



Universal Periodic Review: Ireland

Submission by the
Immigrant Council of Ireland
to the Human Rights Council at the
25th Session of the Universal Periodic Review

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Introduction

- 1.** The Immigrant Council of Ireland – Independent Law Centre (ICI) is the leading voice in securing improved rights and protections in the area of immigration, citizenship and anti-racism in Ireland. It offers support, advice and information, while also achieving positive change through strategic legal action and engagement with lawmakers to make immigration laws fit for purpose. Access to justice is the cornerstone of all of the Council's work. It is committed to supporting individuals and families often at a vulnerable stage in their life, including victims of human trafficking and stateless persons. The Council works in coalition with like-minded individuals, organisations, stakeholders and investors to deliver genuine change at both a national and European level. The ICI has contributed to a number of reports to UN and Council of Europe monitoring bodies on Ireland's compliance with international and regional human rights instruments, including the ICCPR,ⁱ CERDⁱⁱ and CEDAWⁱⁱⁱ.
- 2.** In respect of this UPR Cycle, the ICI has contributed to the consultation process for the joint civil society response coordinated under the campaign identity, Your Rights. Right Now. The ICI has also prepared a joint submission with the European Network on Statelessness (ENS) and the Institute on Statelessness and Inclusion (ISI) which focusses specifically on the issue of statelessness and the human rights protection of stateless persons in Ireland, which was not addressed in the First UPR Cycle.
- 3.** In October 2011, Ireland was subject to the First Cycle of the UPR during the 12th Session of the UPR Working Group. This submission provides an update on specific recommendations previously made that were accepted or partially accepted by the Irish Government and that are central to the work of the ICI. Where recommendations made overlap on a thematic basis, they are identified and addressed together. The submission also highlights other significant issues that remain of particular concern to the ICI.

Asylum & Immigration^{iv}

- 4.** The Immigration, Residence and Protection Bill 2010 was not enacted. In April 2015, the Irish Government published the General Scheme of the International Protection Bill^v, which is intended to introduce a single procedure mechanism for the determination of international protection applications in Ireland. As currently

drafted, the legislation will abolish the Office of the Refugee Applications Commissioner (ORAC) and examination of international protection claims will be subsumed within the Department of Justice and Equality. Independence of the first instance examining authority is a critical feature of an international protection system.

5. Although the General Scheme contains various references to stateless persons, no definition of statelessness is provided and no reference is made to statelessness as an act of persecution or reason of persecution. There are no provisions providing for statelessness determination. It is noted, furthermore, that currently no formal statelessness determination procedure exists in Ireland for stateless persons, some of whom may be need of international protection. This is a significant lacuna, given that Ireland is a party to 1954 UN Convention relating to the Status of Stateless Persons and the 1961 Convention in the Reduction of Statelessness and therefore has obligations in this regard.
6. The General Scheme contains provisions that seek to restrict family reunification entitlements of recognised protection status holders in Ireland (Head 50). It is also proposed that a family member who is admitted under family reunification provisions will not be granted a residence permit for the same duration as a protection status holder (Head 48(2)) and the permission will cease to be valid where the person 'ceases to be a qualified person or a family member'. As drafted, no guidance is provided as to the circumstances where a person may 'cease to be a qualified person or a family member'. For example, it is not clear whether a family member could have their permission to reside revoked in circumstances where protection status holder subsequently naturalises as an Irish citizen or in the event of subsequent relationship breakdown. The ICI has concerns in respect of these provisions, particularly arising from our experience of supporting victims of domestic violence who are frequently fearful of seeking State protection due to immigration-related considerations.
7. In respect of the rights of the child, the 'best interests' principle is identified in various places throughout the General Scheme as a relevant consideration and this is welcome. However, the legislation should include express provision for the recognition of the best interests of the child as the primary consideration whenever there is a determination made in respect of child directly or where a child may be affected by the decision, including deportation decisions.
8. Despite many commitments over the past decade and the accepted UPR recommendations, there has been no comprehensive legislative reform in the broader area of general immigration and residence. The Irish immigration system

remains based on ministerial discretion and there is no system of independent appeals for immigration or naturalisation (citizenship) applications. According to MIPEX 2015^{vi}, Ireland has some of the most discretionary family reunion, residence and citizenship policies in the developed world.

9. Recommendations:

- Amend and enact the draft International Protection legislation providing for the independence of decision-making, the best interests of children, family reunification and domestic violence.
- Introduce a stateless determination procedure in compliance with international obligations.
- Enact comprehensive legislative immigration reform, including statutory provisions providing a right to family reunification in Ireland for Irish citizens and legally resident migrants.
- Establish independent appeals mechanisms for immigration and naturalisation decisions.

