



Information for the Committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to assist in the evaluation of Ireland's compliance.

1. Introduction

Founded in 2002, 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 ICI'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.

Since Ireland's last report to the Committee there have been some positive developments and, in our view, these include:

- The establishment of the Garda National Protective Services Bureau, with a Human Trafficking Investigation and Coordination Unit and specialist remit in domestic violence.
- The extension of the remit of the Office of the Ombudsman and the Office of the Ombudsman for Children to receive and examine complaints regarding the reception conditions of asylum seekers and refugees in Direct Provision accommodation centres and the actions of the Reception and Integration Agency.

There remain, however, significant concerns. In the following sections, information is provided by way of update to the UN Committee against Torture List of Issues prior to the submission of the second periodic report of Ireland, UN Doc CAT/C/IRL/QPR/2, 17 December 2013 with a particular focus on domestic violence, the new international protection legislation and immigration related detention. In addition the submission details key issues related to deportation, victims of trafficking and the rights of stateless persons.

2. Migrant Women and Domestic Violence (Article 2)

2.1 Independent Residence Permissions

The ICI welcomed the introduction of Immigration Guidelines for Victims of Domestic Violence by the Irish Naturalisation and Immigration Service in 2012, and Policy Document on Non-EEA Family Reunification in 2013. While both documents provide guidelines on applications for independent status, gaps remain in the protection of migrant women, and neither policy has a legislative footing but rather access to independent status is based on Ministerial discretion. It is acknowledged that in the majority of cases of domestic violence,

applications for independent status are treated sensitively and positively by the immigration authorities.

The Domestic Violence Guidelines set out that generally the immigration status granted [under the arrangements] would be “at the same level as that which was previously held as a dependent (normally Stamp 3)”. This would not enable women to become economically self-sufficient and could act as a disincentive to women seeking independent status. While it is known to service-providers that it can be possible to obtain a Stamp 4 with permission to work, this information is not stated in the policy.

Women from outside the EU who are successful in receiving an independent immigration status are then required to register, or re-register, with the Garda National Immigration Bureau (GNIB). In the majority of cases this incurs a fee of €300 to be issued with a certificate of registration. This registration fee may prove prohibitive for women in situations where they were previously not permitted to work under Irish immigration law and financially dependent on their spouse.

Recommendations:

- Adopt immigration legislation that is clear, fair and just that places provisions for independent status for victims of domestic violence on a statutory footing and provides for granting of immigration permission with full access to the labour market.
- Waive the registration fee in situations of first registration of victims of domestic violence following granting of independent status.

2.2 Access to Support Services

In addition, the issue of access to emergency supports is critical for victims of domestic violence. In circumstances where a person’s immigration status is pending, where they have a status that prohibits them from accessing public funds, or where they are not deemed to be ‘habitually resident’ in Ireland, women are often left without any finances to support their basic needs. Social services make insensitive requests for information regarding payments or passport information and in cases of domestic violence, this information may not be available to the victim, or the victim may not wish to contact her abuser.

Recommendations:

- Social welfare payments should continue for eligible non-EEA victims of domestic violence regardless of the stage of their immigration application and regardless of their current immigration status with flexibility regarding evidentiary requirements in this context.
- Community welfare officers should be directed to positively exercise their discretion to issue a temporary basic supplementary welfare payment to ensure that a person in a domestic violence situation is in a position to access emergency accommodation and supplies.

Equally, there is no assurance of access to safe emergency accommodation for victims who exit a situation of domestic violence. The Housing Circular 41/2012, issued by the Department of the Environment, Community and Local Government in 2012 sets out where applications for social housing supports from non-Irish nationals will be accepted. It provides for joint applications from spouses/civil partners, one of whom is an Irish citizen. However, when a couple separates, the non-Irish spouse/partner is no longer entitled to apply for

housing. This can leave victims of domestic violence with no access to social housing supports. Similar difficulties arise for other categories of migrant not envisaged by the circular, including victims of trafficking. In the absence of alternatives, many migrant victims of domestic violence are being housed in direct provision centres which have repeatedly been deemed unsuitable for victims of gender-based violence. Adapting the statutory definition of homelessness to include victims of domestic violence could also help in recognising the urgent and difficult situations many women find themselves in when seeking safety from violence.

The establishment, as in other jurisdictions, of a scheme for the provision of emergency welfare benefits and safe emergency accommodation for migrant victims of domestic violence whilst their applications are under consideration is required, together with the provision of specialised support services for migrant women. As in all domestic violence situations, the burden lies with the victim. Further deficiencies relate to the few concrete mechanisms currently in place to encourage the reporting of gender-based violence and the lack of awareness of the situation for migrant victims.

