenges in entering the labour market when eventually granted permission to remain. Years of inactivity, poverty and isolation has a detrimental effect on people seeking protection in Ireland, which could be helped by granting the right to employment, as recognised by Human Rights Commissioner Hammarberg during his visit to Ireland.¹⁷

Access to the labour market at an early stage for asylum seekers would be of benefit to both asylum seekers and the State. The right to employment would allow people seeking protection to live independently, help to ensure that asylum seekers are integrated into community life, are self-sufficient and would decrease dependency on the State in the short and long-term.

Despite a recent review of the protection process by the Government, including the system of Direct Provision, which led to the publication of recommendations for improvements to the system¹⁸, no substantial action has been taken to reform the system.

Recommendations

B: Reception conditions for asylum seekers and refugees

- Ireland should urgently take steps to regularise the status of long-term residents who have been living in Direct Provision for more than one year, prioritising families with children and those who have been in the system the longest;
- Ireland should opt-in to the Council Directive 2003/9/EC on minimum standards for the reception of asylum seekers and legislate for the practical implementation of same;
- The Irish government should legislate for the right to seek employment for asylum seekers nine months after lodging their initial application;
- Ireland should implement the findings of the recent High Court judgement in relation to the Direct Provision system such as the introduction of an independent complaints mechanism and amendment of the House Rules;
- Ireland should take steps towards developing an alternative reception system for asylum seekers that meets their needs.

C: Victims of Trafficking in Ireland

While the Irish government has provided some supports and protections under the Irish anti-trafficking framework (or 'national referral mechanism') there remain large gaps in the victims' identification process, the transposition of EU directives into Irish law, and the failure to formally identify all victims, regardless of their immigration status. A rights-based and victim-centred approach to Trafficking in Human Beings (THB) is urgently required in Ireland.

Ireland has signed and ratified a number of international mechanisms, including:

- EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime (Palermo Protocol, 2000);

¹⁵ RIA Statistics, Annual Report 2014. Available here:

<http://www.ria.gov.ie/en/RIA/RIA%20Annual%20Report%202014.pdf/Files/RIA%20Annual%20Report%202014.pdf>

¹⁶ Available here: <http://www.irishstatutebook.ie/1996/en/act/pub/0017/>

¹⁷ Commissioner Hammarberg Human Rights Report on Ireland, November 2007. Available at:

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1283555&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

¹⁸ Working Group on Improvements to the Protection Process, available here:

http://www.justice.ie/en/JELR/Pages/Working_Group_on_Improvements_to_the_Protection_Process

- The Council of Europe Convention on Action against Trafficking in Human Beings (2005).

Under Irish law, human trafficking is criminalised under the following acts:

- Criminal Law (Human Trafficking) Act 2008;
- Criminal Law (Human Trafficking) (Amendment) Act 2013.

Despite the enactment of Irish legislation and the ratification and transposition of EU directives, a number of issues remain which have yet to be adequately addressed by the Irish government. Primarily human trafficking is treated as an immigration issue, and victims are frequently treated no better than asylum seekers. The current protections available to victims under the *Administrative Immigration Arrangements for the Protection for Victims of Human Trafficking* discriminates on the basis of nationality. While the Irish state does provide a Stamp 4 to victims from non-EEA countries renewable every six months, EU victims of trafficking and asylum seekers must rely on Reception and Integration Agency (RIA) accommodation, €19.10 per week and are generally not entitled to additional supports.

Some of the issues facing victims of trafficking in Ireland include:

- Victims are not identified in a timely or transparent manner;
- Temporary residency permit provided to victims from non-EEA countries can lapse between renewals, causing on-going vulnerability and distress;
- Victims from non-EEA countries are formally identified. Asylum seekers, EU victims and Irish victims are precluded from full protections due to their immigration status.
- Victims from EU member states are often left destitute and forced to remain for long periods in Direct Provision centres while investigations are on-going;
- Housing victims in Direct Provision centres causes further trauma;
- Trafficking for criminal activity, as an emerging trend, is not sufficiently understood or recognised by authorities;
- Victims of trafficking for forced marriage are not identified or supported under the current anti-trafficking framework.

Recommendations

C. Victims of trafficking

- Early legal advice for all victims of THB is urgently required. Victims should have clear guidelines in their own language if/when they wish to report the crime committed against them;
- The Irish Government should commit to providing greater transparency in the criminal investigation process, and providing regular updates to victims. Additionally, the new victims directive must be implemented with clear and transparent guidelines for victims of trafficking, their supporting organisations and legal practitioners;
- Provide Recovery and Reflection (R&R) period to all victims of THB, regardless of their nationality, as is their entitlement under EU law. However in practice, few victims in Ireland receive it. The purpose of R&R is to give victims time to recover from their experience and decide whether they wish to pursue criminal proceedings against their traffickers. In practice victims are giving statements to An Garda Síochána. This is contrary to EU law.
- The Irish Government should put an immediate end to the policy of nationality discrimination when formally identifying victims of THB. All victims should be formally recognised regardless of their nationality or immigration status. Victims of trafficking from the EEA should be given access to the same supports and services as those from non-EEA countries. Asylum seeker victims should be given parallel protections, in the form of an application for International protection and access to the administrative arrangements.
- Discontinue accommodating victims of trafficking in Direct Provision centres. These centres are unsuitable for all victims of trafficking and can cause further trauma.
- The Irish State should appoint an Independent National Rapporteur. The Council of Europe Expert Group on Human Trafficking evaluation report recommended this to monitor the implementation of legislation and policy developments (GRETA, 2013). There are numerous NGO reports that highlight inconsistencies relating to the protection and assistance of victims of human trafficking. The independent Rapporteur could have responsibility for ensuring effective implementation of the Irish anti-trafficking framework, thus ensuring efficiency of victim services, including a review of new or emerging trends.