

# Submission to DCEDIY on Ireland's third review under the Universal Periodic Review Mechanism

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## **Submission by Nasc, Migrant and Refugee Rights Centre on the occasion of Ireland's third review under the Universal Periodic Review mechanism.**

07<sup>th</sup> May 2021

### **Introduction:**

1. Nasc, Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork City, Ireland. Nasc, the Irish word for 'link', empowers migrants to realise and fulfil their rights. Nasc works with migrants and refugees to advocate and lead for change within Ireland's immigration and protection systems, to ensure fairness, access to justice and the protection of human rights.

2. Nasc, founded in May 2000, has over two decades of experience supporting refugees, asylum seekers and ethnic minority communities in Ireland. Through our various projects including our free legal service, our migrant youth project and our education and employment project for refugee women, Nasc provides information, advice and support to over 1,200 people annually. Nasc also provides support in the form of referrals and training to mainstream services working with migrant and ethnic minority communities.

3. This submission expands on our submission to the United Nations Human Rights Council in advance of the Third Review under the Universal Periodic Review mechanism in March 2021<sup>i</sup>. This submission is directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland. It aims to identify issues disproportionately impacting Ireland's migrant, asylum seeking and ethnic minority communities.

### **Positive developments since Ireland's second review under the Universal Periodic Review mechanism**

4. Nasc would like to acknowledge some positive developments since Ireland's second review under the Universal Periodic Review mechanism. We welcome the launch of Community Sponsorship Ireland, an alternative form of refugee resettlement in 2019<sup>ii</sup>, Ireland's decision to opt into the recast Reception Conditions Directive, the introduction of the *National Standards for Accommodation Centres*, the commitment in the Programme for Government and the subsequent *White Paper on Ending Direct Provision* to end direct provision within the lifetime of the government as well as the recent publication of the General Scheme of the Criminal Justice (Hate Crime) Bill 2021 and an outline of a regularisation scheme for undocumented migrants. Positive developments have arisen directly from litigation including the introduction of a right to work for people in the international protection process<sup>iii</sup>. We would also like to commend the government for providing undocumented workers and workers in the international protection process with access to the Pandemic Unemployment Payment during the Covid-19 restrictions.

### **Optional Protocol to the Convention against Torture & immigration-related detention**

5. In the second review under the Universal Periodic Review mechanism Ireland accepted recommendations to ratify the Optional Protocol to the Convention against Torture (OPCAT)<sup>iv</sup> noting that the State would ratify OPCAT once legislation on National Preventative Mechanisms was enacted. This has not been done to date however the State has recently committed<sup>v</sup> to pass legislation to ratify and implement the Optional Protocol to the Convention Against Torture by quarter 4 of 2021.

6. In 2018 Nasc published a research report<sup>vi</sup> detailing the experience of those placed in immigration-related detention in Ireland. The report found that those detained for immigration-related offences were routinely detained with detainees on remand and convicted prisoners. The report also found that those detained on the basis of an immigration related offence were unable to access basic facilities such as the right to access legal advice for issues related to residence, detention and deportation. Those detained under the provisions of section 5 of the Immigration Act 2003 do not have the immediate right of access to legal advice. In Nasc's research report, *Immigration, Detention and Border Control in Ireland* only one of the eight detainees, all of whom had been refused leave to land, had been able to avail of a legal representative.

7. The Irish State has committed to building a facility close to Dublin Airport to provide for dedicated detention facilities<sup>vii</sup> however the status of this project is now unknown. More recent plans to have a dedicated wing in one prison reserved for immigration-related detainees have been postponed because of new Covid-19 restrictions social distancing requirements<sup>viii</sup>.

Recommendations:

Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Ensure that immigration-related detainees are not detained in prisons and are provided with the right not to be held incommunicado by facilitating access to a legal representative.

## Children

### (a) Remit of the Ombudsman for Children

8. Ireland supported a recommendation<sup>ix</sup> to facilitate the Ombudsman to investigate claims from children that find themselves in a situation of irregular migration. Since 2017 children in the asylum seekers accommodation units can complain to the Ombudsman for Children's Office. However, asylum-seeking children are still unable to make a complaint about the refugee status determination process to the Ombudsman. Undocumented children who are in the process of regularising their immigration status are also unable to bring complaints to the Ombudsman with regard to their immigration status determination.

Recommendation: Extend the remit of the Ombudsman for Children’s Office to include oversight of immigration and/or international protection applications.

### **(b) Child protection in IPAS accommodation centres**

9. The Ombudsman for Children published *Safety & Welfare of Children in Direct Provision: An investigation by the Ombudsman for Children’s Office*<sup>x</sup> in April 2021. The report made serious findings regarding failings in monitoring and oversight in accommodation centres. The report further found that Tusla, has no mechanism in place “gather data about children living in [Direct Provision] accommodation which might identify risks and inform planning at a strategic level.”<sup>xi</sup>

10. Nasc were also deeply concerned by information in the Ombudsman for Children report that “[a] misleading notice was issued to parents which implied that child protection and welfare services may remove children as a result of a lack of parental supervision in the centre”<sup>xii</sup>. This tallies with anecdotal reports that Nasc has received from parents in direct provision that improper threats of child protection referrals are made by staff members and with data from a 2015 HIQA report which found that the rate of referrals for children living in direct provision were almost 9 times higher than that of the general population of children<sup>xiii</sup>. The Ombudsman Report also mirrors an issue highlighted in a 2019 report *Safe Haven: The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study*<sup>xiv</sup> (Safe Haven report). Although this report dealt exclusively with families living in Emergency Reception and Orientation Centres (EROCs), from our extensive experience of working with families living in direct provision Nasc believes that similar attitudes prevail widely across direct provision centres and can result in parents having a deep fear of, and a reluctance to engage with, social services and social workers when their families are struggling. In a 2020 paper, *Problematizing parenting: the regulation of parenting practices within reception centres for Syrian refugees in Ireland* the authors note that a child-protection professional who had contact with one of the EROCs, expressed concern about the impact that the threats of reports to social services had on residents’ trust in their services.<sup>xv</sup>