Recommendation:

- Ensure that migrant victims of domestic violence and victims of trafficking have access to safe emergency accommodation, essential welfare benefits to meet basic needs and social housing.

3. Update re. International Protection Act 2015 (Article 3)

3.1 General Considerations

Ireland has not progressed comprehensive immigration legislative reform. The International Protection Act 2015 generally commenced operation on the 31st December 2016. The legislation introduced a long overdue single protection procedure, which was intended to streamline the application procedure and significantly reduce overall processing times. However, there are major concerns that this objective will not be realised for some years due to transitional arrangements and the significant backlog in protection applications pending decisions prior to the entry into force of the new legislation. The International Protection Office tasked with processing initial applications is not sufficiently resourced to process applications efficiently. Unless an application qualifies for prioritisation, new applications made under the International Protection Act 2015 are not likely to proceed to first interview for a period of 18 months.

In addition to the above, it is notable that the International Protection Act 2015 did not:

- Recognise domestic violence as an act of persecution;
- Provide a definition of statelessness, recognise statelessness as an act of persecution or provide for a stateless determination procedure;
- Provide for a right of appeal against a negative decision to grant permission to remain or family reunification applications;
- Make express provision for the best interests of the child as the primary consideration whenever there is a determination to be made in respect of a child directly or where a child may be affected by the decision; or
- Provide for access to the labour market by protection applicants after any period of time at all.

In May 2017, the Irish Supreme Court¹ ruled that current indefinite ban on asylum seekers working is unconstitutional. The applicant in this particular case spent eight years in direct provision without access to employment and it is hoped that this decision will inform legislative developments and improve rights of asylum seekers in state provided accommodation.

Direct provision accommodation administered by the Reception and Integration Agency (RIA), was originally conceived as a short term accommodation for individuals seeking international protection. The selection of RIA centres is unsatisfactory due to concerns regarding safety, privacy, re-victimisation, children and young people's safety, accessibility for pimps and traffickers, the propositioning of female residents for prostitution, the sexualisation of younger residents and other considerations. The ICI welcomed the introduction of women-only centres by the RIA but is still concerned at the number of unsuitable centres used to accommodate vulnerable persons, in particular victims of trafficking. The housing in RIA accommodation centres of vulnerable persons, including victims of trafficking for sexual exploitation, has been widely criticised by many civil society organisations in Ireland.

Recommendations:

- Review and amend the International Protection Act 2015 to address the identified gaps and, in particular, provide access to the labour market for asylum seekers.
- The International Protection Office and Irish Naturalisation and Immigration Service should be adequately resourced to deliver international protection and family reunification services effectively and efficiently.
- End the use of direct provision for accommodation of victims of trafficking for sexual exploitation.

3.2 Immigration Related Detention (Articles 3, 11, 16)

The International Protection Act 2015 extended the State's power to arrest without warrant and detain persons suspected of committing certain offences including, without reasonable excuse, destroying his or her identity or travel document, or being or having been in possession of a forged, altered or substituted identity document², intending to leave the State and without lawful authority enter another State³ and not having made reasonable efforts to establish his or her identity.⁴

While the Act 2015 introduced some protections⁵, such as providing for the detained persons entitlement to consult a legal representative and have the assistance of an interpreter and limitations on immigration-related detention, there remain concerns. Although a person detained on the grounds outlined in the Act 2015 must be brought as soon as possible before a District Court judge who can authorise detention for 21 days, detention can be extended for further periods of 21 days pending the determination of the person's protection application

¹ *N.V.H -v- Minister for Justice & Equality and Ors* [2017] IESC 35

² International Protection Act 2015, Section 20 1 (f).

³ International Protection Act 2015, Section 20 1 (d).

⁴ International Protection Act 2015, Section 20 1 (c).

⁵ International Protection Act 2015, Section 20 (14).

without a maximum time limit. This is a key concern given the current expected timeframe of 18 months for first interviews.

Additionally, while the exclusion of children from detention is to be welcomed, the age assessment process could result in the arrest and detention of children. The provisions on detention “shall apply to a person if and for so long as— (i) not fewer than two members of the Garda Síochána or two immigration officers, or (ii) a member of the Garda Síochána and an immigration officer, on reasonable grounds, believe that the person has attained that age”.⁶ The exemption from protection of married children is of further concern.

