

Submission for the Twelfth Session of the Working Group on the
Universal Periodic Review: Ireland

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Introduction:

1. This is a submission of the Irish Refugee Council (IRC), Nasc, the Irish Immigrant Support Centre, and Doras Luimni. The IRC is a membership-based, independent non-governmental organisation which advocates on behalf of asylum seekers and refugees. Nasc, the Irish Immigrant Support Centre, seeks to respond to the needs of migrants, providing particular support services to asylum seekers and refugees. Doras Luimni is a migrant support organisation, whose client base is made up of a wide variety of status types in the Midwest of Ireland including asylum seekers and refugees.
2. This submission raises concerns and gives recommendations in relation to the law, policy and practice of the Irish government in relation to asylum seekers, recognised refugees and migrants. The key areas of concern are the detention of asylum seekers, the lack of single procedure for refugee and subsidiary protection claims, the restriction on what decisions can be appealed to the Refugee Appeals Tribunal, deportation procedures, the facilities and the long time spent in the direct provision and dispersal system, delays in family reunification and the rights of separated children seeking asylum.¹

Implementation of International Human Rights Obligations

Right to life, liberty and security of the person

Detention of Asylum Seekers:

3. Under Irish legislation, people may be detained for a variety of immigration related reasons. Section 9(8) of the Refugee Act 1996² outlines six grounds under which an immigration officer or a member of An Garda Síochána 'with reasonable cause' may detain an asylum seeker. What constitutes 'reasonable cause' is unclear and migrants themselves have reported that they may be subject to 'racial profiling' by immigration officials and the Garda Síochána.³ The maximum detention period is also unspecified as a judge may commit an asylum seeker to successive periods of 21 days in detention while their application is being determined. Further, there are also no special facilities for those detained under section 9(8). Asylum seekers detained for immigration reasons are placed in ordinary prison facilities. The Human Rights Committee in its 2008 review advised that Ireland 'take immediate and effective measures to ensure that all persons detained for immigration related reasons are held in facilities specifically designed for this purpose.'⁴ To date, this recommendation has not been implemented by the Irish government.

¹ The main rights raised in this submission relate to the are Convention and Protocol relating to the Status of Refugees, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights Ratified by Ireland in 1956, 1992, 2002, 1989, 1989 respectively

² 1996 Refugee Act as amended.

³ The 2009 EU-MIDIS European Union Minorities and Discrimination Survey from the EU Fundamental Rights Agency (FRA) included an analysis of "experiences of police stops, perceptions of ethnic profiling and trust in the police". Two ethnic groups per country were surveyed, in Ireland these groups were Sub-Saharan Africans and Central and Eastern Europeans. Ireland had the second highest rate of police stops with 59% of Sub-Saharan Africans reporting being stopped by police in the previous 12 month period. 93% of these stops occurred when respondents were driving cars or were riding motorbikes.

EU Fundamental Rights Agency (2009) EU-MIDIS European Union Minorities and Discrimination Survey.

⁴ Human Rights Committee, Concluding Observations on Ireland, 2008. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/49/PDF/G0843349.pdf?OpenElement>

4. Section 12 of the Immigration Act 2004 provides that a criminal offence is committed should a non-national fail to, upon demand by any immigration officer or member of the Garda Síochána, produce a valid passport or equivalent document or fail to give a 'satisfactory explanation' for such a failure⁵. In practice, this has had a disproportionate and discriminatory effect in that it is used systematically against asylum seekers who often present themselves at a point of entry without personal documents having fled persecution in their countries of origin. This is a clear breach of Article 31 of the Convention relating to the Status of Refugees. Such individuals are immediately charged and detained upon arrival and may not, in many cases, be aware of or fully understand the nature and cause of the charge against them. Further, individuals who commit this offence are often not granted bail unless the arresting Garda officer is satisfied as to the identity of the individual in question. This results in a situation in which asylum seekers from certain countries commit this offence perpetually.

Recommendations:

5. The detention of asylum seekers should be avoided and should only ever be a last resort.
6. Detention should be in a facility which is suitable and in line with international standards.
7. All asylum seekers detained under immigration legislation, regardless of the reason, should be formally notified of the reasons for their detention, of their right to challenge that detention, in a language they understand and have access to legal assistance.

