



## **Joint Oireachtas Committee on Justice, Defence and Equality Submission on the International Protection Bill 2015**

8 May 2015

### **Overview**

Nasc, the Irish Immigrant Support Centre, is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. The information we present in this submission is based on our experience providing legal advocacy and support for asylum seekers and refugees.

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A representative of Nasc is willing to appear before the Committee in a public session to discuss the arguments made in this submission.

## **Submission to Joint Oireachtas Committee on Justice, Equality and Defence on the International Protection Bill 2015**

### **I. Introduction**

Nasc, the Irish Immigrant Support Centre, is a non-governmental organisation working for an integrated society based on the principles of human rights, social justice and equality. Nasc (which is the Irish word for link) works to link migrants to their rights through protecting human rights, promoting integration and campaigning for change. Through our legal clinics, Nasc provides information, advice, and support to over 1,000 migrants and their families annually living in the Cork area. It is the only NGO offering legal information and advocacy services to migrants in Ireland's second largest city.

Nasc welcomes the opportunity to make a submission to the Justice Committee on the International Protection Bill 2015. Nasc was founded in 2000 in response to the rapid rise in the number of migrants moving to Cork. This rise was due in part to the introduction of the Government's policy on dispersal and the establishment of the Direct Provision System in 1999, which resulted in an increase in the numbers of asylum seekers being dispersed to direct provision accommodation in Cork. At that time there were no services in the city to address the needs of this vulnerable population. There are currently five direct provision centres in Cork City and County placing Cork as one of the counties with the highest asylum seeking population in the country. We have over fifteen years experience working in the immigration and protection systems and our contribution to this process is directly informed by the issues that we encounter in our legal clinics and through our direct work with asylum seekers at all stages of the process.

### **II. General Observations**

Nasc broadly welcomes the publication of the General Scheme of the International Bill (General Scheme), and we welcome the fact that the General Scheme relates solely to protection, removing the uneasy tension between Immigration and Protection Legislation. We particularly welcome the proposed introduction of a single or unified procedure to replace our current system, in which eligibility for refugee status and subsidiary protection status are considered sequentially. The sequential nature of our current system has led to inordinate

delays in the processing of applications, resulting in asylum seekers spending many years awaiting a decision on their application.

The introduction of the Single Procedure coupled with the forthcoming report of the Working Group on The Protection Process and Direct Provision, of which Nasc was a member, offers the State a unique opportunity to establish a fair, efficient, and transparent Protection System that is in compliance with our obligations under international human rights law, E.U law and domestic legislation. The proposed introduction of the Single Procedure, as outlined currently in the General Scheme, goes some way to address some of the systemic issues that have lead our current dysfunctional system.

### **Current EU Standards**

It is Nasc's contention that one of the primary and principle reasons for the well-documented systemic failures in our current Protection and Reception systems stems from the fact that we have failed to meet the relevant E.U. minimum standards for Protection and Reception of Asylum Seekers. These standards are set out in a suite of Directives known as the Common European Asylum System (CEAS) which derives from Member States' obligations under Article 63<sup>1</sup> of the Treaty on the Functioning of the EU (TFEU). The primary Directives include: the Reception Conditions Directive<sup>2</sup>, the 'Dublin' Regulation<sup>3</sup>, the Recast Qualification Directive<sup>4</sup> (adopted in

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<sup>1</sup>Article 63 Provides: 1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

<sup>2</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

December 2011), the Recast Eurodac Regulation,<sup>5</sup> and the Procedures Directive<sup>6</sup>. A number of these Directives were passed by European Parliament in June 2013, when Ireland held the presidency of the European Council.

Ireland is not bound to participate in European instruments in this area,<sup>7</sup> but may cherry pick or opt in to any Directive it wishes to. To date, Ireland has opted in to only one Directive in the Recast CEAS instruments – the Recast Dublin Regulation. The current General Scheme, which is absent of any of the substantive provisions across a number of the Directives, would seem to indicate a marked unwillingness and a missed opportunity by the State to introduce and be held accountable to a clear set of minimum basic standards for the reception, processing and withdrawal of protection applications in Ireland. Nasc would therefore strongly recommend that Ireland opt into all the Directives under the Common European Asylum System, placing us in line with EU member states and ensuring that Ireland has a fair, transparent and humane protection and reception system. With the possible exception of the introduction of the Single Procedure and a repeal of the ban on the right to work (Head 15(3)), primary legislation would not be required to implement and give effect to the Directives<sup>8</sup>. This would also enable Ireland to keep up to date with any future developments in changes in EU law without the need for primary legislation.

Notwithstanding the above overarching recommendations, Nasc has a number of general recommendations:

### **Equality**

Nasc are concerned that the General Scheme does not contain a provision of non-discrimination or equality and given the fact that our equality legislation does not extend to protection policy, Nasc would recommend that consideration be given to the introduction of an equality guarantee.

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<sup>3</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

<sup>4</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

<sup>5</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013

<sup>6</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

<sup>7</sup> Under Protocol, No 21, annexed to the Treaty of European Union and the Treaty on the Functioning of the European Union, "on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice"

<sup>8</sup> European Communities Act, 1972 (as amended) provides for the adoption of statutory instruments to implement binding instruments of EU law with the same effect as if they were acts of the Oireachtas

### **Statutory Provision for Reception**

There is currently no legislative basis for the direct provision system. We need to implement a reception system that has undergone Parliamentary scrutiny, and ensures compliance with our international obligations under the ECHR Act 2003 and also EU law. Nasc recommends that statutory provision for reception is included in the General Scheme.

### **Extending the Remit of the Ombudsman**

Several aspects of the Reception and Integration Agency's 'House Rules', including the complaints procedure, were recently deemed unlawful in High Court Justice Mac Eochaidh's ruling in *C.A. and T.A (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* (14 November 2014). This is an extremely welcome development; Nasc has long highlighted the failures in the existing complaints procedure and called for an independent and impartial complaints mechanism to provide oversight of the direct provision system.

