

MRCI's submission to the Second Cycle of the Human Rights Council Universal Periodic Review for Ireland



1. Introduction

The Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote the rights of migrant workers and their families living in situations of vulnerability throughout Ireland. The MRCI works collectively with migrant workers to become involved in decision-making processes that affect their lives. We seek to influence policy, build public awareness on migration issues, undertake research and document the experiences of migrant workers. The MRCI supports locally based initiatives and networks at a local, national, European and global level. In 2013 MRCI provided information and support to over 3,000 people from 111 different countries.

2. Migrant Workers

MRCI works with migrants in low-paid and precarious work at risk of poverty, discrimination and social exclusion for over 12 years. We work predominantly with Non-EU migrants to ensure their access to rights and entitlements. In 2013 there were 157,782 Non-EU migrants registered in Ireland which represent over 26% of the overall migrant population. The vulnerabilities and precariousness associated with immigration status merits special consideration when developing integration strategies to ensure equality outcomes for migrants.

3. Scope of the Submission

By mean of Article 29.3 of its Constitution, Ireland recognises the principles of international law as its rule of conduct in its relations with other States. These principles include human rights law as insofar as it forms part of customary international law.

Ireland is party to the following human rights treaties adopted under the auspices of the United Nations

- The International Covenant on Civil and Political Rights and its First and Secondary Optional Protocols
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Rights of the Child and its Optional Protocol
- The Convention on the Elimination on All Forms of Discrimination Against Women
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol

This submission is in the context of the second cycle of the UN Universal Periodic Review, focusing largely on the implementation of the recommendation made by peer states in October 2011 and following the publication of the National Interim Report

4. Recommendations and Issues of Concern

We are concerned about the Implementation of human rights obligations in the following areas

- **Equality and non-discrimination**

- *National Action Plan Against Racism*

Ireland continues to operate without a National Action Plan against Racism and legislation criminalising hate crime and ethnic profiling in spite of recommendations 107.24, 107.25 and 107.26 of the First UPR Cycle.

The Government must act swiftly to tackle racism and discrimination at all levels of society, including through the promotion of reporting mechanisms for racist incidents such as the iReport and as envisaged by recommendation 107.20. Incidents of ethnic profiling by law enforcement agents and other State services are on the rise; this cannot be tolerated when Ireland is moving towards an intercultural society where the participation, contributions and lives of first and second generation migrant communities are respected and valued.

- **Right to life, liberty and security of the person**

- *Trafficking in human beings, including trafficking for the purposes of criminal activities.*

The existence and growth of domestic servitude, forced labour and human trafficking in Ireland has become increasingly evident in recent years, Ireland continues to operate without a National Action Plan against Trafficking since 2012. An early identification system outside of the remit of the law enforcement is needed to ensure that victims are being identified and offered protections. The protection mechanisms should be put on legislative footing.

The non-prosecution clause envisaged by EU Directive 2011/36 needs to be properly implemented to ensure that victims of human trafficking forced into criminal activities are not being detained in Irish Prisons. A multi-agency model of identification needs to be developed in order to ensure transparency in the process.

- **Administration of justice, including impunity and the rule of law.**

- Provision of legal aid for immigration matters.

The provision of legal aid needs to be extended to encompass matters of immigration law. Currently many migrants suffer from the lack of legal representation or from ill-advice.

- **Right to work and to just and favourable conditions of work**

- *Ireland's Labour Migration Policy*

The lack of foresight following the economic recession has seen a reduction of regular channels of migration that has put many migrants in situations of vulnerability. The growth and need for flexible labour has seen for example, the development of a burgeoning exploitative 'Au pair system' and arguably the use of the student system by the State to meet its labour shortages. The lack of adequate policy responses forces irregularity both in terms of work contracts and in terms of access to the state.

The economic recovery since 2013 has seen an increased inflow of migrants to Ireland, many from outside the EU. It is important to recognise the value of work provided by non-EU migrants in our economy and afford them the opportunity to work in a dignified manner covered by social protection and with the possibility to access residency and citizenship irrespective of the skills set they bring to our labour market.

- *Work Permit System*

As part of its labour migration strategy, Ireland operates a work permit system. In this system, a worker's immigration status is dependent on them maintaining his/her employment which ties him/her to a specific employer. To change employer, a person has to go through complex administrative procedures which involves undertaking a Labour Market Needs Test, a minimum salary threshold and an ineligibility for certain sectors of employment. This puts them at risk of falling out of the immigration system. This coupled with a fear of becoming undocumented many migrant workers accept exploitative conditions of employment. This unequal relationship often results in breaches in employment law and non-compliance.

- *Increase of temporary migration*

In recent years we have witnessed a turn away from the work permit system - which in spite of its deficiencies offers rights to permanency and citizenship – and towards a system where our labour shortages are met through temporary migration schemes to respond to market need and flexible employment practices. The promotion of flexible work undermines workers' rights and often leaves workers outside the system of social protection, increasing their vulnerability and risk of 'working in poverty'.