11. The *Safe Haven* report found that EROC staff had “overly high expectations as regards supervision”<sup>xvi</sup> with stakeholders expressing that “unnecessary”<sup>xvii</sup> child protection were being made. The report also notes “paternalistic”<sup>xviii</sup> attitude of some EROC staff towards residents. One EROC staff member recounted advising Syrian refugees that their children could be taken from them and they would be deported if they failed to supervise their children at all times:

*“We tell them that when you go to your homes ... you can’t leave your child out in the street [when] you’re inside. Eventually you’ll be deported, and those kids will be taken off you. You must keep an eye on your kids. Anything could happen to a child. It could be abduction, it could be anything... So you need to keep an eye. You need [to] be with your children all the time.”*<sup>xix</sup>

12. Nasc are clear that accommodation centres are not appropriate settings to raise children however until such time as all of these centres are closed, work must continue to address the systemic deficiencies. The available Irish research certainly raises serious questions as to the suitability and efficacy of the child protection training provided to centre staff, who predominantly come from a professional hospitality rather than social work or social care background. It indicates an insupportable level of interference in parenting decisions and normal family life.

13. Nasc welcomes the commitment by both Tusla and the International Protection Accommodation Service (IPAS) to implementing the recommendations in *Safety & Welfare of Children in Direct Provision: An investigation by the Ombudsman for Children's Office* but are concerned that detailed plans have not been set out for how these agencies will fulfil recommendations 11 and 12 ie for IPAS and Tusla to develop an interagency protocol to inform how they “work together and liaise and share information at a local, operational level, regional and national level”<sup>xx</sup> and for Tusla to collaborate with accommodation centres to provide onsite preventative and early intervention services locally. Nasc’s experience of working with families in direct provision, especially through our social work-led Connect Migrant Youth Project, has been that preventative service are under-resourced or unavailable in many locations and there is insufficient emphasis on early intervention.

Recommendations:

IPAS and Tusla should take immediate steps to implement the recommendations in the *Safety & Welfare of Children in Direct Provision: An investigation by the Ombudsman for Children's Office* report.

IPAS and Tusla should devise specific training on anti-discriminatory practice as well as culturally competent child protection training for all IPAS accommodation staff.

**(c) Child Benefit payments to children in direct provision**

14. Since 2004, child benefit payments have not been payable to eligible families in the international protection system<sup>xxi</sup>. The impact of the loss of financial support for families in the international protection system was noted by the Joint Oireachtas Justice and Equality Committee who found that, “[f]amilies in Direct Provision do not have access to child benefit, with the payment having been discontinued since 2004. Parents often have difficulty in meeting the costs associated with school-going children - such as uniforms, ‘voluntary’ contributions and extracurricular costs such as class trips and sports clubs”<sup>xxii</sup>.

15. In 2019 the Supreme Court overturned a Court of Appeal ruling which would have allowed parents in direct provision with Irish citizen children or children with a legal residence status apply for child benefit. The Supreme Court found that the provisions of the Social Welfare Act, which required the parents rather than the child to be habitually resident in the State, did not give rise to any inequality of treatment in terms of those

entitled to claim child benefit.<sup>xxiii</sup> As a result, Irish citizen children whose parents are not habitually resident in the State receive significantly less State financial support than their counterparts with habitually resident parents.

Recommendation: The Child Benefit payment is an important mainstay against child poverty in Ireland and as such, it should be a universal payment and not be subject to the habitual residence condition.

## **Racism and Discrimination**

16. Ireland supported recommendations to take action to combat hate speech<sup>xxiv</sup> and hate crime<sup>xxv</sup> and to introduce a National Action Plan Against Racism<sup>xxvi</sup> and partially accepted recommendations to with regard to racism and xenophobia<sup>xxvii</sup>.

### **(a) National Action Plan Against Racism**

17. Ireland has not delivered a new National Action Plan Against Racism. In Ireland's interim report<sup>xxviii</sup>, Ireland provided the welcome update that the State formed a new Anti-Racism Committee in 2019, with a mandate to review current evidence and practice and make recommendations to Government. The Committee's report, *Interim Report to the Minister for Children, Equality, Disability, Integration and Youth Anti-Racism Committee*<sup>xxix</sup> was set before government in November 2020 and was published in April 2021. The Report outlined three key recommendations for immediate action.

Recommendation: Implement the three immediate and urgent recommendations of the Anti-Racism Committee.

18. Ireland's interim report also notes that the Government has developed a National Migrant Integration Strategy (2017-2020) which has Combating Racism and Xenophobia within its remit. However, concerns have been raised about the efficacy of the National Migrant Integration Strategy particularly as the Strategy itself excludes, almost entirely, applicants for international protection (asylum seekers) from its purview.

Recommendation: Introduce a new Integration Strategy which includes all migrants, international protection applicants and people from ethnic minority backgrounds.