While we understand that the High Court judgment will force RIA to develop some form of independent complaints system, we strongly recommend that oversight of this mechanism be officially extended to the Offices of the Ombudsman and the Children's Ombudsman and that this oversight be guaranteed in legislation in the Protection Bill. Nasc has long advocated for the Department of Justice to recognise the Offices of the Ombudsman and the Children's Ombudsman's investigatory remit over all administrative issues relating to asylum to the exclusion of decisions on status, which includes accommodation, administration processes and internal complaint handling. These are areas the Offices of the Ombudsman and the Children's Ombudsman already believe to be within their remit; however the Department of Justice does not share this understanding.<sup>9</sup> Clarification in the General Scheme will ensure that this remit cannot be contested.

Furthermore, we recommend that the remit of the Ombudsman and the Children's Ombudsman be extended to the administration of the law relating to asylum and immigration, which would include asylum decisions. Ombudsman Emily O'Reilly, in one of her last actions prior to taking up the role of European Ombudsman, presented to the Joint Oireachtas Committee on Public Service Oversight and Petitions in September 2013 on this area continuing to remain outside the Ombudsman's jurisdiction, and noted that 'this anomalous situation is virtually unique in terms of the jurisdiction of national Ombudsmen internationally'. We recommend that the necessary amendments to the Ombudsman Act be included in the General Scheme.

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<sup>9</sup> See JOC Public Service Oversight and Petitions, Report on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision System (DPS) on DP, 2015; Office of the Ombudsman, *A report by the Ombudsman for Children on the operation of the Ombudsman for Children Act, 2002* (March 2012).

## Section II Recommendations:

- Ireland opt in to all of the EU Directives under the Common European Asylum System;
- The introduction of an equality guarantee into the General Scheme;
- Statutory provision for reception to ensure parliamentary oversight;
- The remit of the Ombudsman and the Children's Ombudsman be clarified and extended in the General Scheme in relation to the handling of all issues relating to asylum and immigration

### III. The Best Interest of the Child

The principle of the best interests of the child derives from Article 3 of the UN Convention on the Rights of the Child (CRC), which Ireland ratified in 1992. In addition, Ireland is bound by the European Convention on Human Rights (ECHR), which does not specifically address the principle; however the European Court of Human Rights (ECtHR) has developed a practice of interpreting certain substantive Convention rights in light of the principle.<sup>10</sup> The best interest of the child principle is also enshrined in Article 24 of the EU Charter of Fundamental Rights, which became legally binding in Ireland following the passing of the Lisbon Treaty in 2009. In implementing the various EU Directives under the CEAS in the International Protection Bill, Ireland is bound to do so in conformity with the rights contained in the Charter of Fundamental Rights. Finally, both the Child and Family Agency Act 2013 and the Children First Bill 2014 (published but not yet enacted) give significant prominence to the best interest of the child principle in relation to all functions Tusla, the Child and Family Agency (CFA) performs under the legislation.

The UN Committee on the Rights of the Child defined this principle as a 'threefold concept': a substantive right; a fundamental, interpretive legal principle; and a rule of procedure.<sup>11</sup> Thus, giving effect to the best interests of the child principle is not solely a question of incorporating provisions into domestic legislation on substantive rights. It is a question of interpreting and drafting legal provisions in a manner that is compatible with the principle as well as designing rules of procedure to ensure that they are compatible with and facilitate the application of the principle.

The General Scheme must reflect the general principle that the best interests of the child be a primary consideration in all actions concerning all children at every stage of the process. Currently, only Heads 23 (medical assessment to determine the age of unaccompanied minor); 33 (unaccompanied minors); 47-49

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<sup>10</sup> In the case of *Neulinger and Shuruk v Switzerland*, the ECtHR held that there is a 'broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount'. *Neulinger and Shuruk v Switzerland*, Appl. No. 41615/07, Judgment of 6 July 2010, para. 52.

<sup>11</sup> UN Committee on the Rights of the Child, General Comment 14

(extension to qualified persons of certain rights, permission to reside in the State, travel document); and 50-51 (right to family reunification) contain provisions that the best interests of the child be a primary consideration.

### **The right of a child to make a protection application**

The UN Committee on the Rights of the Child's General Comment 6 states that 'asylum seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection irrespective of age'. The General Scheme must contain a clear statement that all children have the right to lodge an application for international protection on their own behalf, or through a representative, which, in the case of accompanied children may be a parent (Head 12). By amending Head 12 to clearly articulate that right, it will remove any potential conflict with Head 6(2)f, which makes explicit reference to acts of persecution of a child-specific nature.

### **The rights of the child in relation to a protection application**

The application of the best interest of the child principle does not give an automatic right to international protection; a child must meet the same eligibility criteria as any other protection application. That being said, the best interest of the child principle is potentially relevant to evaluating a claim for protection when the applicant is a child, for instance acts of persecution of a child-specific nature or child-specific country of origin information may be relevant in assessing an application. The General Scheme should include a clear statement to that effect.

### **The right of the child to be heard**

Article 12 of the CRC (and Article 24 of the CFR) provides that States must assure that a child 'who is capable of forming his or her own views [has] the right to express those views freely in all matters affecting the child', and that 'the views of the child [be] given due weight in accordance with the age and maturity of the child', and that the child 'be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law'. Therefore, a child who is capable of forming his or her own views must be provided the opportunity to be heard at all stages of the asylum procedure. The General Scheme must include reference to ensuring the rights of the child to be heard are given sufficient expression and protection.