Outside of international protection, it remains a significant concern that Irish immigration legislation provides for immigration-related detention in a wide range of circumstances.⁷ It is of particular concern that migrants can be kept in detention on immigration-related matters for periods of up to eight weeks in aggregate and that certain periods of time spent in detention do not count as part of the eight-week maximum, including time spent on remand awaiting trial or serving a sentence. Detainees still do not enjoy an express right to notify a person of their choice for their situation or to access a lawyer, although this may be facilitated if specifically requested. There is no right of appeal against decisions that may result in a migrant being placed in detention, for example, a decision to refuse entry on arrival in the State. The numbers of individuals refused leave to land in recent years has been increasing with 4,127 refused in 2016 and 3,450 refused in 2015. Civil society organisations have expressed concern that these figures have included nationals of Syria, Afghanistan, Iran, Iraq and Eritrea who were removed from the State, although it is reported that in some cases the individuals were subsequently permitted to apply for international protection.⁸

Recommendations:

- In compliance with existing recommendations of international committees, Irish legislation providing for immigration related detention should be reviewed and amended and priority given to alternative forms of accommodation.
- An express right of access to a lawyer should be provided for all persons in detention
- There should be a right of appeal for all immigration related decisions.
- Information should be provided to all detainees on their rights and duties in detention in a language that they understand.

3. Deportation (Articles 3, 16)

Before issuing a deportation order, the person concerned may make representations in writing to the Minister within 15 working days why they should be permitted to remain in the state rather than deported. Even though a person wishing to remain in the state may need to make complex legal submissions regarding torture/refoulement, statelessness, respect for private and family life or other human rights issues, with the exception of persons who have previously applied for asylum/protection in the state, there is very limited access to legal aid for persons without financial means who require legal advice or representation regarding their situation.

⁶ International Protection Act 2015, section 20 (7).

⁷ Section 3 Immigration Act 1999 (as amended) and Section 5 Immigration Act 2003.

⁸ See: <https://www.irishtimes.com/news/ireland/irish-news/the-number-denied-entry-into-ireland-rises-significantly-1.2744329>

There is no legal duty imposed on the Minister to process an application for permission to remain in the state in the context of proposed deportation within a specific period of time and it is not uncommon for applications to remain pending for periods of several years prior to being determined. During this period, the affected persons have no entitlements to work or to access social welfare or other support services in the state and, consequently, proposed deportees are at huge risk of destitution, homelessness and exploitation.

In the event that a person is issued with a deportation order, there is no right of appeal against the decision and the Office of the Ombudsman has no remit in any immigration-related decisions, including deportation decisions. The only legal remedy available is to seek judicial review in the High Court of the decision within 28 days. However, this is a very limited remedy, as the High Court is not in a position to review the merits of a case and cannot deal with questions of fact. In addition, the High Court does not have the power to alter or vary an administrative decision and the issuing of judicial review proceedings does not automatically have suspensive effect.

Persons issued with deportation orders are obliged to cooperate with immigration officers and to make arrangements for their departure from the country. Notwithstanding cooperation with the authorities, persons are often arrested in their homes in the very early morning hours and removed from the state with little or no notice of the travel arrangements that have been made on their behalf and without much opportunity to inform immediate family members, including their spouse or minor children, or to pack personal belongings.

A recent High Court ruling *Omar v Cloverhill*⁹ related to a deportation order issued by the Minister for Justice for the applicant and two members of his family. Members of the Garda Síochána (GNIB officers) arrived at the applicant's home and entered the premises to accompany the applicant's family to the airport to be deported. Although the applicant's child was sleeping the Gardaí advised the applicant to wake the child up just before leaving for the airport. The family were subsequently transported to Dublin Airport where they were held in detention. After a period of time the applicant refused to be deported to Tanzania and was formally arrested pursuant to s 5(1)(d) of the Immigration Act 1999 and sent to Cloverhill prison. It was held that the Gardaí entered the dwelling without a search warrant for the purposes of arresting the occupants and to give effect to a deportation order. This exceeded their powers of searching the premises and the subsequent detention of the applicant and his family, as well as his arrest, became unlawful. The deportation took place in the middle of the night when the applicant's son was sleeping and it was held that 'invading the sanctity' of a child's bedroom was unconstitutional. Subsequently, changes were made in the International Protection Act 2015 to the State powers to arrest and detain with a view to deportation. Instead of protecting the sanctity of the home, the legislation expressly provided for arrest without warrant in order to give effect to a deportation order.

Recommendations:

- Legal advice and information should be available to anyone who has received a deportation notice.
- There should be a time restriction in which a deportation pursuant to a deportation order can be carried out.
- Due to the inadequacy of judicial review proceedings, remedies should be available to

⁹ 2013 IEHC 579

- those who seek to appeal a deportation order
- Potential deportees should be given notice as to when the deportation will be carried out.