### **(b) Hate-based offences in Ireland**

19. Nasc welcomes the publication of the General Scheme of the Criminal Justice (Hate Crime) Bill, 2021 and the commitment in the Department of Justice *Action Plan 2021* to passing legislation by Quarter 4 of 2021<sup>xxx</sup>. The sole legislation currently in force in Ireland to deal with hate-based offences is the Prohibition of the Incitement to Hatred Act, 1989 (the 1989 Act)<sup>xxxi</sup>. Forms of hate speech other than incitement are not covered the 1989 Act. A report by the State on the review of the 1989 Act, *Legislating for Hate Speech and Hate Crime in Ireland: Report on the Public Consultation 2020*, (Public Consultation Report 2020) notes that the legislation “is effectively not useful in practical terms for prosecution of incitement to hatred.”<sup>xxxii</sup>

Recommendation: Introduce comprehensive legislation to deal with hate crime using the ‘aggravated offence’ model.

### **Immigration Policy**

20. Ireland partially supported a recommendation to continue to have a broad and flexible immigration policy<sup>xxxiii</sup>. There have been some positive developments including the introduction of a regularisation scheme for undocumented international students<sup>xxxiv</sup>. We also welcome the current public consultation on the introduction of a regularisation of undocumented migrants and the commitment to have this scheme open by Quarter 4 of 2021<sup>xxxv</sup>.

#### **(a) Family Reunification for Irish citizens and Irish residents**

21. Ireland’s immigration system is primarily based on policy rather than legislation; this contributes to uncertainty and inconsistency of outcomes for immigrants. There is no statutory right<sup>xxxvi</sup> in Irish law to family reunification for Irish citizens living in Ireland<sup>xxxvii</sup>. In practice this disproportionately impacts naturalised Irish citizens who are more likely to have formed family relationships outside of the State.

Recommendation: Introduce comprehensive immigration legislation to place family reunification for Irish citizens and non-EEA nationals on a statutory footing.

#### **(b) Delays in residence and visa application processing**

22. Applications made for residency, both from within and outside of the State, can often be extremely lengthy. Although the Department of Justice sets out estimated time frames for applications these constitute business targets rather than legal obligations and are, in Nasc’s experience, rarely achieved. No legislative provisions exist to limit the length of time the State may take to process an immigration or visa application<sup>xxxviii</sup> with the result that visa

and residency applications can take well in excess of a year to process extending to multiple years for complex cases<sup>xxxix</sup>.

23. The delays have been further exacerbated since the beginning of Covid-19 restrictions in March 2020 as visa requirements have been imposed on previously non-visa required non-EEA citizens<sup>xl</sup>. At time of writing, the visa office has suspended accepting visa applications from passport holders of all countries with the limited exception of priority or emergency cases<sup>xli</sup>. Nasc's experience has been that there is little consistency between visa offices as to what constitutes a priority or an emergency case and reunification of migrant and refugee families is not being treated as priority. The delays and uncertainty have led to considerable hardship for families who find themselves left in limbo by Ireland's uncertain immigration and visa system<sup>xlii</sup>.

Recommendations: Place deadlines for processing immigration applications on a statutory footing.

Provide a clear timeframe for the resumption of processing of visa applications.

24. Ireland does not have a permanent residence status for non-EEA migrants<sup>xliii</sup>. This leads to insecurity of residence for migrants who may find their immigration status revoked or not renewed for reasons such as absences from the State or being convicted of a criminal offence even after spending years living in Ireland. This particularly impacts migrants from countries which forbid dual citizenship and who wish to retain citizenship from their country of origin. Further there are no clear rules on the length of permitted absences from the State so the decision on whether a length of absence from the State is in breach of the conditions of an immigration residence permit is often at the discretion of an immigration official. Nasc has encountered cases where non-EEA migrants, have resided legally for over a decade in Ireland and found themselves faced with the threat of the revocation of their immigration status on returning from an extended stay in their country of origin to care for an ill family member.

Recommendation: Introduce a permanent resident immigration status and place it on a statutory footing.

25. Ireland does not provide for a statutory right to retain immigration status for migrant victims of domestic, sexual or gender-based violence (DSGBV). Migrants who have an immigration permit granted based on their family relationship to a sponsor, indefinitely (or at least until such time as they naturalise as Irish citizens) have their immigration status tied to that of the sponsor. In cases of DSGBV, a migrant may make a discretionary application<sup>xliv</sup> to the Department of Justice to request an independent residence status.



26. Nasc has a number of concerns about the *Immigration Guidelines for Victims of Domestic Violence*. Of primary concern is that the Guidelines are not based on legislation<sup>xlv</sup> which can lead to inconsistent and untransparent decision-making. The guidelines have not been updated in the wake of new legislation and do not reflect the Domestic Violence Act, 2018 which recognised a new offence of coercive control. Undocumented migrants who experience domestic abuse are excluded from the remit of the Guidelines. This is particularly concerning as, in Nasc's experience, abusers will often seek to isolate their family members; refusing to cooperate with the renewal of family members' immigration or citizenship applications is an extremely effective tool in silencing victims. Nasc's experience of assisting migrants in making applications under the Guidelines is that the type of documentation requested as evidence of domestic violence is often very difficult to obtain and does not reflect the lived experience of migrant victims of domestic violence.

Recommendation: Place the right to apply for independent residence for victims of DSGBV on a statutory footing.

### **Asylum Seekers (International Protection Applicants) and International Protection Beneficiaries**

27. Ireland accepted a recommendation to speed up the determination of refugee status applications<sup>xlvi</sup> and to apply international standards to the treatment of refugees and asylum seekers.

#### **(a) Delays in decision making**

28. In its interim report Ireland noted that as of the end of 2019, an applicant for international protection could expect to receive a first instance decision on their application within 11-12 months in the case of applications without complications<sup>xlvii</sup>. The median processing time has again increased. In 2020 the median processing time for a first instance decision in all international protection applications was 17.6 months<sup>xlviii</sup>. As of the end of January 2021, there were 5,279 cases pending with the International Protection Office for a first instance decision and of those, 3991 cases had been pending for 12 months or longer<sup>xlix</sup>. Despite Ireland receiving only 1,566 applications<sup>l</sup> for international protection in 2020, there were a total of 5,279 cases pending a first instance decision<sup>li</sup>.