### **Training for those working with children**

Giving effect to the best interest of the child principle requires those working in the system to have a high level of awareness of the specific rights and needs of children and their obligations under international and domestic law. The provision of training is necessary in this regard. The General Scheme should contain provisions

requiring procedural and substantive training for decision-makers who make decisions in relation to children as well as those who interview them.

### **Prioritisation of children’s applications**

Under the Heads of Bill, Head 67 refers to the discretion of the Minister in regard to the prioritisation of applications. Both the Refugee Act 1996 and the 2013 Subsidiary Protection Regulations facilitate the prioritisation of applications with reference to age; however Head 67 does not include specific reference to age as a specific grounds for the Minister to apply discretion. The General Scheme should ensure that the Minister can continue to prioritise cases where appropriate by reference to the age of the application, or his or her status as an unaccompanied minor.

### **Separated Children or Unaccompanied Minors**

Unaccompanied minors (or Separated Children Seeking Asylum) are defined as “children under 18 years of age who are outside their country of origin, who have applied for asylum and are separated from their parents or their legal/customary care giver.”<sup>12</sup> There are many reasons why children arrive unaccompanied and child trafficking is one of these reasons. Separated children are a vulnerable group and the state is duty bound by international and domestic law to protect and provide for separated children in the same way as children normally resident in the State. Currently, it is under the Child Care Act, 1991 and the Refugee Act, 1996 (as amended) that the responsibilities of the State are set out in relation to the care needs of separated children who seek asylum in the State. Separated children who arrive in this jurisdiction are placed in the care of the State, with Tusla, the Child and Family Agency (CFA).

For the purposes of the General Scheme, a clear definition of the separated child should be included in the legislation, in accordance with the UNHCR best practice definition. As it stands, there is a lack of clarity in the General Scheme about whether a minor is ‘accompanied’ or ‘unaccompanied’. Under the General Scheme, Head 12(1)b notes that an adult may make an application for international protection *‘on behalf of another person who is in the State (whether lawfully or unlawfully) where the person over the age of 18 years is taking responsibility for the care and protection of the person who is under the age of 18 years’* (emphasis added). In Head 14(1) it states that, when a person indicates that he or she wishes to make an application for international protection, and it appears to an immigration officer that that person is under the age of 18 and *‘is not accompanied by an adult who is taking responsibility for the care and protection of the person concerned’* (emphasis added), the Child and Family Agency is notified. Upon this notification, the Child Care Acts 1991 to 2007, the Child and Family Agency Act 2013 and ‘other enactments relation to the care and welfare of persons under the age of 18 years’ applies to the separated child (Head 14(2)).

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<sup>12</sup> UNHCR, *Separated Children in Europe Programme: Statement of Good Practice* (2004), available: <http://www.unhcr.org/4d9474399.pdf>

In law and international best practice, a child is either accompanied by a parent or guardian or is a separated child. The current General Scheme make reference to a ‘responsible adult’, which is not defined and does not accord with Irish law (unlike the term ‘guardian’). This ‘responsible adult’ has powers to make an application for international protection on behalf of a separated child, and under Head 23, has the power to consent to a medical examination of a separated child, without their relationship to the child ever having to be established. The adult could be a friend, or the adult could be the child’s trafficker. If a child enters the state with an adult that is not their parent or legal guardian, the General Scheme must include clear guidance of how to establish the relationship of this adult to the separated child, if the adult is acting in the best interests of the child, and if it is in the best interest of the child to remain with that adult, prior to giving that adult powers to make decisions on behalf of that child. This must include establishing evidence of appropriate ties to the child, with due consideration given to cultural differences.

If the child is a separated child, Nasc recommends that he or she should be taken into the care of the Child and Family Agency using interim and full care orders. This would allow the CFA to act as legal guardian as defined within the Child Care (Amendment) Act 2011. This could apply in the context of acquiring early legal advice to ensure that, if appropriate, a separated child enters into the protection process as soon as possible after he or she enters the care of the state. A care order also means that the Court can appoint a guardian ad litem to provide additional support. The Child and Family Agency would then function as the separated child’s legal guardian in the context of age assessment, which under Head 23, currently allows a ‘responsible adult’ to consent to a medical examination for a separated child. Further to Head 23, UNHCR guidelines on best practice call for the ‘medical examination’ to make provision for the physical, development, psychological and cultural attributes of the child and be conducted by independent professionals with appropriate expertise and familiarity with the child’s ethnic and cultural background, and be gender appropriate.

### **Section III Recommendations:**

- The General Scheme must reflect the general principle that the best interests of the child be a primary consideration in all actions concerning all children at every stage of the process;
- The General Scheme must contain a clear statement that all children have the right to lodge an application for international protection directly, or through a representative, which, in the case of accompanied children may be a parent;
- The General Scheme should include a clear statement that the best interest of the child principle is potentially relevant to evaluating a claim for protection when the applicant is a child;
- The General Scheme must include reference to ensuring the rights of the child to be heard are given sufficient expression and protection;
- The General Scheme should contain provisions legislatively requiring procedural and substantive training for decision-makers who make decisions in relation to children and those who interview them;

- The General Scheme should ensure that the Minister can continue to prioritise cases where appropriate by reference to the age of the application, or his or her status as an unaccompanied minor.;
- The General Scheme should include a clear definition of the separated child, in accordance with the UNHCR best practice definition;
- The General Scheme must include clear guidance of how to establish the relationship of the ‘responsible adult’ to the separated child;
- The General Scheme should include provision that if a child is a separated child, he or she should be taken into the care of the Child and Family Agency using interim and full care orders;
- The General Scheme should make provision within the medical assessment (Head 23) for the physical, development, psychological and cultural attributes of the child to be taken into consideration and be conducted by independent professionals with appropriate expertise and familiarity with the child’s ethnic and cultural background, and be gender appropriate

#### IV. Family Reunification

The right to family reunification for refugees and persons eligible for subsidiary protection (sponsors) is contained in Heads 50-51 of the General Scheme. The right to a family life is affirmed by the Irish Constitution<sup>13</sup>, and is also recognised by international<sup>14</sup> and European<sup>15</sup> instruments. It is recognised<sup>16</sup> that family reunification plays an essential part in the long term integration of refugees and, more latterly, persons eligible for subsidiary protection, into their host member State.