4. Victims of Trafficking (Article 14)

4.1 Identification Procedures

The present system of identification precludes the vast majority of victims of trafficking from its benefits by operating a nationality and immigration status led categorisation approach and, in particular, interferes with the right of victims of trafficking to seek and enjoy asylum.

The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (AIAs) provide that a foreign national identified as a suspected victim of trafficking can be granted a 60 day recovery and reflection period, a six month renewable temporary residence permission (TRP) on condition of cooperation with authorities in an ongoing investigation, voluntary repatriation and changes of immigration status, after certain conditions have been met. However, the AIAs are of limited scope, precluding EU citizens and individuals who have applied for international protection from any benefits.

Very few recovery and reflection periods are ever granted in practice with many women providing numerous statements to the police prior to being identified in any formal way. The process of identification also fails to formally identify the increasing number of women trafficked for the purposes of exploitative sham marriages. Identified victims of trafficking are issued with a temporary residence permit, which enables them to access social protections and benefit payments, employment and education/training. By imposing a nationality and immigration status led categorization, the existing policy interferes with the right of victims of trafficking to access social protections and to seek asylum.

As mentioned in the 2011 report to the Committee¹⁰, a continuing concern of the ICI is the inadequacy of the recovery & reflection period of 60 days currently provided, during which a victim of trafficking is expected to make an informed decision as to whether to assist the Garda Síochána or other relevant authorities. Victims of trafficking will often be highly traumatised and may not recover sufficiently within 60 days to make an informed decision about whether to participate in an investigation and/or prosecution.

The current AIAs, in addition to excluding EU nationals and asylum seekers, also operate exclusively for the purposes of investigating and prosecuting offences and not for the purposes of ensuring that all victims receive adequate protection and support regardless of cooperation with criminal investigations. In accordance with the current administrative arrangements, a temporary residence permit may only be issued in circumstances where the Minister is “satisfied that it is necessary for the purposes of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to any investigation or prosecution arising in relation to the trafficking”.¹¹ This does not allow a victim to remain in Ireland in order to pursue a civil action against traffickers and the administrative arrangements also fail to provide an avenue to residence on humanitarian

¹⁰ Joint Shadow Report to the First Periodic Review of Ireland under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <http://www.iprt.ie/files/ICCL-IPRT-report-web.pdf>

¹¹ Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, para. 22

grounds for victims who are too traumatised to return to their country of origin. Currently, the only access for a victim of trafficking to a residence permit on humanitarian grounds is by way of a discretionary application for leave to remain in the context of proposed deportation from the country.

In 2015 the Irish High Court¹² recognised the fundamental difficulties with the existing mechanism for identification of victims of trafficking. This echoed the serious findings of the various international monitoring reports and the previous ICI and other organisations' submissions outlining Ireland's inadequate transposition of the EU Trafficking Directive and other international treaties, such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children, supplementing the United Nations Convention against Transnational Organized Crime. Since the judgment in April 2015, there have been no formal amendments to the current victim identification process.

The ICI continues to call for an identification procedure that applies to all victims without exception. This procedure must include formal acknowledgement in writing offering a Recovery and Reflection period to all identified. Of similar importance to the improvement of the identification procedure is the issue of who identifies victims, what the threshold for evidence is and how long it takes to reach a conclusion and to notify the victim and their legal representative

In line with the international recommendations with regard to the identification process, the ICI continues to believe that the assessment of reasonable grounds has to involve non-governmental organisations and should utilise their expertise and unique liaison with the victim. Finally, decisions should be issued within reasonable and clearly defined time periods to avoid prolonged waiting on the part of the individual and to avoid further traumatising.

Recommendations

- Comprehensive reform of the existing AIAs and the introduction of an effective identification procedure that enables victims to access necessary social assistance and protection irrespective of nationality and immigration status. In the continued absence of such legislation, a clear and comprehensive policy document is essential
- The Irish Government should adopt legislative measures to ensure that victims of trafficking are not victimised or re-traumatised during the victim identification process, including at a minimum appropriate housing and witness protection measures.
- Provide for access to legal advice and representation to victims of trafficking prior to their engagement with An Garda Síochána.

4.2 Early legal intervention and comprehensive legal aid

The ICI is of the view that immediate access to legal advice and intervention is critical to ensuring that all victims of trafficking are fully informed of their rights and obligations at the earliest possible opportunity and are able to make an informed choice regarding the multiple issues they are facing in relation to immigration, family safety, investigation, compensation, repatriation and others.