29. In 2019 the government appointed an independent Advisory Group<sup>lii</sup> to advise on the development of a long-term approach to the provision of supports to people in the international protection process and to set out a process for achieving those supports. The Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process<sup>liii</sup> (Day Report) recommended that all first instance decisions should be made in a time frame that ensures decisions will be taken within 6 months from the date of the application for international protection<sup>liv</sup>. The Day Report further recommends that a once-off case processing panel should be constituted to

deal with the backlog of cases with a view to granting an immigration permission to anyone waiting two years or more for a final decision on their international protection application as of January 2021<sup>lv</sup>.

Recommendations: Implement Recommendation 3.1 of the Day Report to ensure that decisions on international protection will be taken within 6 months from the date of the application.

Implement Recommendation 6.7 of the Day Report to deal with the backlog of international protection applications.

### **(b) Accommodation (Direct Provision)**

30. Applicants for international protection can avail of accommodation and other facilities/services, under what is commonly known as the Direct Provision system in Ireland. The system has been widely criticised<sup>lvi</sup>. There are currently 44 direct provision centres across Ireland; of those 10 provide full or partial own-door accommodation and 32 provide access to own cooking facilities in communal kitchens or private cooking facilities. Since 2018, Ireland has been unable to provide sufficient accommodation spaces within direct provision centres and has resorted to using emergency accommodation centres, most of which are not suitable for long stay accommodation<sup>lvii</sup>. The majority of emergency accommodation centres provide for dormitory style accommodation with no cooking facilities or private spaces. The situation of people living in Direct Provision and emergency accommodation centres has worsened considerably over the course of 2020 with restrictions imposed because of Covid-19<sup>lviii</sup>.

31. Nasc welcomes the commitment by the Irish government to end Direct Provision<sup>lix</sup> and the commitments in the subsequent White Paper<sup>lx</sup> which set out plans to close direct provision centres and establish new accommodation and support services by 2024. It is essential that the process of transitioning international protection applicants out of direct provision centres begins before 2024 and the government need to set out a clear plan to meet their 2024 target.

Recommendation: Implement the commitments in the White Paper to end Direct Provision by 2024.

### **(c) Vulnerability Assessments**

32. In 2018 Ireland transposed the recast EU Reception Conditions Directive into Irish law<sup>lxi</sup> which included a legal obligation to assess whether applications for international protection may be deemed to have special reception needs.<sup>lxii</sup> The government implemented a pilot Vulnerability Assessment Process in December 2020 and, as of date of writing, the process

continues to operate only on a pilot basis. As of 21<sup>st</sup> January 2021, only four assessments in total had taken place as part of the pilot. The pilot was extended to all new applicants for international protection from February 2021<sup>lxiii</sup>.<sup>lxiv</sup> An update was provided by an IPAS official on April 27<sup>th</sup>, that as of that date 317 vulnerability assessments had been fully or partially carried out.<sup>lxv</sup>

33. While Nasc welcomes that Ireland is moving towards complying with its legal obligations, as a member of the Advisory Group on *National Standards*<sup>lxvi</sup> for accommodation centres, Nasc was disappointed that the definition of vulnerability agreed upon in the National Standards is not being used in the current pilot process<sup>lxvii</sup>. We are also concerned that no resources have yet been put in place to recruit or train a suitable reception officer with the responsibility to receive information arising from vulnerability assessments for each resident and to liaise with relevant services around residents' needs.<sup>lxviii</sup>

Recommendation: Meet the legal obligation to provide a comprehensive and ongoing vulnerability assessment process to all applicants in the international protection process to ensure that special reception needs are identified and met.

#### **(d) Independent Inspections**

34. Ireland does not have an independent inspection regime for direct provision or emergency accommodation centres. Ireland's inspection regime has been criticised consistently by civil society organisations, as well as by the former government-appointed Special Rapporteur for Child Protection, Dr Geoffrey Shannon<sup>lxix</sup>. In 2015 the Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (McMahon Report)<sup>lxx</sup> urged the government to "establish an inspectorate ... independent of RIA to carry out inspections in Direct Provision centres..."<sup>lxxi</sup> The National Standards, referred to above, were predicated on the agreement that the success of the "thorough and robust system of standards"<sup>lxxii</sup> would be reliant on being supported by a system of independent inspections.

35. Nasc welcomes the commitment by the Minister for Children, Equality, Disability, Integration and Youth in the *White Paper on Ending Direct Provision* to establish an independent inspection regime. We also welcome recent updates from the Minister that his Department is currently engaged in consultations with the Department of Health and HIQA aimed at establishing an independent monitoring mechanism for standards in International Protection Accommodation Service (IPAS) accommodation centres.<sup>lxxiii</sup> However, we are concerned that it has taken so many years for discussions to be begin on implementing a genuine independent inspection regime.

36. At time of writing, inspections are carried out by officials in IPAS and by an independent inspectorate company QTS Limited. Nasc has serious concerns about the adequacy and

frequency of inspections. Inspection reports<sup>lxxiv</sup>, provide little analysis of the quality of food available, the services available to residents and do not include interviews with residents. Nasc fully agrees with the criticism of the current inspection regime made by the Ombudsman for Children in their report, *The Safety & Welfare of Children in Direct Provision: An investigation by the Ombudsman for Children's Office*:

“[I]nspections focus on service delivery issues such as food, food hygiene, cleanliness, upkeep and physical appearance of premises as well as health and safety issues. In their most recently published Annual Report, IPAS state that the primary purpose of these inspections is to record a ‘snapshot’ of the physical conditions of the centre on the day of the inspection and to ensure that the services contracted by IPAS are being delivered by the contractor.”<sup>lxxv</sup>

Recommendation: Extend the statutory remit of HIQA under section 8(4) of the Health Act 2007 to include the inspection of IPAS accommodation centres.