Hate Crime & Discrimination^{vii}

10. Ireland has not ratified the Convention Against Discrimination in Education. The majority of primary and second level schools in Ireland are denominational and remain at least partially in the control of religious bodies. Information collected during the Department of Education's annual census for the school year 2013-2014 shows 23 per cent of Irish schools educated almost 80 per cent of children of immigrant origin.^{viii} One of the reasons for the ethnic clustering may be the indirect discrimination arising from school enrolment policies. Under the Education Act 1998, schools are allowed to draw up their own admissions policies. In areas of high demand, schools tend to give children of past-pupils priority. Schools also enrol pupils according to their religious membership and require early expression of interest, leading to the creation of waiting lists. This inevitably disadvantages children of Traveller or migrant families who have only recently moved into an area or who practice different religious faiths and/or children whose parents did not attend secondary school. While waiting lists are expected to be abolished, the other two criteria will remain. In light of the reality that approximately 90 per cent of primary schools in Ireland are under the patronage of the Roman Catholic Church,^{ix} children face discrimination in accessing education on religious grounds.

11. ECRI in its fourth monitoring cycle on Ireland^x (2013) strongly encouraged the Irish authorities to improve and to supplement the existing arrangements for collecting data on racist incidents and the follow-up given to them by the criminal justice system. Central statistics figures published by the Office for the Promotion of

Migrants Integration (OPMI)^{xi} suggest that Reported Racially Motivated Crimes (including Anti-Semitism) in the last three years were 100 (2012), 94 (2013) and 41 (first two quarters of 2014). However, there are concerns regarding under-reporting and accuracy of recording of reported incidents. A recently published report^{xii} highlighted that ‘the definition and requirement to record a racist or homophobic incident by the Garda Síochána is the same as the one used in the UK, namely “any incident which is perceived to be racist or homophobic by the victim or any other person”. However, in 2014, the Garda (police) Inspectorate reported that during its inspection visits (which included engaging with approximately 1,000 police officers staff) no officer reported that they had either recorded or investigated a hate crime.^{xiii} This evidences that the provision in the Garda PULSE system for recording racist incidents is used infrequently and official statistics are unreliable due to under-reporting to State authorities.

12. Since the National Consultative Committee on Racism and Interculturalism (NCCRI) was abolished in 2008, due to cuts in State funding, there is no centralised racist incident recording mechanism similar to that provided by the NCCRI at national level.

13. There are reports that many non-Irish people are subjected to police stops and are required to produce identity documents, which can result in racist incidents and racial profiling.^{xiv} A Special Inquiry^{xv} undertaken by the Ombudsman for Children found that ethnic profiling played a role in the decisions to remove Roma children from their families in two high-profile incidents in 2013. It was recommended that cultural competence within An Garda Síochána must be enhanced and that An Garda Síochána must ensure that its policy on interpretation and language supports, diversity training for staff and community engagement conform to the highest standards. The report welcomed the plans for the adoption and implementation of An Garda Síochána's forthcoming Diversity Strategy 2014-2016, however, no diversity strategy for Garda Síochána has been introduced to date and the last diversity strategy expired in 2012. Nevertheless there are examples of good practice initiatives from civil society organisations in the area of diversity and anti-racism training for members of Irish police forces. Nasc, the Irish Immigrant Support Centre, delivered a pilot anti-racism training to 40 Gardaí in Cork in 2014, in collaboration with Cork Community Policing and the Garda Racial, Intercultural and Diversity Office (GRIDO). The training focused on raising awareness and promoting discussion about the impact racism has on migrant and ethnic minority communities and how to prevent discriminatory ethnic profiling.

14. Recommendations:

- Ratify the Convention Against Discrimination in Education.
- Enact legislation to provide for fair and equal school admissions policies.

- Develop a new National Action Plan to combat all forms of discrimination and hate crime and provide sufficient resources to ensure its full implementation.
- Tackle racism and xenophobia as a national priority through education and awareness raising initiatives and monitoring of racist incidents nationally.
- Enact effective hate crime legislation and introduce a State-funded racist incident reporting and recording mechanism at national level.
- Anti-racism and awareness raising training to prevent ethnic-profiling should form part of the basic training for all members of Irish police force and employees of all State and Public Bodies.