Administration of justice and the rule of law

Refugee status determination procedure:

8. Under the current system, an application to be recognised as a refugee is considered by the Office of the Refugee Applications Commissioner (ORAC); an applicant has the right of appeal against a negative decision of ORAC to the Refugee Appeals Tribunal (RAT). Only after the refugee application has been finally, negatively determined can an application for subsidiary protection⁶ be made, despite the fact that the refugee and subsidiary protection claims often raise similar or identical facts. If an applicant raises a fear of inhuman and degrading treatment in their country but not for a reason that engages the Refugee Convention, the person must still make an application for refugee status, despite the fact that it is bound to fail, so that they can reach the stage that they can apply for subsidiary protection. Ireland is the only EU state without a single procedure that considers both refugee and subsidiary protection simultaneously.
9. Other human rights, for example a claim that deportation from Ireland will interfere with a person's family and private life, will not be considered by the State until after the subsidiary protection claim is finally, negatively determined. From the making of the application to be recognised as a refugee, to an appeal to the RAT, then consideration of a subsidiary protection claim and then the leave to remain claim, a person can wait as long as 5 years. This delay, compounded by the problems of Direct Provision (explained below) results in health and psychological problems, isolation and frustration that in certain cases lead to mental

⁵ Immigration Act 2004

⁶ Subsidiary protection is protection other than refugee status against a real risk of suffering "serious harm" which consists of: (a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

illness⁷. The Irish government has attempted to introduce a single procedure through legislation under the Immigration, Residency and Protection Bill, which, in various forms, has been before the Irish Dail on three occasions (2005, 2008, 2010), but failed to pass on each attempt. In February 2011, UNHCR wrote to political parties prior to the general election stating the need for the introduction of a single procedure, possibly through a discrete piece of legislation to avoid further delay.⁸

10. We are also aware of deficiencies in how ORAC determine a refugee claim: claims are frequently refused on the grounds that a person is not credible for reasons peripheral to whether the person is at risk on return, the notes recording the interview between the ORAC and the applicant are not released until after a negative decision is made meaning that the person has no way of checking what was said during the interview. In 2010 Ireland was the EU member state least likely to grant refugee status at first instance. Almost 99 per cent of applications were rejected compared with an EU average acceptance rate of one in four.⁹

Recommendations:

11. In line with other EU States, refugee, subsidiary protection and human rights claims should be considered simultaneously.¹⁰
12. An applicant should have access to any interview record or document available to the State in determining the protection application at the earliest opportunity.
13. The State should abandon its practice of applying confidentiality clauses in settlements on asylum and immigration matters.

Appealing against a negative decision:

14. We have concerns about the practice of the RAT and what decisions can be appealed to it. In practice, the RAT's recognition rate of refugees compared to other EU States' recognition rates for the same countries of origin is low; the RAT turned down 90 per cent of appeals in 2010 for which figures are available.¹¹ Many of the RAT decisions seen contain poor reasoning which question the 'credibility' of the applicant for reasons peripheral to the issue of risk of return, suggesting a culture of disbelief pervades the decision making process. The transparency of the RAT is also in question: appeal hearings are not open to the public, access to decision is restricted, no procedural rules guide the hearing and RAT judges ('members') are appointed by the Irish government.
15. Only a decision against the refusal to recognise a person as a refugee can be appealed to the RAT. A decision involving other human rights, for example that a person would be subject to inhuman and degrading treatment or torture, or that deportation would interfere with their right to a private and family life, cannot be appealed; such a decision can be subject to judicial review but this is not an automatic right, is costly and time consuming for all parties and is not therefore an effective remedy and is not the

⁷ As recognised by the Committee on the Elimination of Racial Discrimination in its concluding observations on Ireland in March 2011.

⁸ UNHCR Ireland statement on need for introduction of single procedure, available here: http://www.unhcr.ie/feb_statement_2011.html

⁹ Irish Times, Editorial, 'Immigration and Asylum' 24.02.2011

¹⁰ See 'The Single Protection Procedure, A Chance for Change, by Brian Barrington for the Irish Refugee Council' available at http://www.irishrefugeecouncil.ie/media/Report_single_protection.pdf

¹¹ Irish Times, Editorial, 'Immigration and Asylum' 24.02.2011

purpose of judicial review. In the new programme for government, the newly formed coalition government have committed to the establishment of a statutory appeals system but details are unknown.

Recommendations:

16. An independent appeals body should be created to which decisions involving refugee, human rights, immigration and deportation decisions can be appealed.
17. Appeal hearings should be open to the public (when no 'in camera' application has been made) decisions publicly available (anonymised when appropriate), and procedural rules drafted and published.
18. Appointments to the appeals body to be made by an independent appointments commission.