### **(e) Family reunification**

37. Ireland partially accepted four recommendations relating to the family reunification of refugees<sup>lxxvi</sup>. The International Protection Act 2015 (2015 Act) reformed Irish law on refugee family reunification and removed the right for refugees and persons eligible for subsidiary protection to apply for dependent family members including parents, adult children, siblings and wards. The narrow definition of a family in the 2015 Act does not account for the reality of refugee families which can often include orphaned children who have been informally ‘adopted’ by relatives. The exclusion of dependent adult children from family reunification is particularly egregious given the long delays in the Irish international protection system. Refugees waiting for years to receive a refugee declaration may find that their teenage children have become young adults and are no longer eligible to reunify with the refugee in Ireland. These restrictions have had the effect of undermining the family lives of refugee families<sup>lxxvii</sup>.

38. In 2017, the International Protection (Family Reunification) (Amendment) Bill<sup>lxxviii</sup> was brought before the Oireachtas. The Bill would have alleviated the harshest restrictions imposed by the 2015 Act and received the support of the Oireachtas Committee on Justice and Equality<sup>lxxix</sup>. Despite wide support from opposition parties, the Bill was opposed by the then-minority government party who prevented it from passing out of Committee Stage by refusing to pass a ‘money message’.<sup>lxxx</sup>

Recommendation: Pass the International Protection (Family Reunification) (Amendment) Bill to restore family reunification right for refugees.

## Access to Justice

39. Ireland has placed significant barriers between immigration and asylum litigants and justice. In 2018 the Irish High Court issued a new Practice Direction (Direction HC 81)<sup>lxxxix</sup> laying down rules to regulate asylum and immigration Judicial Review litigation. Under the Practice Direction, in order to bring any *ex parte* application, applicants are obliged to provide all documents relevant to the proceedings and also all documents relevant to every past immigration or protection decision made in relation to every applicant in the proceedings. Failure to comply with these requirements may have severe legal costs consequences for applicants who lack the means and supports to meet them. Financial legal aid is generally not available for such cases which leaves applicants (who are generally of little or no means) dependent on sourcing a private solicitor who is willing to take a case on a “no foal, no fee” basis. These onerous documentation requirements together with strict time limits make it less likely that a solicitor will be willing to engage in this type of work.

40. HC 81 places a severe and disproportionate set of burdens on applicants for judicial review and their legal representatives which are above and beyond those required of litigants in other judicial review proceedings without placing similar obligations on respondents. Individuals and families contemplating immigration and asylum litigation are some of the most vulnerable and marginalised in Irish society. HC 81 effectively curtails access to justice for a group most in need of it.

Recommendation: The onerous documentary requirements and prohibitive penalties introduced by HC81 should be removed and replaced with a more reasonable regime that acknowledges the limited means of immigration and asylum applicants.

Legal aid should be available for judicial review cases that have an arguable case, particularly where cases relate to matters of public interest.

## ENDNOTES

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- <sup>i</sup> Nasc's submission to the United Nations Human Rights Council is available to read at [https://nascireland.org/sites/default/files/Submissions/Nasc\\_UPR%20Submission%20Ireland\\_Third%20Cycle\\_March2021.pdf](https://nascireland.org/sites/default/files/Submissions/Nasc_UPR%20Submission%20Ireland_Third%20Cycle_March2021.pdf)
- <sup>ii</sup> Community Sponsorship Ireland was formally launched as a national programme in November 2019 following a successful pilot programme.
- <sup>iii</sup> In May 2017, the Supreme Court found that an absolute ban on the right to seek employment for asylum seekers, where there was no time limit in the decision-making process, was unconstitutional. The State subsequently took the opportunity to opt into the recast Reception Conditions Directive 2013 and, as part of this, introduce a labour market access permission for people in the international protection process. In January 2021, new rules on the right to work provisions for asylum seekers came into force. These new rules have reduced the period of time it takes, from 9 months to 6 months, to become eligible to apply for a Labour Market Access Permission.
- <sup>iv</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, Second Cycle, (18 July 2016) Recommendation 135.8: Intensify efforts to ratify the Optional Protocol to the Convention against Torture to further foster the rights of liberty-deprived persons.
- <sup>v</sup> Department of Justice, *Action Plan 2021: Strategic Priorities and Initiatives*, (Department of Justice), available at [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf/Files/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf)
- <sup>vi</sup> Nasc, the Migrant and Refugee Rights Centre, *Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice* (2018) available at <https://nascireland.org/publications/immigration-detention-and-border-control-ireland-2018>
- <sup>vii</sup> See the response of the Minister for Justice when questioned about a dedicated immigration detention facility in 2016, "Plans are being progressed for the provision of a dedicated immigration detention facility at Dublin Airport. I am informed that plans for the facility have been drawn up and agreement reached with the Office of Public Works and the Dublin Airport Authority for the necessary redevelopment work to be carried out. This redevelopment will be completed as soon as possible within the next 12 months and will replace the existing Garda Station at the airport, provide office accommodation for Gardaí and civilians as well as providing a modern detention facility." Dail Debate, Written Answers, Question 69, 7<sup>th</sup> July 2016. The former Minister for Justice provided a similar statement in 2018 in response to being questioned about Nasc's report *Immigration, Detention and Border Control in Ireland – "An Garda Síochána in conjunction with the Office of Public Works are undertaking a project at Dublin Airport (by far the busiest point of entry to the State) to refurbish and fit-out an existing facility to provide a Garda Station, office accommodation and detention facilities."* Dail Debate, Written Answers, Question 200, 29<sup>th</sup> March 2018.
- <sup>viii</sup> With the outbreak of Covid-19 and the imposition of social distancing requirements, the space was required for the existing general prison population. Dail Debate, Written Answers, Question 219, 28<sup>th</sup> January 2021.
- <sup>ix</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, Second Cycle, (18 July 2016) Recommendation 135.38: Amend the provisions of the Law on the Ombudsman for Children, that impedes the Ombudsman from investigating the claims of children that find themselves in a situation of irregular migration.
- <sup>x</sup> Ombudsman for Children, *Safety and Welfare of Children in Direct Provision – An Investigation by the Ombudsman for Children's Office* (April 2021) Available to download at <https://www.oco.ie/library/safety-and-welfare-of-children-in-direct-provision-an-investigation-by-the-ombudsman-for-childrens-office/>
- <sup>xi</sup> Ibid, p. 6
- <sup>xii</sup> Ibid, p. 3
- <sup>xiii</sup> A 2015 report from the Health Information and Quality Authority (HIQA) *Report on Inspection of the Child Protection and Welfare Services Provided to Children Living in Direct Provision Accommodation under the National Standards for the Protection and Welfare of Children*, found that approximately 14% of the population of children living in direct provision were referred to the Child and Family Agency in one year which is a significantly higher referral rate than for the general child population of 1.6%.
- <sup>xiv</sup> Ní Raghallaigh M., Smith K. & Scholtz J, *The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study*, (September 2019) Children's Rights Alliance available at <https://www.childrensrights.ie/sites/default/files/Safe%20Haven%20Main%20Report.pdf>