Nasc is concerned that the provisions contained in the General Scheme are significantly more restrictive than the rights currently legislated for by section 18 of the Refugee Act, 1996 and Regulation 25 of the European

<sup>13</sup> Article 41, Bunreacht na hÉireann

<sup>14</sup> Article 16(3) *Universal Declaration on Human Rights*; Articles 9 and 10 *United Nations Convention on the Rights of the Child*; Article 17 and 23(1) *International Covenant on Civil and Political Rights*; Article 10(1) *International Covenant on Economic, Social and Cultural Rights*;

<sup>15</sup> Article 8 *European Convention for the Protection of Human Rights and Fundamental Freedoms*; Articles 7 and 9 of the *Charter of Fundamental Rights of the European Union*.

<sup>16</sup> UN High Commissioner for Refugees (UNHCR), *Protecting the Family: Challenges in Implementing Policy in the Resettlement Context*, June 2001, available at: <http://www.refworld.org/docid/4ae9aca12.html> [accessed 5 May 2015] UNHCR has outlined five guiding principles of family reunification:

- a) The family is the natural and fundamental group unit of society, and is entitled to protection by States
- b) The refugee family is essential to ensure the protection and well being of its individual members
- c) The principal of dependency entails flexible and expansive family reunification criteria that are culturally sensitive and situation specific
- d) Humanitarian considerations support family reunification efforts
- e) The refugee family is essential to the successful integration of resettled refugees

Union (Subsidiary Protection) Regulations, 2013 and would represent a significant diminution of family rights for sponsors and their family members.

### **Restriction of Family Reunification to Nuclear Family**

Heads 50-51 remove the eligibility for sponsors to apply for dependent family members who may fall outside the 'nuclear family' but who may nonetheless have been a dependent part of the sponsor's household. Head 50(8) limits the definition of a 'member of the family' to spouses or civil partners and unmarried children under the age of 18, or in the case of a minor sponsor, parents and their children. As outlined by UNHCR, refugee families "rarely fit neatly into preconceived notions of a *nuclear* family (husband, wife and minor children...) A broad definition of a family unit – what may be termed an extended family – is necessary to accommodate the peculiarities in any given refugee situation."<sup>17</sup>

#### *Same-Sex Relationships*

While we welcome the extension of family reunification rights to civil partners of refugees, Nasc are concerned that in reality LGBT refugees will remain unable to realise their rights to family reunification with same-sex spouses or partners. The General Scheme provides that the relationship must have been subsisting at the time of the sponsor's application for protection in Ireland, however same-sex marriages or civil partnerships are illegal in the top refugee-producing countries. Appendixes 1-3 contain tables establishing that there is no provision for same-sex marriage or partnership in any of the five top refugee producing countries in the world or amongst the nationalities making up the highest number of family reunification applications in Ireland. Appendix 1 contains a table showing the nationalities from which the highest numbers of asylum seekers entered Ireland between 2011 and 2014 and shows that there is no provision in any of those countries for same-sex marriages and, in the majority, same-sex sexual activity is illegal. It is quite possible that a sponsor's application for international protection may have been based on the risk of persecution because of their sexual orientation and it would be unrealistic to expect, in these circumstances, couples to have married or cohabitated prior to the sponsor fleeing their country of origin.

#### *De Facto Partnerships*

The family reunification provisions contained in Head 50(8) excludes family reunification for *de facto* partners even in circumstances where a couple may have cohabitated and have had children together. Confining the definition of 'family members' to relationships based on civil partnerships or marriage ignores the realities of family life and is contrary to the principles of Article 8 of the *ECHR*. In Ireland 35.4% of all births occur outside marriage or civil partnership. The restrictive definition of 'family members' would mean that sponsors would

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<sup>17</sup> Ibid

have a right to apply for biological children, but in some cases, not the other parent and could effectively lead to the break-up of the family unit. This would significantly undermine the integrity of the family life in the State.

### *Dependents*

The Refugee Act 1996 contains includes the possibility for refugees to apply for dependent family members, “any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully.”<sup>18</sup> No similar provision is included in the General Scheme. Nasc is extremely concerned that these provisions are inadequate and will particularly affect very vulnerable family members including adults with disabilities and orphaned wards who have become part of the sponsor’s family unit.

*Sami, a refugee, came to Nasc for assistance with a family reunification application. Sami had spent several years waiting for his application for asylum to be processed in Ireland. Once he was granted refugee status, he immediately wished to apply for family reunification with his wife and 4 children who were living in a refugee camp. Sami’s eldest child was over 18 and suffered from a significant physical disability. Sami had a right to family reunification with his wife and 3 younger children, and the Minister used his discretion to also grant Sami’s eldest son family reunification under s18(4) to ensure that the family unit was maintained.*

### **Time-bound right to Family Reunification**

Head 50(1) limits the right to family reunification to the 12 month period after the sponsor has been recognised as a person in need of international protection. Current legislation does not contain this restriction. This time period should be removed as it will severely impact the most vulnerable family members who may have become separated in fleeing conflicts or who may have been imprisoned. Nasc has represented a number of sponsors who have only successfully found family members years after they have been granted status. Under the proposed General Scheme, they would have lost their right to family reunification.