- *Work in the Private Home*

An issue which has been highlighted for many years are domestic workers and care workers employed in other people's private homes. Despite providing essential services domestic workers experience multiple forms of discrimination based on their gender, ethnicity and employment. This is a hidden sector and many workers suffer from isolation and emotional and physical abuse on a daily basis. Au pairing in Ireland has become a thriving industry in spite of the ratification of the ILO Convention 189. A MRCI report points to the systematic abuse of 'au pairs' where they as de-facto workers are denied basic employment rights. Evidence shows that 'au pairs' are being used as a cheap form of childcare, which also highlights the lack of regulation of the industry. It is important to recognize the value of care and domestic work in the private home and put in place regular channels of migration to allow for care and domestic work including child care, adult care and household services to be conducted within a regulated framework which affords workers recognition and protection.

- **Right to Social Security and adequate standard of living**

- *Access to PRSI Contributions*

A number of workers do not have access to their insured contributions due to their immigration status or lack of – these include international students, undocumented migrants and those registered as family dependents of employment permits holders. The role of social security is to prevent, manage and overcome adverse situations that affect people’s wellbeing

Employment contributions are designed to provide a safety net which diminishes people’s exposure to economic and social risks. By denying them and their families’ access to their personal insurance contributions, the State is effectively leaving them and their families at risk of poverty and social exclusion

- *Access to Child Benefit*

Child Benefit is a universal payment which is payable to the parents or guardians of children under 16 years of age, or under 18 years of age if the child is in full-time education. It is intended to recognize that children are a vulnerable group in society and that poverty is detrimental to their upbringing. Child Benefit is not means-tested in order to provide a safety-net to all children. Nonetheless, access to child benefit is currently dependent on the immigration status of the parents leaving many non-Irish children at risk of poverty

- *The Habitual Residence Condition*

The Habitual Residence Condition(HRC) is used to determine whether or not a person possess an entitlement to apply for certain social protection payments, including social insurance payments, means-tested payments and universal payments.

The HRC is not defined in legislation, leaving statutorily appointed Deciding Officers to use discretion to determine who meets the five factors which are determinant of habitual residence in the State. The HRC has proven to disproportionately affect migrant workers.

- *Lack of provision of adequate housing for migrants.*

Immigrants more often than not find themselves in the poorly-regulated private rental market, which leaves them at greater risk of housing inadequacy. Both EU and non-EU migrants are disproportionately affected by the Habitual Residence Condition when trying to access social housing. Recently introduced rules have made it more difficult for non-EU migrants to access the housing list, by requiring them to prove they can account for five years of Stamp 4 residence permits, either retrospectively or prospectively. Migrants without a Stamp 4 are barred from accessing the housing list.

- *Access to Health Services for Irregular Migrants*

Ireland has failed to implement recommendation 106.57. Irregular Migrants often face barriers when accessing health services. Despite national legislation only requiring proof of “ordinary residence” (Twelve months of residence in Ireland, prospectively or retrospectively) immigration status is often checked. This discourages irregular migrants from accessing essential health services which are intended to be universal,

such as maternity care. It also leaves other health needs unattended, which represent a serious public health issue.

- **Issues relating to Migrants, refugees and asylum seekers**

- *Lack of Legislative Framework relating to immigration and asylum in Ireland*

In spite of recommendation 106.60 Ireland continues to lack a consolidated framework relating to immigration and asylum issues. Currently, the Irish immigration system is based on piecemeal legislation and ad-hoc administrative policies and practices and underpinned by Ministerial discretion. The system should be transparent, robust and fair, with rights and entitlements clearly outlined and enshrined; comprehensive legislation is urgently needed to ensure this.

Currently, in spite of recommendation 107.21 there are no legislated rights to family reunification or permanent residency. Legislation should introduce rights to dependent family members as well as an independent appeals mechanism.

- *Irregular Migration*

Undocumented migrants' lack of legal status prevents them from accessing their fundamental rights to housing, health, education and employment. For the great majority, undocumented migrants have entered the State legally yet they are unable to keep their immigration status despite the demand for their labour. Estimates of the undocumented population are between 26,000 and 30,000 undocumented migrants, which is a growing area of concern both nationally and internationally. The majority of undocumented who MRCI has been working with are engaged in some form of employment, typically in more informal job sectors such as restaurants and cleaning, often living on meagre incomes

In the Government's commitment to deal with the problems in our current immigration system, it is an issue that cannot be overlooked. MRCI has been advocating for the introduction of a regularization scheme, where people come forward register with the state and work their way to permanent residency over a 5 year period. This scheme is a practical solution to address the situation of undocumented migrants in the state and ensure this vulnerable group have .

- *International Convention of the Protection of the Rights of all Migrant Workers and Members of their Families.*

To date Ireland has failed to ratify the UN Migrant Workers Convention. We recommend the establishment of a working group with the view of establishing a pragmatic avenue for ratification of the Convention.