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- <sup>xv</sup> Ní Raghallaigh, M., Smith, K., & Scholtz, J., (2020) Problematised parenting: the regulation of parenting practices within reception centres for Syrian refugees in Ireland. *Journal of Refugee Studies*.
- <sup>xvi</sup> *Supra* xiv, p. 39
- <sup>xvii</sup> *Ibid*
- <sup>xviii</sup> *Ibid*, p. 40
- <sup>xix</sup> *Ibid*
- <sup>xx</sup> See *supra* x, p. 46
- <sup>xxi</sup> The exclusion of protection applicants from some social welfare entitlements is provided for in the Social Welfare and Pensions (No. 2) Act 2009, which prevents protection applicants from fulfilling the habitual residence condition requirement.
- <sup>xxii</sup> Joint Committee on Justice & Equality, Report on Direct Provision and the International Protection Application Process (December 2019), p. 38
- <sup>xxiii</sup> *Agha (a minor) & ors v Minister for Social Protection & ors and Osinuga (a minor) & anor v Minister for Social Protection & ors* [2019] IESC 82
- <sup>xxiv</sup> *Supra* iv, Recommendation 135.115 Combat hate speech and prosecute perpetrators of xenophobic acts
- <sup>xxv</sup> *Ibid*, Recommendation 135.116 Ensure accountability for hate crimes
- <sup>xxvi</sup> *Ibid*, Recommendations 135.103 Renew the national plan of action against racism or elaborate a new one, always in collaboration with civil society & 135.104 Reinforce the policies for the protection against racism, renewing the National Action Plan against Racism (2005-2008)
- <sup>xxvii</sup> *Ibid*, Recommendation 136.46 Take effective steps to address racism and xenophobia and incorporate the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination into its domestic legislation, to raise awareness and promote tolerance in society and to ensure that violent acts, discrimination and hate speech are systemically investigated and the alleged perpetrators prosecuted. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, Second Cycle, (18 July 2016) Recommendation 136.47 Develop a legislation that sets the line between freedom of expression and hate speech and set up a strong mechanism to monitor all manifestations of intolerance, racism, xenophobia especially against Muslims.
- <sup>xxviii</sup> Ireland's Universal Periodic Review National Interim Report (2020) available at [https://lib.ohchr.org/HRBodies/UPR/Documents/session25/IE/UPR\\_Interim\\_Report2020\\_PartII.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/session25/IE/UPR_Interim_Report2020_PartII.pdf)
- <sup>xxix</sup> Anti-Racism Committee, *Interim Report to the Minister for Children, Equality, Disability, Integration and Youth Anti-Racism Committee* (November 2020), available to download at <https://www.gov.ie/pdf/?file=https://assets.gov.ie/132151/ed3f39e2-4aa1-4991-aa06-52beae8310db.pdf#page=null>
- <sup>xxx</sup> Department of Justice, *Action Plan 2021: Strategic Priorities and Initiatives*, (February 2021), available at [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf/Files/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf)
- <sup>xxxi</sup> The 1989 Act prohibits certain forms of threatening, abusive or insulting conduct that are intended or likely to stir up hatred against a group of persons on account of certain characteristics.
- <sup>xxxii</sup> Department of Justice, *Legislating for Hate Speech and Hate Crime in Ireland Report on the Public Consultation 2020*, (December 2020)
- <sup>xxxiii</sup> *Supra* iv, Recommendation 136.87 Continue giving the broadest possible scope, flexibility and coverage to its immigration policy
- <sup>xxxiv</sup> For more see <http://www.inis.gov.ie/en/INIS/Pages/press-release-special-scheme-for-students-launched-151018>
- <sup>xxxv</sup> Action 181: Department of Justice, *Action Plan 2021: Strategic Priorities and Initiatives*, (February 2021), available at [http://www.justice.ie/en/JELR/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf/Files/Department\\_of\\_Justice\\_Action\\_Plan\\_2021.pdf](http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf)
- <sup>xxxvi</sup> In lieu of legislation, the Irish Department of Justice has published a policy document, *Policy Document on Non-EEA Family Reunification* (2016) available at <http://www.inis.gov.ie/en/INIS/Family%20Reunification%20Policy%20Document.pdf/Files/Family%20Reunification%20Policy%20Document.pdf>
- <sup>xxxvii</sup> Irish citizens who return to Ireland, having exercising free movement rights in another EU or EEA Member State, may benefit from the provisions of Directive 2004/38EC. Minor Irish citizen children may benefit from

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provisions of the Treaty on the Functioning of the European Union to secure family reunification with a non-EEA citizen parent.

