

Submission to the United Nations Human Rights Council
12th Session of the Working Group on the UPR (6th October 2011) Ireland

Written statement submitted by Doras Luimni

I. BACKGROUND INFORMATION

Doras Luimni is an independent non-governmental organisation that supports the rights of asylum seekers, refugees and all migrant. It was founded in 2000. Initially we worked specifically with Asylum Seekers and Refugees as we responded to the Direct Provision system of dispersal of protection applicants. Over the last 11 years we have evolved to incorporate all migrants in the region. Our **vision** for Ireland is a society where equality and respect for the human rights of migrants are social norms.

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

Our **core values** are rooted in the human rights framework, with a belief in equality and non discrimination in both public and private life. We believe that it is a moral imperative to be welcoming towards new communities arriving in Ireland, and to extend particular support to the most vulnerable amongst them. Doras means door and Luimni means Limerick, we consider ourselves to be the metaphorical open door of welcome to the Midwest region through the gateway city of Limerick.

II. CONCERNS

A. Statelessness

- a. **There is no specific policy to formalise the situation of Stateless people who present in Ireland – We call on the government to justify this and to rectify it.**
- b. **Ireland’s constitutional changes in 2004 opens a pathway to statelessness we call on the government to justify this and implement protections to prevent the creation of statelessness.**

B. Detention

- a. **Article 12 of the Immigration Act 2004 allows a non-Irish national to be detained and subject to criminal prosecution if they cannot produce, on demand, acceptable identification. There is no such obligation on Irish citizens. We believe this is discriminatory and the legislation should be equalised.**

C. Employment

- a. **A particular sector of people resident in the state are denied access to the labour market based on residency status and are therefore denied independent living. They are forced to endure a prolonged period of dependency, spanning years, while the state imposes a cumbersome policy to regularise them. We call on the government to sign the directive to allow those awaiting protection application outcomes to be allowed access mainstream society after a defined length of time.**

A. Ireland's 2004 Constitutional Changes open a pathway to Statelessness¹

- a. The Twenty-seventh Amendment of the Irish Constitution in 2004, which was approved by referendum on 11 June 2004 and signed into law on the 24 June created a vacuum into which children born in Ireland could now be born stateless.

The Irish Nationality and Citizenship Act, 2004, which commenced on 1 January, 2005 provides that certain non-Irish nationals are required to be resident in the island of Ireland for a three year period prior to the birth of their child, for that child to be entitled to Irish citizenship. This altered the previous situation whereby a child born in the island of Ireland was automatically entitled to Irish citizenship.²

This constitutional change means that the nationality of a child born in Ireland on or after the 1st of January 2005 will be regulated by that of its parents. *Due to the change in our citizenship laws, this may mean that some children born in Ireland are now stateless.*³

Internationally, the range of instruments which contain provisions which cover the recognition of the right to a nationality are substantial and for the most part, well known:

- *Universal Declaration of Human Rights (Article 15) (UDHR)*
- *International Covenant on Civil and Political Rights (Article 24) (ICCPR)*
- *International Convention on the Elimination of All Forms of Racial Discrimination (Article 5) (CERD)*
- *Convention on the Elimination of All Forms of Discrimination against Women (Article 9) (CEDAW)*
- *Convention on the Rights of the Child (Article 7) (CRC)*
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 29) (CMW);*
- *Convention on the Rights of Persons with Disabilities (Article 18) (CRPD).*⁴

Article 24 of the International Convention on Civil and Political Rights states that every child has the right to registration after their birth and Article 9 of the UN Convention on the Reduction of Statelessness prohibits states from depriving 'any person or group of persons of their nationality on racial, ethnic, religious or political grounds.⁵ Despite Ireland having ratified the six core UN human rights treaties⁶ and having acceded to both conventions on statelessness in June 2004, the government amended the Constitution of Ireland and in

¹ Ledwith, James *Statelessness – Ireland's Denial of 'The Right to Have Rights* (unpublished LLM Thesis held at the Irish Centre for Human Rights, Galway) 2010

² INIS, 2010, Citizenship: Frequently Asked Questions about Irish Citizenship, <http://www.inis.gov.ie/en/INIS/Pages/WP07000120#10>

³ Brophy, G & McGonigle, B, 2009, Statelessness: An Overview of the Legal Issues, *The Researcher*, Vol. 4, Issue. 3, October, Legal Aid Board, http://www.legalaidboard.ie/lab/publishing.nsf/content/The_Researcher_October_2009

⁴ 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).

⁵ Gelazis, N.M, 2004, The European Union and the Stateless problem in the Baltic States, *European Journal of Migration and Law*, Vol. 6, Issue 3, (Pg. 233).

⁶ Ratification of International Human Rights Instruments, Department of Foreign Affairs, <http://www.dfa.ie/home/index.aspx?id=318>

doing so created a “new category of persons born in Ireland whose protection of legal rights and social rights and services will be uncertain at best”.⁷ The Human Rights Commission stated that this amendment could impact on Article 2 of the Constitution which declares that all persons born on in the State have an ‘entitlement and birthright to be part of the Irish Nation’ and that the then proposed amendment could cause further ambiguity to a child’s status. Furthermore, the Commission felt that the State could be in breach of its

international human rights obligations by virtue of the fact that the amendment causes divisions between citizens and non-citizens which have the consequence of “unreasonable differential human rights protection.”⁸ In addition, the Commission described the refusal of citizenship to a child born in the State on the basis of the nationality of the parents as both exclusionary and a restriction of their rights.