*Amino from Somalia was granted refugee status. She successfully applied for family reunification for her children, who were living in a refugee camp in Ethiopia, to join her. At the time of her application, she was unable to find her husband Mohamed who had become separated from the rest of the family. She had applied for tracing through the Red Cross but this did not yield any leads. Four years after she was granted status, her*

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<sup>18</sup> Article 18(4) Refugee Act, 1996

*husband contacted her through social media. He had been frantically searching for her and their children for years and a chance encounter with a mutual acquaintance gave him enough information to track her down. Amino was able to apply for family reunification to complete her family.*

### **Loss of family reunification status if a family member does not enter or reside in the State by a specified time**

Head 50(5) permits the Minister to provide a time limit by which a family member granted family reunification must have entered the State. Nasc is concerned about the introduction of any such restrictions which may not take into consideration any exceptional measures or obligations which may arise which may prevent travel. Nasc also notes that the cost of travel is borne entirely by the sponsor (there are no grants available) and can represent a very significant cost, particularly for those with large families.

### **Failure to provide for a right of appeal of negative decisions**

The General Scheme does not provide for a right of appeal on a negative family reunification decision. In the event that the sponsor wishes to challenge a decision, the only legal remedy open to him/her is judicial review proceedings. Nasc believes that judicial review is not an adequate remedy as it is not an appeal on the facts of the case and is an inefficient and costly mechanism.

### **Time limit on processing applications**

The General Scheme does not include a statutory deadline by which a family reunification application should be processed. Nasc recommends that a processing time limit be introduced in legislation. Directive 2003/86/EC on the right to family reunification (to which Ireland is not a signatory) contains an obligation on Member States to provide a written decision on a family reunification application no later than nine months after the date of application.<sup>19</sup>

### **Section IV Recommendations:**

- The requirement for the marital relationship or civil partnership to have existed at the time of application for international protection be removed;
- The family reunification provisions should be expanded to include cohabitating partners;
- The current definition of a family based on the 'nuclear family' be replaced with a broader definition of a family unit which would include dependent family members;
- The requirement that family reunification applications be made within 12 months of the grant of international protection status be removed;

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<sup>19</sup> Article 5(4) Directive 2003/86/EC of 22 September 2003 on the right to family reunification

- Provision regarding the loss of status in the event of the family member's failure to enter or reside in the State should be removed;
- A right of appeal should exist for negative family reunification applications;
- The introduction of a statutory time frame for processing applications

## V. Detention

### Access to the Protection Process

Nasc is currently undertaking research into immigration-related detention and this is due to be published later this year. The initial findings emerging from the research to date would indicate that a considerable number of migrants who come to Ireland to access the protection system are, in a number of cases, not being given the opportunity to make an application for international protection, and are being "turned around" at our airports. This is a matter of serious concern to Nasc. To ensure that we are in compliance with our international human rights obligations, EU Law and our domestic legislation we would recommend the following be provided for under Head 19:

- a) All immigration Officers are fully trained on International Protection Legislation and their obligations to grant access to the Protection System for those who seek it.
- b) Any detained person should be informed in writing, in a language that they understand, their right of appeal against any decision to detain or refuse access to the territory.
- c) All protection applications detained should have the right to inform a person of their choice and should be granted access to legal representation from the beginning of their detention.
- d) Both the UNHCR and the Minister or Tribunal shall also be informed from the outset of a decision to detain a Protection Applicant.

### Compatibility with International Legal Obligations

The 1951 UN Convention (the Convention) relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, to which Ireland is a part and the General Scheme seeks to give effect to, explicitly recognise and provide for the fact that Protection Applicants may enter the state in an irregular manner. Article 31 of the Convention prohibits States from imposing penalties on Applicants who enter the state irregularly. This is in recognition of the fact that those fleeing war and persecution may not be able to obtain the requisite travel documentation. Article 31 of the Convention provides:

*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

Nasc is concerned that Head 19(1)(c) and (e)(ii) (Detention Provisions) may be incompatible with the Convention as it provides that a protection applicant can be detained if he/she is in possession of forged, altered or substitute documentation. The Article does not afford the Applicant an opportunity to show "good cause" for being in possession of said documents as required under Article 31 of the Convention.

Nasc recommends that, in line with both the text and spirit of the Convention, the Head be amended to provide for a consideration of "good cause" to be made for protection applicants who enter in this manner.

#### **Detention as measure of last resort**

Further, we would also note that detention of protection applicants should only be a measure of last resort, with clearly defined limits to avoid risk of long term or indefinite detention. Article 8 of the Receptions Directive provides that "a state should only detain a Protection applicant if other less coercive measures cannot be applied effectively". Head 19 as it is currently drafted does not, in our view, meet this requirement and Nasc recommends that the section be amended to provide that detention only be used as a measure of last resort.

Nasc is concerned that Head 19 (2) provides that Protection Applicants who have been detained shall be brought before a judge of the District Court "as soon as practicable"; this term is undefined. If the judge is satisfied that one or more of the grounds for detention are met he/she may "commit the person concerned to a place of detention for a period not exceeding 21 days" (Head 19 (3) (2) (a)). This means in practice that protection applicants may potentially be detained for successive 21 day committals until a decision has been made on their protection application. Nasc recommends that an upper time limit on the overall period spent in detention be set in line with the requirements of the Receptions Directive (Article 9), which provides that - "An applicant shall be kept only for as short a period as possible".

Nasc is also concerned with the addition of new grounds for detention under 19 (1) (e) (ii), which provides that a Protection Applicant can be detained if he/she "is or has been in possession of a forged, **altered or substituted identity document**". Whilst Head 19 offers a definition of a substituted identity document, whether or not a document is substituted is a highly subjective decision, with no oversight, and one which confers wide discretionary powers on immigration officers. This is of particular concern when viewed against the severity of the sanction, which is detention.