<sup>xxxviii</sup> Applications made under Directive 2004/38EC by family members of EU/EEA citizens who are exercising their family reunification rights and applications made by minor Irish citizen children under Article 20 of the Treaty on the Functioning of the European Union per the *Ruiz Zambrano v Office national de l'emploi C-34/09* case are the only exceptions to this.

<sup>xxxix</sup> Delays in 'Join Family Member' visa applications from outside of the State have been highlighted regularly via Parliamentary Questions in the Dail. See, Dail Debate, Written Answers, Question 201 on 24<sup>th</sup> September 2019; Dail Debate, Written Answers, Questions 341 & 342 on 23<sup>rd</sup> October 2018; Dail Debate, Written Answers, Question 957 on 8<sup>th</sup> September 2020, Dail Debate, Written Answers, Question 160 on 17<sup>th</sup> September 2020.

<sup>xl</sup> As of midnight 27th January 2021, new or additional visa requirements were imposed on passport holders from the following countries travelling to or through Ireland: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, South Africa, Suriname and Uruguay.

<sup>xli</sup> "[W]e also took the decision to temporarily cease accepting new visa/preclearance applications with the exception of the Priority/Emergency case types listed below, which we continue to accept. This is effective from close of business 29th of January 2021 and applies to all countries..." Notice, Covid 19 visa arrangements available at <http://www.inis.gov.ie/en/INIS/Pages/visas-updates>

<sup>xlii</sup> See Sorcha Pollak, *Brazilian man seeks emergency family reunification*, The Irish Times (22<sup>nd</sup> April 2021) available at <https://www.irishtimes.com/news/social-affairs/brazilian-man-seeks-emergency-family-reunification-1.4543797>

<sup>xliii</sup> There is one exception for non-EEA migrants who are family members of EEA citizens and have secured their residence on the basis of Directive 2004/38EC. This cohort of migrants may, subject to meeting certain conditions, be eligible for permanent residence in the State after a period of 5 years. Ireland also has a long term residence and Without Conditions as to Time Schemes however neither of these schemes provide security of residence.

<sup>xliiv</sup> The Irish Department of Justice published Immigration Guidelines for Victims of Domestic Violence in 2014. This is available at <http://www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf>

<sup>xliiv</sup> Supra iv, Recommendation 135.148 Apply international standards relating to the treatment of refugees and asylum

<sup>xlv</sup> This was raised in the Anti-Racism Committee in their Interim Report as one of the three urgent priorities to be addressed.

<sup>xlvi</sup> Supra iv, Recommendation 135.148 Apply international standards relating to the treatment of refugees and asylum seekers, provide them with adequate services and speed up the processing of their application.

<sup>xlvii</sup> Supra xlvii

<sup>xlviii</sup> Dail Debate, Written Answer, Question 632 on 27<sup>th</sup> January 2021

<sup>xlix</sup> Dail Debate, Written Answer, Question 173 on 11<sup>th</sup> March 2021

<sup>l</sup> Dail Debate, Written Answer, Question 240 on 11<sup>th</sup> February 2021

<sup>li</sup> Dail Debate, Written Answer, Question 173 on 11<sup>th</sup> March 2021

<sup>lii</sup> Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process chaired by Dr Catherine Day. Nasc was one of the members of the Advisory Group.

<sup>liii</sup> Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (Day Report) (September 2020) available at

<https://www.gov.ie/en/publication/ee7d5-report-of-the-advisory-group-on-the-provision-of-support-including-accommodation-to-persons-in-the-international-protection-process/>

<sup>liv</sup> Ibid, Recommendation 3.1 of the Day Report

<sup>lv</sup> Ibid, Recommendation 6.7 of the Day Report

<sup>lvi</sup> The Irish system of direct provision whereby applicants for international protection are accommodated in congregated settings (often disused or commercially unviable hotels, hostels or boarding schools) has been criticised widely by international treaty rights bodies (see the Committee on the Elimination of Racial Discrimination), the Irish Human Rights and Equality Commission, numerous Oireachtas Committees (Parliamentary Committees), the Faculty of Paediatrics at the Royal College of Physicians of Ireland (RCPI), Dr Geoffrey Shannon (Special Rapporteur on Child Protection) as well as civil society organisations.