b. The United Nations High Commission for Refugees has highlighted that currently there are no procedures in which stateless persons can have their status considered. The UNHCR asserts that this lack of identification impacts on stateless persons’ ability to get, for instance, stay permits, travel documents, and 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.⁹ This is very concerning as it means individuals are attempting to work within legislative and policy frameworks built to a different purpose in order to get their status regularised, for example, there may be people in the asylum system who need not be there but have been directed there due to perceived similarities between the needs of stateless people and the needs of those seeking protection. The asylum system may well ultimately fail stateless person as the criteria under which asylum is determined is limited and may not represent the experience of the stateless person. Ireland is a state party to the Convention on the Reduction of Statelessness (1961) and is a state party to the Convention relating to the Status of Stateless Persons (1954) so its obligations under International Law are prescribed. Yet Gabor Gyulai notes that in order to comply with these obligations, States should “establish a statelessness determination mechanism which efficiently identifies stateless persons in need of protection”.¹⁰

B. Citizenship determines whether an individual can be detained

⁷ Human Rights Commission, *Preliminary Observations on the Proposed Referendum on Citizenship and on the 27th Amendment to the Constitution Bill 2004, April 27th, 2004.*

⁸ Ibid

⁹ <http://www.unhcr.ie/statelessness.html>

¹⁰ G. Gyulai, ‘Forgotten without Reason: Protection of Non-Refugee Stateless Persons in Central Europe’, Hungarian Helsinki Committee, 2007 <http://www.unhcr.org/refworld/publisher,HHC,,,497475802,0.html> in Grainne Brophy and Bernadette McGonigle, *Statelessness: An Overview of the Legal Issues*, 2009 http://www.legalaidboard.ie/lab/publishing.nsf/content/The_Researcher_October_2009_Article_1#_ftn9

Ireland has no national identity card and there is no requirement on Irish citizens to carry an accepted form of identity to satisfy justifiable stop and search by the authorities. Foreign nationals, however, are subject to the Immigration Act 2004 and under section 12 risk punishment if they do not carry valid identification for stop and search. This is in breach of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Article 1

*1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or **preference based on race, colour, descent, or national** or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹¹*

Section 12 of the Immigration Act is discriminatory as it ascribes a penalty on a member of society for an action for which another member of society has no obligations or requirements to fulfil. This particular section of the act is currently before the Irish High Court where the contention was made that it was "unconstitutional and in breach of the European Convention on Human Rights on grounds including it is vague, lacks legal certainty and discriminates against her status as an undocumented non-national."¹²

Furthermore regulations in Ireland require that people who make asylum applications must relinquish their identification documents to the Department of Justice and Law Reform and in return receive a Garda Naturalisation and Immigration Bureau (GNIB) Temporary Residence Card (TRC) on which it is explicitly stated that it is not an identification card. When a person has unsuccessfully gone through the asylum applications process their GNIB TRC card is not renewed whilst they await the outcome of an application for leave to remain in the state. Throughout this period their original documents are not returned. As a result individuals can reside in the state for more than 5 years without any form of identification and are therefore at risk of falling foul to this piece of legislation.

C. The Denial of Asylum Applicants to Employment

The current regulations governing the entitlement of those applying for asylum, Leave to remain or Subsidiary protection are in breach of Article 6 of the International Convention on Economic, Social and Cultural Rights.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural

¹¹ Article 1 (1), International Convention on the Elimination of All Forms of Racial Discrimination, <http://www2.ohchr.org/english/law/cerd.htm>

¹² <http://www.irishtimes.com/newspaper/ireland/2011/0209/1224289345201.html>

*development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*¹³

Under the current Rights and Obligations of Asylum Seekers in Ireland:

- You are not entitled to seek or enter employment, unless you sought asylum in the state on or prior to 26 July 1999. If you sought asylum prior to this date and are still awaiting a decision on your application and wish to enter employment, you should contact the Office of the Refugee Applications Commissioner.¹⁴

The Council Directive 2003/9/EC was delivered on the 27th of January 2003, “Laying down the minimum standards for the reception of asylum seekers.”¹⁵

With regards to employment, Chapter 2, Article 11(1) of the Directive states that;

“Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.”¹⁶

Further to this, section 2 states that if a decision on asylum has not been taken within a year of its being lodged and that the delay in this matter cannot be attributed to the applicant, the state shall then make provisions for the applicant to enter the labour market. Section 3 states that this provision for employment cannot be withdrawn during the appeals stage.

The consequence of this restriction to open employment and the numerous years applicants must wait to gain legal status within the country creates a dependency and institutionalised belief within the applicant. Years of living from canteen to bedroom, create great barriers to the open employment market that the mere granting of a stamp 4 can rectify.

Recommendations:

A. Statelessness

- a. Ireland must formalise the situation of Stateless people who present in Ireland – if there is a reason why this has not been done or cannot be done we ask for a clear explanation.**
- b. Ireland must implement protections to prevent the creation of statelessness for children born in the state.**

B. Detention

- a. Article 12 of the Immigration Act 2004 is discriminatory, the legislation should be equalised.**

C. Employment

- a. The Direct Provision system for Asylum Seekers denies rights to this sector of society on many levels. We have focused on employment here but the system needs to be ultimately abolished and the dignity of independent living needs to be returned to such people as a matter of priority. Under the system individuals and families are not entitled to access autonomous living, be self-sustaining,**

¹³ Article 6 (1) (2), International Convention on Economic, Social and Cultural Rights, <http://www2.ohchr.org/english/law/cescr.htm>

¹⁴ Rights and Obligations of Asylum Seekers in Ireland, Citizens Information Public Service Information, <http://www.citizensinformation.ie>

¹⁵ Council Directive 2003/9/EC of 27 January 2003, Laying down minimum standards for the reception of asylum seekers; L31/18, Official Journal of the European Union, 6.2.2003

¹⁶ Ibid

access further education and skills training for personal and professional development and are denied financial resources that could allow meaningful integration. This needs to be changed dramatically.