Head 19 should be amended to ameliorate the harshness of this provision. Nasc recommends that this be removed from the Head and due consideration should be given to, including the requirement to establish nationality, a lower threshold, as an alternative to identity.

Nasc is also concerned by the fact that protection applicants can be detained in "a place of detention" (Head (19) (1)). The term "a place of detention" is not defined in the Act. A clear definition of what constitutes "a place of detention" should be provided.

In defining "a place of detention", Nasc considers that prisons or Garda Stations are not suitable places for the detention of protection applicants who have not been convicted of a criminal offence and who are attempting to enter the state, are awaiting the outcome of their protection applications or are subject to deportation orders. Detention in prisons and Garda Stations runs contrary to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Where detention is the only option, protection applicants should be held in specific centres and away from the general prison population.

Head 19 (13) outlines the procedures to be followed where a protection applicant indicates a desire to leave the State. Notwithstanding the fact that protection against *non-refoulement* is provided for under Head 44, Nasc recommends that to ensure compliance with our obligations not to return an applicant to a place in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion, that this be inserted into this Head as one of the stated grounds to be satisfied before an order is made in the District Court.

### **Detention of Unaccompanied Minors**

Nasc welcomes the fact that unaccompanied minors appear not to be subject to the detention provisions as currently drafted. This position could be strengthened and further clarified by the insertion of a clear statement in the General Scheme that no child under the age of 18 shall be detained.

Nasc is concerned that under Head (19) (7), if an immigration officer has reasonable grounds for believing a person is over the age of 18, applicants can be detained in line with the adult provisions. In the absence of any age determination guidance in the Scheme, Nasc has serious concerns that in cases of uncertainty, children may be detained and treated as adults. Nasc recommends that clear age assessment guidelines be established and that immigration officers at the port of entry are fully trained to recognise children at risk and that the "Best Interests of the Child" principle should inform all decisions in this regard.

### **Section V Recommendations:**

- All immigration Officers are fully trained on International Protection Legislation and their obligations to grant access to the Protection System for those who seek it;
- Any detained person should be informed in writing, in a language that they understand, their right of appeal against any decision to detain or refuse access to the territory;
- All protection applications detained should have the right to inform a person of their choice and should be granted access to legal representation from the beginning of their detention;
- Both the UNHCR and the Minister or Tribunal shall also be informed from the outset of a decision to detain a Protection Applicant;
- Applicants have an opportunity to show 'good cause' for being in the possession of forged, altered or substitute documentation;
- Detention of Protection Applicants only be used as a measure of last resort;
- The implementation of an upper time limit on the overall period that a Protection Applicant can be detained;
- Due consideration should be given to, including the requirement to establish nationality, a lower threshold, as an alternative to identity;
- A clarified definition of the term "a place of detention";
- Where detention is the only option, protection applicants should be held in specific centres and away from the general prison population;
- Compliance with the principle of *non-refoulement* be required as one of the stated grounds to be satisfied before an order is made in the District Court;
- That clear age assessment guidelines be established and that immigration officers at the port of entry are fully trained to recognise children at risk and that the "Best Interests of the Child" principle should inform all decisions in this regard

## VI. Voluntary Return

Head 43A of the International Protection Bill, 2015 provides for the option of voluntary return for unsuccessful applicants for international protection. Applicants who are unsuccessful at first instance and appeal in their applications for refugee status and/or subsidiary protection status and have either not informed the Minister of any reasons why they should be granted permission to remain in the State or have had such an application refused, will now be notified that their applications/appeals have not been granted and will be given an

opportunity to notify the Minister that they wish to avail of voluntary return to their country of origin. The Minister will not make a deportation order in respect of such a person.

While Nasc welcomes this commitment to voluntary return, we believe that the time frame allotted to applicants is inadequate. Head 43(4) states that the notification expires “on the fifth day following it being given to the person concerned”. Nasc submits that this is an extremely short timeframe within which a person or a family is expected to make a life-changing decision. Nasc is concerned that this may not provide unsuccessful applicants with sufficient time to get legal advice on their circumstances.

#### **Section VI Recommendations:**

- An extension of the proposed five-day timeframe in which to avail of voluntary return

## **VII. Preliminary Interview**

Head 13 provides for the procedures that follow once a protection applicant arrives at the frontiers of the State seeking to make an application for protection. Nasc is concerned that there is no specific requirement that immigration officers possess the necessary level of training appropriate to their role. Article 6 (1) of the Recast Procedures Directive<sup>20</sup> provides: that "Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged".

Nasc recommends, in line with E.U. standards, that consideration be given to formalise in legislation that all adequate and dedicated training be provided to immigration officers on international protection obligation and cultural awareness. This measure would also provide adequate protection against *refoulement*.

Nasc notes that the General Scheme does not appear to contain a provision dealing with persons who are already present in the state and are seeking to make an application for protection. It is the experience of Nasc that protection applicants often have a fear of authority from experience in their country of origin and may be in a position to make an application upon immediate arrival at the border. Nasc recommends that clear provisions be made for to ensure that persons already in the state have access to the protection system.

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<sup>20</sup>Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

### Section VII Recommendations:

- Consideration be given to formalise in legislation that all adequate and dedicated training be provided to immigration officers on international protection obligation and cultural awareness;
- Clear provisions be made for to ensure that persons already in the state have access to the protection system

## VIII. Permission to Remain in the State

Head 15 outlines the conditions which attach to a permission granted to a protection applicant whilst remaining in the state.

Section (3) b places an outright prohibition on protection applicants to seek, enter or be in employment. Ireland is now the only country in the E.U. that has a blanket ban on protection applicants entering the work place. The impact that this has on the lives of protection applicants is well documented, by Nasc and other NGOs in the field, and by protection applicants themselves. It has formed part of the public discourse on our protection system in recent months, receiving wide public support for the lifting of the ban. Despite this Nasc is deeply concerned that the prohibition on the right to work is restated in the current General Scheme.