Deportation process and practice:

19. We have deep concern regarding the process and practice used to deport people (including children) who are not recognised as needing protection or without a human rights claim to remain in Ireland. A person may have had a deportation order for several years, during which time they have continued to develop their private and family life in Ireland (children attending school, relationships created and education undertaken), before the person is actually deported. Also, no notice is given of the date and timing of deportation, despite the person being required to regularly report to the authorities. The Irish authorities continue to deport the parents of Irish citizen children. The decision of the Court of Justice of the European Union¹² in March 2011 suggests that this practice is inconsistent with Article 20 of the Treaty of Functioning of the European Union which precludes a Member State from refusing a third country national upon whom his or her minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children. Another concern is that children who have been born in Ireland, who are not citizens but who have been attending schooling and have integrated in to Irish society and consider themselves Irish, and in some cases have never been to the country to which they are being deported, are also being deported.
20. The actual practice and procedures used during deportation flights is also of concern. Deportation often involves families being woken by officers of the Gardai National Immigration Bureau (GNIB) early in the morning and being given little time, often as little as 15 minutes, to collect their belongings. They are then taken to the airport where they are held before deportation. Some children are also taken from school. A deportation flight organised by Ireland and other EU states to Nigeria via Greece and given financial support by Frontex¹³ in December 2010 which included 34 Nigerians, including 13 children, including one Irish child. From the information available to the authors when people were allowed to use the toilet, they were not allowed to close the door. On arrival at Athens Airport, they remained on the flight for 2 hours. During that time the people being deported were not allowed to use the toilet. Children were subsequently forced to use bottles to urinate resulting in one 5 year old wetting himself and being forced to remain in wet clothes until his return to Dublin. After two hours they were taken from the plane to an airport lounge for a period of 14 hours and subsequently returned to Dublin due to the plane suffering

¹² Gerardo Ruiz Zambrano, v Office national de l'emploi (ONEm), Ruiz Zambrano (European citizenship) [2011] EUECJ C-34/09 (08 March 2011)

¹³ Frontex is an EU agency that coordinates cooperation between EU Member States in the field of border security.

mechanical problems. They had little refreshment during that period, in contrast to the availability of food and drink to groups under the control of officers from other EU countries. Ireland was also the only country to deport children. One woman, who was travelling with her young children, was physically restrained with handcuffs for a period in excess of 24 hours and other restraints about her chest and legs were used.

Recommendations:

21. People who are at the end of the process should be able to access the services of the International Organization for Migration (IOM).
22. Where school age children form part of the family unit to be removed, removal should take place at the end of a school term or, in the case of those in an academic year which leads to a recognised national qualification, at the end of the academic year.
23. In the event that an individual or family fails without good reason to depart from the state in accordance with the above, that they be removed from the state in accordance with the state's obligations under the European Convention on Human Rights and/or the UN Convention on the Rights of the Child.

Right to Work and to just and favourable conditions of work

Support and accommodation of asylum seekers:

24. In Ireland, those seeking protection are accommodated and provided for under the direct provision and dispersal system.¹⁴ This system is administered by the Reception and Integration Agency (RIA), an administrative unit under the authority of the Department of Justice and Law Reform. Residents in direct provision (DP) are given a residual weekly allowance of €19.10 for an adult and €9.60 for a child.¹⁵ Further, the DP scheme is regulated by a series of directions, rules and regulations which have been put into place by RIA¹⁶. There is also no formal independent complaints mechanism, leaving no opportunity for those living in DP centres to raise issues they may have.
25. The DP system has a very high financial and human cost. In its recent review of Ireland, the Committee on the Elimination of Racial Discrimination 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'¹⁷. The impact of DP is outlined below. CERD has recommended that Ireland 'take all necessary measures to improve the living conditions of asylum seekers by providing them with adequate food, medical care and other social amenities including also a review of the DP system'¹⁸. It should be noted however that similar recommendations were made in CERD's Concluding Observations of 2005¹⁹ and notwithstanding no discernable improvement in reception conditions has taken place.

¹⁴ The Direct Provision System was initially introduced by the government in April 2000. It is a scheme whereby asylum seekers and people seeking other forms of protection are provided with accommodation on a full board basis with all of their basic needs e.g. medical care provided for directly. It was only ever envisaged to be in place on a short term basis of not more than 6 months.

¹⁵ This allowance has not been raised since the DP system was put into place 10 years ago.