Currently the Legal Aid Board provides “legal services on certain matters to persons identified by the Garda National Immigration Bureau as “potential victims” of human trafficking under the Criminal Law (Human Trafficking) Act 2008”. In other words, a

¹² P. –v- Chief Superintendent Garda National Immigration Bureau & others [2015] IEHC 222.

potential victim of trafficking is required to present herself/himself to An Garda Síochána (the Irish police) and provide at least basic details of their identity and situation to them before they are eligible for legal assistance.

Furthermore, the services offered to ‘potential victims’ of human trafficking are currently limited to legal advice only. The fact that victims of trafficking can only access State funded legal advice in Ireland after having been identified by the immigration police as ‘potential victims’ fails to observe the State’s obligations under EU and international human rights law. The current procedures are not in line with Article 12(2) of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, for example, as they fail to ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Additionally, Article 15(2) of the Council of Europe Convention provides for the right to free legal assistance and legal aid for victims in relation to compensation and legal redress, while Article 6(2)(b) of the United Nations Trafficking Protocol makes provisions for assistance enabling the views and concerns of the trafficked person to be presented and considered.

The ICI further notes that Ireland lacks any particular commitment to victims of trafficking with special needs, as identified in the EU Directive 2011/36/EU, where those needs derive, in particular, from pregnancy, ill health, disability, mental or psychological disorder, or due to a serious psychological, physical or sexual violence they have suffered.

The ICI calls for a stronger commitment to the establishment of an independent national rapporteur in Ireland, which is recognized as the international best practice approach. At present, the Anti Human Trafficking Unit (AHTU) fulfils the required role of a “national rapporteur or equivalent mechanism” for the purposes of the EU requirements, and furthermore AHTU has asserted that they rely on assessments provided by international monitoring reports. The appointment of a national rapporteur, who would evaluate all anti-trafficking policies and legislation to measure their effectiveness, collate real data and report directly to the Parliament, would increase the effective implementation of the NAP, when operational.

Recommendations:

- Increase the overall civil legal aid budget for the purpose of assisting victim of trafficking crimes, as well as provision of funding for specialised law centres or private practitioners providing legal services to victims of trafficking through an extension of the private practitioners’ scheme.
- Special attention is provided to particular cases where special services and concessions are needed, in line with EU law.
- Appointment of an independent National Rapporteur for the evaluation and monitoring of policies which is recognised as the international best practice approach.

5. Statelessness (Article 3, 16)

Although Ireland has long been a party to the UN conventions on statelessness and has general human rights obligations to prevent statelessness and to protect stateless persons, Ireland has not enacted any specific legislative or administrative measures to address the issue of statelessness, including the specific issue of childhood statelessness, and there is no formal

determination procedure for statelessness in the country.¹³

As mentioned in section 3.1 above, statelessness is not defined nor recognised as an act of persecution in the International Protection Act 2015. For non-protection related applications, in the absence of a formal procedure, the Irish authorities deal with stateless applications in an ad hoc and unsatisfactory way. In terms of access to justice, there are significant issues regarding procedural fairness in terms of transparency, processing times, lack of appeal procedures and little or no evidence of shared burden in terms of assessing the applications. While some rights are provided for stateless persons under domestic legislation including potentially faster access to citizenship and waiver of the fees that are usually required of naturalisation applicants, in the absence of any determination procedure these rights remain inaccessible to the individuals they are intended to assist. Stateless individuals frequently remain in a legal limbo for a significant number of years and may experience acute destitution, detention and risks of forced removal/deportation.¹⁴

Recommendation:

- Introduce a fair and effective system for identifying persons as stateless through a national statelessness determination procedure, that complies with international standards of due process and which follows the guidance of the UNHCR.

ENDS

¹³ For a comprehensive overview of relevant issues related to statelessness in Ireland, please refer to the Joint UPR Submission 2015 of the ICI, ENS and ISI available at: [http://www.upr.ie/WebSite/UPR/uprweb.nsf/page/DOJL-A8SJD51456577-en/\\$file/0033%20Immigrant%20Council%20of%20Ireland%20and%20European%20Network%20on%20Statelessness%20joint%20submission.pdf](http://www.upr.ie/WebSite/UPR/uprweb.nsf/page/DOJL-A8SJD51456577-en/$file/0033%20Immigrant%20Council%20of%20Ireland%20and%20European%20Network%20on%20Statelessness%20joint%20submission.pdf)

¹⁴ See further: <http://www.statelessness.eu/blog/ireland-ad-hoc-approach-failing-stateless-persons-dublin-seminar-highlights-shortfalls-and>