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- <sup>lvi</sup> The Ombudsman issued a report, *The Ombudsman & Direct Provision: Update for 2019*, (Office of the Ombudsman) April 2020 in which he directed his attention to the conditions in emergency centres – “...having people in hotels or smaller facilities, which by definition are not designed to meet the needs of international protection applicants, is even more unsuitable and is just not a sustainable way to accommodate people seeking protection from often dangerous situations in their countries of origin.”
- <sup>lviii</sup> See Nasc, *Nasc calls on the Minister for Justice to Move the Vulnerable Out*, Press Release (March 2021) available at <https://nascireland.org/news/2020/nasc-calls-minister-justice-and-equality-move-vulnerable-out>; Nasc, Irish Refugee Council, Doras, Graham Clifford (Founder of Sanctuary Runners), *Joint letter to An Taoiseach regarding the Skellig Star Direct Provision Centre*, 03<sup>rd</sup> June 2020, available at <https://nascireland.org/news/2020/joint-letter-taoiseach-regarding-skellig-star-direct-provision-centre>
- <sup>lix</sup> Department of the Taoiseach, *Programme for Government: Our Shared Future*, 2020 available at <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>
- <sup>lx</sup> Department of Children, Equality, Disability, Integration and Youth, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service*, February 2021 available at <https://www.gov.ie/pdf/?file=https://assets.gov.ie/124757/ef0c3059-b117-4bfa-a2df-8213bb6a63db.pdf#page=0>
- <sup>lxi</sup> European Communities (Reception Conditions) Regulations 2018 (S.I. 230 of 2018)
- <sup>lxii</sup> Regulation 8 of the European Communities (Reception Conditions) Regulations 2018 (S.I. 230 of 2018) requires that an assessment is carried out within 30 working days as to whether an applicant for international protection has ‘special reception needs.’
- <sup>lxiii</sup> Dail Debate, Written Answer, Question 144 on 11<sup>th</sup> March 2021
- <sup>lxiv</sup> Dail Debate, Written Answer, Question 266 on 21<sup>st</sup> January 2021
- <sup>lxv</sup> Remarks by Shane O’ Connor, IPAS official at the webinar to launch the Ombudsman for Children report, *Safety and Welfare of Children in Direct Provision – An Investigation by the Ombudsman for Children’s Office* (27<sup>th</sup> April 2021),
- <sup>lxvi</sup> *National Standards*, Department of Justice and Equality, (15<sup>th</sup> August 2019) available to download from <http://www.justice.ie/en/JELR/Pages/PR19000215>
- <sup>lxvii</sup> The National Standards provide a broad definition of who may be considered vulnerable and this includes carers, persons at risk of domestic, sexual or gender based violence, persons with substance addictions and persons at risk of suicide. Full definition available at pages 15-16, *ibid*.
- <sup>lxviii</sup> Standard 10.4 of the National Standards, *ibid*, 10
- <sup>lxix</sup> 8 Shannon, G. (2012), “Fifth Report of the Special Rapporteur on Child Protection” available at <https://assets.gov.ie/27438/4b6b48a430164ea0ab09bb7a0d1103b8.pdf>
- <sup>lxx</sup> Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (McMahon Report), June 2015 available at <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>
- <sup>lxxi</sup> *Ibid*, p. 199, ch 4.226
- <sup>lxxii</sup> *Supra* lxxii, p 3
- <sup>lxxiii</sup> Dail Debate, Written Answer, Question 446 on 05<sup>th</sup> May 2021
- <sup>lxxiv</sup> Inspection reports are available publicly on <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>
- <sup>lxxv</sup> Ombudsman for Children, *Safety and Welfare of Children in Direct Provision – An Investigation by the Ombudsman for Children’s Office* (April 2021), p. 19 Available to download at <https://www.oco.ie/library/safety-and-welfare-of-children-in-direct-provision-an-investigation-by-the-ombudsman-for-childrens-office/>
- <sup>lxxvi</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, Second Cycle, (18 July 2016): Recommendation 136.90 Ensure family reunification and the conditions of the reception of refugees and asylum-seekers, in the implementation of the Law on International Protection, are in accordance with international law; Recommendation 136.91 Accelerate the entry into force of the new programme for the protection of refugees and ensure that it guarantees the protection of the best interest of the child and fully complies with international standards regarding unaccompanied migrant children and family

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reunification; Recommendation 136.92 Amend the General Scheme of the International Protection Bill to address family reunification, best interests of the child and the legal framework of reception conditions; Recommendation 136.93 Address concerns about family reunification and the best interests of the child in its legislation on refugees

<sup>lxxxvii</sup> See Smith, Ní Raghallaigh, Johnson & Izzeddin, *Invisible People: The Integration Support Needs of Refugee Families Reunified in Ireland*, Nasc, Migrant and Refugee Rights Centre (2020) available at <https://nascireland.org/publications/invisible-people-integration-support-needs-refugee-families-reunified-ireland-2020> and 'A family belongs together': Roisin Hinds, *Refugees' experiences of family reunification in Ireland*, Oxfam Ireland, Nasc & Irish Refugee Council (2018) available at <https://nascireland.org/publications/family-belongs-together-refugees-experiences-family-reunification-ireland-2018>

<sup>lxxxviii</sup> International Protection (Family Reunification)(Amendment) Bill 2017, Bill 101 of 2017 available at <https://www.oireachtas.ie/en/bills/bill/2017/101/>

<sup>lxxxix</sup> Joint Committee on Justice and Equality Report on Scrutiny of the International Protection (Family Reunification) (Amendment) Bill 2017 [PMB] July 2019 available at [https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_justice\\_and\\_equality/reports/2019/2019-07-04\\_report-on-scrutiny-of-the-international-protection-family-reunification-amendment-bill-2017-pmb\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_justice_and_equality/reports/2019/2019-07-04_report-on-scrutiny-of-the-international-protection-family-reunification-amendment-bill-2017-pmb_en.pdf)

<sup>lxxx</sup> Under Article 17.2 of the Irish Constitution, any Private Members' Bill that could result in the expenditure of public moneys requires a "money message" (recommendation) signed by the Taoiseach. This was used to prevent the passage of Bills that otherwise might have enjoyed majority support in the 32<sup>nd</sup> Oireachtas.

<sup>lxxxix</sup> High Court Practice Direction, HC81, Asylum, Immigration and citizenship list available at <https://www.courts.ie/content/asylum-immigration-and-citizenship-list>