Trafficking^{xvi}

- 15.** The Civil Registration (Amendment) Act 2014 enacted to address “sham marriage” was not commenced until mid-August 2015. Consequently, the effectiveness of this legislation cannot yet be evaluated. With reference to the State update on this issue regarding further anticipated measures to be adopted, there has been no progress regarding immigration and residence legislation, nor has there been any amendment to the Free Movement Regulations 2006 transposing the Citizenship Directive 2004/38/EC into Irish law. It remains the case that there are no comprehensive measures in Ireland to tackle ‘sham marriage’ in the context of human trafficking involving exploitative sham marriage.
- 16.** Ireland has not had a National Action Plan to Prevent and Combat Human Trafficking since 2012. It is concerning that the recently circulated draft National Action Plan does not refer to any plans to develop policy or legislation regarding the protection of victims, in line with the recommendations of the monitoring bodies such as the Council of Europe^{xvii} and the OSCE^{xviii}.
- 17.** Additionally, Ireland urgently needs appropriate policy and/or legislation for the identification and protection of victims of human trafficking. Currently, the Administrative Immigration Arrangements for the Protection of Victims of Trafficking^{xix} apply only to isolated cases of undocumented third country national victims. The present system of identification precludes the vast majority of victims from the possibility to be formally identified and protected by operating a nationality and immigration status driven approach and interferes with the right of victims of trafficking to seek international protection. This approach to identification has been criticised by virtually all international monitoring bodies and Irish NGOs organisations. The failings of the system are evidenced by a recent High Court case concerning a Vietnamese woman who was trafficked for forced criminality.^{xx} The State failed to identify her and incarcerated her for two years for a crime she committed under

duress. Ms. Justice Iseult O'Malley found failures in the Garda investigation and in State policies and procedures for identifying victims of human trafficking.

Recommendations:

- Monitor the effectiveness of legislative measures addressing sham marriage and ensure that trafficking in all forms is combatted.
- A National Action Plan is published and that the recommendations of the monitoring bodies such as the Council of Europe and the OSCE are implemented.
- Develop a comprehensive victim identification and protection procedure which includes the involvement of civil society for the early identification all victims of trafficking in Ireland, including review and improvement of the existing administrative immigration arrangements.

i

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fIRL%2f93%2f9070&Lang=en

ii http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_NGO_IRL_78_9047_E.pdf

iii <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ImmigrantCouncilOfIreland.pdf>

iv Recommendation 106.60 Establish a consolidated framework relating to immigration and asylum issues, including an independent appeals body; Recommendation 106.61. Ensure that all asylum-seekers in Ireland can effectively accede to the process of determination of their refugee condition and that decisions on the necessity for international protection can be reviewed and are subject to independent judicial supervision and Recommendation 107.21. Enact laws setting principles on law, rights and obligations that govern family reunification.

v

http://justice.ie/en/JELR/General%20Scheme%20of%20the%20International%20Protection%20Bill%20_final_.pdf/Files/General%20Scheme%20of%20the%20International%20Protection%20Bill%20_final_.pdf

vi <http://www.mipex.eu/ireland>

vii **Recommendation 107.7** Adopt practical and legal measures to curb racial discrimination and discrimination against migrants and look at the appeal by UNESCO to ratify the Convention against Discrimination in Education; **Recommendation 107.24** In line with the recommendations made by CERD, adopt and implement immediately legislation prohibiting any form of racial discrimination and ensure humanitarian treatment for migrants and persons of non-Irish origin, including through adequate training for judicial and police personnel

viii Department of Education, Annual census for the school year 2013-2014,

<http://www.education.ie/en/Publications/Statistics/Statistical-Reports/>

ix Vasquez del Aguila, E and Cantillon, S, *Discrimination on the ground of religion or belief in Ireland* (Social Justice Series; 12(4): 65-87, 2012),

<http://researchrepository.ucd.ie/bitstream/handle/10197/4509/Vasquez%20del%20Aguila-Cantillon-Religion%20in%20Ireland-2012.pdf>

^x <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf>

^{xi} <http://www.integration.ie/website/omi/omiwebv6.nsf/page/statistics-RacistIncidentsstatisticscrime-en>

^{xii} Schweppe, J. *et al*, 'A Life Free From Fear' *Legislating for Hate Crime in Ireland: An NGO Perspective* (University of Limerick, 2014) available at: <http://www.ul.ie/emotions/publications>.

^{xiii} Garda Síochána Inspectorate Report on Crime Investigation
http://www.gsinsp.ie/index.php?option=com_docman&Itemid=152

^{xiv} CERD report on Ireland, 4 April 2011, p. 4, paragraph 18

^{xv} <http://www.justice.ie/en/JELR/Emily%20Logan%20report.pdf/Files/Emily%20Logan%20report.pdf>

^{xvi} Recommendation 106.54 Pass legislation to combat trafficking in human beings in the form of sham marriages and Recommendation 107.43 Amend the Civil Registration Act empowering the registers and the Garda (police) to intervene against sham marriages and to amend the criminal law to criminalize the organizers and facilitators of sham marriages.

^{xvii} Report concerning the implementation of the CoE Convention on Action against Trafficking in Human Beings by Ireland GRETA (2013)15 First Evaluation Report <http://emn.ie/index.jsp?p=100&n=105&a=1309>

^{xviii} Sec.Gal/246/12 <http://www.osce.org/secretariat/107636>

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<http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf>

^{xx} *P. v the Chief Superintendent of the Garda National Immigration Bureau, the Director of Public Prosecutions, Ireland and the Attorney General* [2013/795 JR]