Nasc recommends in the strongest possible terms that protection applicants should be given access to the Labour Market and that Head 15 (3) (b) be removed. This could be provided for by way of a Statutory Instrument by giving effect to the Reception Conditions Directive<sup>21</sup>. It should be noted that the provisions outlined in Article 5 of the Directive grants a qualified or limited access to the labour market and provides:

- 1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.*
- 2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market. For reasons of labour market policies, Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals.*

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<sup>21</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

3. *Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.*

#### **Section VIII Recommendations:**

- Protection Applicants should be given access to the Labour Market through a Statutory Instrument, giving effect to the Reception Conditions Directive

### **IX. Vulnerable Persons**

The early identification of vulnerable applicants is essential, in order to provide targeted supports for this category of people throughout the application process. For vulnerable persons, which could include unaccompanied minors, victims of torture, LGBTI applicants and the elderly, the lack of early identification and the delivery of targeted supports can have a negative impact on the quality of their asylum application, the length of time they are in the system and the care they receive while they are in the system. Reports relating to a person's specific circumstances, for example medico-legal reports for victims of torture, may not be available when the person initially submits his or her protection application.

The Refugee Act, 1996 contains only one provision related to the identification of vulnerable persons, the scope of which is confined to unaccompanied minors.<sup>22</sup> The only mention of vulnerable persons in the General Scheme is in Head 52, where 'due regard shall be had' in the application of Heads 47-51 (those concerning the 'Content of International Protection'), 'to the specific situations of vulnerable persons such as persons under the age of 18 years (whether or not accompanied), disabled persons, elderly persons, pregnant women, single parents with children under the age of 18 years, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence'. Thus, in the current General Scheme, vulnerability is only taken into account once a person has received a positive decision on their protection application and been granted a protection status, not in the application process itself.

Under the Recast Procedures Directive (Article 24), which Nasc recommends Ireland opt in to, States must ensure vulnerable applicants are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of the Directive throughout the duration of the asylum procedure. The

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<sup>22</sup> Section 8 establishes a procedure to be followed where an unaccompanied minor is identified by an immigration officer or the ORAC.

Directive requires States to assess within a reasonable period of time after an application is made whether an applicant needs ‘special procedural guarantees’.<sup>23</sup> The Recast Reception Conditions Directive, which Nasc also recommends opting in to, also includes provisions on vulnerable persons and how they are to be identified, namely Articles 21 and 22. Article 21 outlines a number of examples of vulnerable persons, which have been used in the General Scheme in Head 52 (this list cross references the Procedures Directive). Article 22 outlines what a vulnerability assessment should look like, and that this assessment should dictate what ‘special reception needs’ are required for the support of that applicant.<sup>24</sup>

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<sup>23</sup>*The recast Asylum Procedures Directive*

Article 24 - Applicants in need of special procedural guarantees

1. Member States shall *assess within a reasonable period of time* after an application for international protection has been made whether the applicant is an applicant in need of special procedural guarantees.
2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of [the recast Reception Conditions Directive] and need not take the form of an administrative procedure.
3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with *adequate support* in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.
4. Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, *where such a need becomes apparent at a later stage* of the procedure, without necessarily restarting the procedure.

Recital 29 provides further explanation as to what is intended under this provision:

“Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.”

<sup>24</sup> Article 22 – Assessment of the special reception needs of vulnerable persons

1. In order to effectively implement Article 21, Member States shall *assess* whether the applicant is an applicant with special reception needs. Member States shall also *indicate the nature of such needs*. That assessment shall be *initiated within a reasonable period of time* after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, *if they become apparent at a later stage in the asylum procedure*. Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.
2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.
3. Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive.
4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to [the Qualification Directive].

Currently, voluntary health screenings are available in Baleskin Reception Centre for new protection applicants who opt to stay in direct provision accommodation. Vulnerabilities may be disclosed or discovered as part of that screening or subsequently in consultation with an applicant's GP. However no formal mechanisms currently exist for notifying the Reception and Integration Agency or decision-making officers of any specific needs arising out of such vulnerability. Nasc recommends that vulnerability be taken into account from the point of initial application for international protection, and that this be included in the General Scheme. Nasc also recommends that a vulnerability assessment for all protection applicants, in line with the Receptions and Procedures Directives, be included in the General Scheme, with formal mechanisms of referral in the case of established vulnerabilities to ensure that vulnerable persons receive appropriate information, health or psychological services and procedural supports.

#### **Section IX Recommendations:**

- The vulnerability of Protection Applicants be taken into account from the point of initial application for international protection, and that this be included in the General Scheme

## **X. Assessment of applications for International Protection (Part 4)**

### **Head 15**

Nasc recommends that this section includes a clear statement in line with Article 10 of the Procedures Directive that all applications will be examined and decisions are taken individually, objectively and impartially.

#### **Withdrawal of Application at first instance**

Head 34 provides that applications for protection at first instance shall be deemed to be withdrawn if the applicant fails to attend for interview and has failed to furnish the Minister with an explanation for the non-attendance within a three day period. It is Nasc's view that three days is a unreasonably short period of time in which to notify the Minister of the applicant's reasons for non-attendance, which may be due to a number of factors such as change of address, lack of language and understanding, and the particularly vulnerable nature of protection applicants, among other factors. This provision is harsher than the existing period under the 1996 Act which is five days.

Nasc is also concerned that assuming the applicant overcomes this onerous hurdle that the Minister must be satisfied that the explanation offered is reasonable in all the circumstances. Nasc recommends that, at a minimum, the time limit be restored to the current position, which is five working days.