¹⁶ 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>

¹⁷ Concluding observations of the Committee on the Elimination of Racial Discrimination, Ireland, March 2011

¹⁸ *Ibid.*

¹⁹ Committee on the Elimination of Racial Discrimination, 2005, Concluding Observations on Ireland.

26. Under section 9(4)(b) of the Refugee Act 1996²⁰, those seeking protection in Ireland are prohibited from working while their claim is being considered. In practice, this has resulted in people being excluded from employment from periods of months to years, due to the frequent lengthy delays inherent in the Irish asylum application process. It has also led to asylum seekers spending long periods in demoralising inactivity, often leading to depression, social isolation and poverty.
27. The majority of asylum seekers in Ireland would welcome an opportunity to work and the refusal to allow them to work denies them a fundamental human right. Furthermore, Ireland is also out of step with its European neighbours on the issue, with Denmark the only other European state that does not allow asylum seekers to work.²¹ This was recognised in the report of Human Rights Commissioner Hammarberg on his 2008 visit to Ireland who stated that the DP system resulted in a low standard of personal autonomy, given the length of time that many are in the asylum system, and therefore called upon the Irish authorities to consider providing asylum-seekers with temporary work permits.²²
28. A chief justification put forward by Irish State authorities for imposing a prohibition on asylum seekers taking up paid employment is that it may create an economic 'pull factor'²³, which may in turn put pressure on the labour market and result in possible exploitation of the asylum system by economic migrants. However, access to employment is clearly beneficial both for the asylum seeker and the hosting state, promoting self-sufficiency among asylum seekers and reducing a reliance and dependency on public funds.

Recommendations:

29. The weekly residual payment allowed to asylum seekers should be increased.
30. The Irish government should introduce temporary work permits for asylum seekers, granting the right to work after six months from the lodging of their initial asylum application.
31. Ireland should sign up to Council Directive 2003/9/EC on minimum standards for the reception of asylum seekers.

Right to Social Security and to an adequate standard of living

32. According to statistics from October 2010²⁴, there were 6249 asylum seekers living in DP accommodation of which over 30% were children. CERD has previously called on States to “guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing...”²⁵ DP however cannot be said to meet this recommendation given the often poor standard of accommodation and its location in areas which are often remote. While accommodation standards vary from centre to centre, a recurrent complaint of residents is that space is limited with rooms often being of an inadequate size to accommodate the number of people who are allocated to them. This raises many

²⁰ Refugee Act 1996 as amended.

²¹ Both countries have opted out of EU Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers.

²² 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>

²³ Committee on the Elimination of Racial Discrimination, 2005, Concluding Observations on Ireland.

²⁴ Reception and Integration Agency, Monthly Statistics Report, October 2010.

²⁵ Committee on the Elimination of Racial Discrimination, 2005, Concluding Observations on Ireland.

issues around individual privacy and comfort as single people often have to share rooms with other residents who are normally complete strangers and may not speak the same language. Families are sometimes only allocated one room creating problems of overcrowding and a real breach of privacy for those with older children of both genders. Asylum-seekers are provided with food three times a day but are generally not allowed to store or cook food on the premises of the centre and are expected to eat at certain times of the day rather than choosing a time that is convenient for them. This continuously raises particular concerns for those who may have particular dietary requirements or for those with children who may need to eat regularly and not at such fixed times. It has also at times caused considerable difficulty for those who wish to fully observe their religious obligations with regards to types of food and times of eating.

Recommendations:

33. There must be a review of the system of DP with a view to reforming and improving upon the current system and finding alternative forms of reception for asylum seekers.
34. Until an alternative is found, asylum seekers should no longer spend unreasonable periods of time in reception centres and the standard of living conditions must be significantly improved.

Right to Education and to participate in the cultural life of the community

35. Children in the asylum process are entitled to free education up to Leaving Certificate level just as Irish children are. Children, however, often face a number of barriers to accessing this right to education in practice. Firstly, for many, English is not their first language and they require additional language supports in order to flourish. Even for those that do speak English, the circumstances that have brought them to Ireland are likely to have interrupted their schooling and many are not at the level that would be expected in children of a similar age. Currently, there is no nationwide government funded language support service for children in Ireland seeking asylum.
36. The location of DP centres is another factor affecting access to education and indeed as a direct consequence, the right to participate in the cultural life of the community. DP hostels can be located in isolated areas and while these are sometimes facilitated by bus routes, these often only accommodate regular school hours thus limiting opportunity for students who live in DP to participate in extra-curricular life. Further, the RIA also currently reserves a discretionary right to transfer DP residents to other centres around the country. This can have a devastating effect on residents' stability and particularly on families and school-attending children who may have formed relationships with their classmates and teachers in their respective schools.
37. Adult asylum seekers are offered courses in basic English and basic IT skills, but are not entitled to take part in any FAS (Irish Employment Authority) training courses. They are also not entitled to government funded third level education, largely because they do not meet the habitual residence criteria to qualify for free fees or grants. They may apply for third level education but should they wish to take up a place, they must pay non-EU fees which, depending on the course and institution, can run into thousands of Euros. Post Leaving Certificate courses are a cheaper alternative but fees can still represent a significant

obstacle given the prohibition on the right to work for asylum seekers and the meagre allowance of €19.10 per week.

Recommendations:

38. The Irish government should improve access to education by setting up and adequately funding a nationwide language support service for children and adults entering the educational system whose first language is not English.
39. The Irish government should remove unnecessary barriers present for asylum seekers attempting to access further and third level education courses, for example by removing the requirement that asylum seekers pay non-EU fees.

Migrants, Refugees and Asylum Seekers

Family reunification:

40. The authors receive regular complaints regarding the efficiency of the family reunification process for recognised refugees. Decisions, including those involving minors, take an unreasonably long time, up to several years. Delays can be exacerbated by the authorities' request for documents, from the country of origin, that are difficult for refugees to obtain. The required documentation may be unavailable or simply impossible to obtain due to war and the breakdown of State facilities (e.g. Somalia). In addition, documentation is sent to the Gardai for verification despite a lack of capacity and expertise on their part to verify such documents. Also, the Irish State frequently does not recognise religious or traditional marriages, particularly from states where polygamous marriage is legally permitted, disqualifying a large number of refugees. Delays result in marriages and child-parent relations breaking down and spouses and children being forced to stay in the country of origin, where they may be at risk for similar reasons as the refugee himself, or solely as a consequence of being connected to the refugee.

Recommendations:

41. The best interests of the child should be recognised as the primary interest in family reunification decisions.
42. An accelerated procedure for family reunion for children.
43. A right of appeal against a negative appeal decision.

Separated Children

44. Separated children in Ireland do not have recognised status as subjects of special protection in accordance with Article 20 of the UNCRC.²⁶ Ireland's practice has been called into question regarding safeguards and access to equal justice for separated children in the asylum process in the European Commission's 2010 referral to the Court of Justice of the European Union for its failure to fully implement the Asylum

²⁶UNCRC Article 20: A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. States Parties shall in accordance with their national laws ensure alternative care for such a child.

Procedures Directive.²⁷ Ireland has since amended the Refugee Act 1996 which is intended to implement the Directive.²⁸ However, human rights groups are concerned that it is not enough to bring the Refugee Act in line with the relevant provision of the Directive nor are they enough to fully safeguard the rights of the separated children seeking asylum.

Children in Direct Provision and in the asylum process

45. Since 2004, families in the asylum process, or children dependent upon parents who are in the asylum process, are no longer eligible for child benefit.²⁹ This places children seeking asylum in a position of child poverty where they are vulnerable to social exclusion. The government decision to withhold child benefit from children of asylum seeking parents is in contravention of both Article 2 and 3 of the UNCRC.³⁰ Children in DP are often isolated from other young people their age and socially excluded from field trips and community activities due to poverty. Children are often parented by several adults in the accommodation centre due to overcrowding and lack of privacy. Children in DP often do not have access to play space, homework space or access to toys and play grounds.

Recommendations:

46. Provide separated children with residency status upon entry while a durable solution is sought.
47. Legislate for the provision of an independent guardian for separated children in line with the Asylum Procedures Directive and European best practice.
48. Reintroduce child benefit for children in the DP system to reduce effects of child poverty. Ensure the best interest of the child is considered when taking any decisions in relation to the accommodation of the family.

²⁷ Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

²⁸ European Communities (Asylum Procedures) Regulations 2011 (S.I. No. 51 of 2011), Refugee Act 1996 (Asylum Procedures) Regulations 2011 (S.I. No. 52 of 2011).

²⁹ Free Legal Advice Centres, *One Size Doesn't Fit All* 2009 p. 21. Available at: http://www.flac.ie/download/pdf/one_size_doesnt_fit_all_full_report_final.pdf.

³⁰ UNCRC Article 2.2: States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.