### **Oral Hearing at the Protection Review Tribunal**

Nasc notes that there appears to be some contradiction or a lack of clarity in Head 18 dealing with oral hearings. 38 (4) states that an oral hearing shall be held in private and 38 (7) provides that the Tribunal may hold a hearing in public if the applicant consents and that it is in the interests of justice to so. It is Nasc's contention that holding a hearing in public is *de facto* in the interests of justice and would recommend that, with the consent of that applicant, that all hearings should be held in public.

Nasc would recommend that Head 38 be amended to reflect this.

### **Transitional Provisions**

Nasc notes that the General Scheme is seeking to incorporate as many existing protection applicants as is legally possible under the new draft procedures. We remain deeply concerned however that existing applicants will not be afforded the opportunity to decide or consent to having their current application considered or concluded under the new protection regime. Nasc would contend that, in the interests of fair procedures and natural justice, written informed consent must be attained from all protection applicants outlined in Heads (63) (1) - (6). This is particularly important as applicants who are granted either International Protection or Subsidiary Protection may be at a clear detriment under the new regime when it comes to their entitlement to Family Reunification. The provisions as they currently stand, in the General Scheme are considerably less favourable. This may give rise to a breach of Rights under Article 8 ECHR (Family Rights) if clear consent is not obtained from applicants to have their application considered under the General Scheme.

Nasc recommends that the section be amended to allow for consent to be attained before existing applications can be considered under the new proposed scheme.

### **Section X Recommendations:**

- The inclusion of a clear statement that all applications will be examined and decisions are taken individually, objectively and impartially;
- The proposed three-day time period in which to present an explanation for failing to attend an interview be extended to five days;
- All hearings be held in public, with the consent of the Protection Applicant;
- Written informed consent be attained before existing applications can be considered under the new proposed scheme

## XI. Appendices

Appendix 1: Same-sex relationships by country<sup>25</sup>: Asylum Source Countries in Ireland [Top 5 Nationalities 2011-2014<sup>26</sup>]

	Same-Sex Unions (Marriage or Registered Partnership)	Same-Sex Sexual Activity Legal	Anti-discrimination laws based on sexual orientation
Pakistan	x	x	x
Nigeria	x	x	x
Albania	x	✓	✓
Bangladesh	x	x	x
Zimbabwe	x	* <sup>27</sup>	x
Democratic Republic of Congo	x	✓	x
Malawi	x	x	x
China	x	✓	x
Afghanistan	x	x	x

<sup>25</sup> Luxas Paoli Itaborahy & Jingshu Zhu, *State Sponsored Homophobia - A world Survey of Laws: Criminalisation, protection and recognition of same-sex love*, The International Lesbian, Gay, Bisexual, Trans and Intersex Association 2014 available at [http://old.ilga.org/Statehomophobia/ILGA\\_SSHR\\_2014\\_Eng.pdf](http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf) [accessed 05/05/2015]

<sup>26</sup> Top 5 applicant countries data each year taken from ORAC Annual Reports 2011-2014 available for download from <http://www.orac.ie/website/orac/oracwebsite.nsf/page/orac-stats-en> [accessed 05/05/2015]

<sup>27</sup> Same-sex sexual activity between men is illegal however there are no laws relating to same-sex sexual activity between women.

**Appendix 2: Same-sex relationships by country<sup>28</sup>: Family Reunification Source Countries 2012- 2014<sup>29</sup> [Top 5 Nationalities 2012-2014]**

	Same-Sex Unions (Marriage or Registered Partnership)	Same-Sex Sexual Activity Legal	Anti-discrimination laws based on sexual orientation
Syria	x	x	x
Afghanistan	x	x	x
Somalia	x	x	x
Sudan	x	x	x
Iraq	x	✓	x
Nigeria	x	x	x

<sup>28</sup> Luxas Paoli Itaborahy & Jingshu Zhu, *State Sponsored Homophobia - A world Survey of Laws: Criminalisation, protection and recognition of same-sex love*, The International Lesbian, Gay, Bisexual, Trans and Intersex Association 2014 available at [http://old.ilga.org/Statehomophobia/ILGA\\_SSHR\\_2014\\_Eng.pdf](http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf) [accessed 05/05/2015]

<sup>29</sup> Top 5 applicant countries data each year taken from ORAC Annual Reports 2011-2014 available for download from <http://www.orac.ie/website/orac/oracwebsite.nsf/page/orac-stats-en> [accessed 05/05/2015]

**Appendix 3: Same-sex relationships by country<sup>30</sup>:Asylum Source Countries [Top 5 Nationalities 2014<sup>31</sup>]**

**Table 1: Worldwide**

	Same-Sex Unions (Marriage or Registered Partnership)	Same-Sex Sexual Activity Legal	Anti-discrimination laws based on sexual orientation
Syria	x	x	x
Afghanistan	x	x	x
Somalia	x	x	x
Sudan	x	x	x
South Sudan	x	x	x

**Table 2: Europe**

	Same-Sex Unions (Marriage or Registered Partnership)	Same-Sex Sexual Activity Legal	Anti-discrimination laws based on sexual orientation
Syria	x	x	x
Afghanistan	x	x	x
Kosovo	x	✓	✓
Eritrea	x	x	x
Serbia	x	✓	✓

<sup>30</sup> Luxas Paoli Itaborahy & Jingshu Zhu, *State Sponsored Homophobia - A world Survey of Laws: Criminalisation, protection and recognition of same-sex love*, The International Lesbian, Gay, Bisexual, Trans and Intersex Association 2014 available at [http://old.ilga.org/Statehomophobia/ILGA\\_SSHR\\_2014\\_Eng.pdf](http://old.ilga.org/Statehomophobia/ILGA_SSHR_2014_Eng.pdf) [accessed 05/05/2015]

<sup>31</sup> <http://www.unhcr.ie/about-unhcr/facts-and-figures-about-refugees>

