

## **Submission to Committee on the Rights of the Child: ‘Day of General Discussion on Rights of Children in the Context of International Migration’, 28th September 2012**



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**10<sup>th</sup> September 2012**

### **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. Nasc was founded in 2000 in response to the rapid rise in the number of asylum seekers and migrant workers moving to the city of Cork, Ireland. It is the only NGO offering legal information and advocacy services to immigrants in Ireland’s second largest city. Nasc’s legal team assist some 1,000 immigrants annually in navigating Ireland’s protection, immigration and naturalisation systems. A considerable amount of our work involves reuniting families that have been separated through migration. We also assist migrants and ethnic-minority Irish people who encounter community-based and institutional racism and discrimination.

Nasc welcomes the opportunity to submit information to the Committee on the Rights of the Child in advance of the Day of Discussion on the rights of children in the context of international migration, in order to highlight the situation of child migrants in Ireland. Based on our experience providing legal advice and support to migrants living in Ireland, we know children are particularly vulnerable and experience profound difficulties in navigating migration and post-migration. Significant and unique barriers exist for child migrants and these must be addressed in policy and legislation at international and national levels.

### **Information**

We provide support and advocate for migrant children from a variety of different backgrounds, with complex experiences and needs. Some children are separated minors who have migrated to Ireland on their own and are seeking protection; some children were victims of trafficking or smuggling; some are the children of migrants who were raised and educated in Ireland and now seek residency, access to employment or third level education as aged out minors; some have spent 7+ years living in state-run accommodation, known as ‘direct provision’, waiting for permission to remain in the State. We are deeply concerned, whatever their background or how they migrated, that the rights of child migrants – protected under the United Nations Convention on the Rights of the Child – are not being duly considered by the Irish government when formulating immigration, child protection, social welfare and education legislation and policy. The same considerations for the best interest of the child; the same levels of protection and care; the same rights to health, education, and housing; the same opportunities to reach their potential should be provided to every child residing in the state regardless of their migration status.

For the purposes of this submission, we will highlight four main areas we have come across in our legal and advocacy work in relation to the rights of migrant children in Ireland: 1) children living for extended periods of time in state-run institutions known as 'direct provision' while asylum claims are processed; 2) separated children and aged out minors; 3) residency status, employment and education access for dependent migrant children; and 4) access to social protection.

### 1) Children in 'Direct Provision'

According to statistics released by the Irish Reception and Integration Agency (RIA), of the 4,949 people currently resident in state-run accommodation for asylum-seekers – known as Direct Provision – over one third, or 1,733, are children.<sup>1</sup> While living in direct provision, asylum seekers are not entitled to employment. They are provided with food and shelter, and are given only €19.10 per week for adults and €9.60 per week for children for additional living expenses. Although these state-run accommodation centres were designed for short term (approximately 6 month) stays while asylum seekers wait for their application for refugee status to be processed, the reality is that the majority of people going through the asylum process can remain anywhere from under one to over seven years in direct provision.<sup>2</sup> This is a significant portion of a child's life.

The standards of accommodation in direct provision vary widely. All of the residents eat in a communal canteen at set mealtimes. Many share a bathroom at the end of a corridor. Families with children generally live in one room. The centres are not independently monitored, and the standards and inspections that apply in other residential institutions in the state (like hospices and retirement homes) do not apply to them. There is no independent person or office to address the health and welfare concerns of residents. The practical issues faced by those living in direct provision centres are many and have been well-documented.<sup>3</sup> The specific situation of children and their experiences in direct provision are less researched. In addition, the psychological effects of long-term institutionalisation are a huge cause for concern, particularly for children who spend their childhoods in such centres.

A recent study soon to be published by the Irish Refugee Council<sup>4</sup> highlights the conditions for children living in direct provision, including concerns about safety and overcrowding of the physical environment, family life, social exclusion, barriers to accessing and participating in education, diet and access to play space. The study found that children in direct provision often suffer alienation as a result of enforced poverty and social exclusion. As a result of recent reports looking into child abuse within Church and State-run institutions, the Irish Department of Children and Youth Affairs

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<sup>1</sup> Reception and Integration Agency, 'Monthly Statistics Report: May 2012' (2010), available at: [http://www.ria.gov.ie/en/RIA/RIAMay\(A4\)2012.pdf/Files/RIAMay\(A4\)2012.pdf](http://www.ria.gov.ie/en/RIA/RIAMay(A4)2012.pdf/Files/RIAMay(A4)2012.pdf) (last accessed: 4 September 2012).

<sup>2</sup> A recent [parliamentary question](#), asked by Aengus O'Snodaigh at Nasc's request, revealed that some 1,339 people have lived in residential institutions known as "direct provision centres" for five years or more.

<sup>3</sup> Nasc, *Hidden Cork: The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System* (Cork: Nasc, the Irish Immigrant Support Centre, 2008); Flac, *One Size Doesn't Fit All: A Legal Analysis of the Direct Provision and Dispersal System in Ireland* (Dublin: Free Legal Aid Centres, 2009); Akidwa, *'Am Only Saying It Now': Experiences of Women Seeking Asylum in Ireland* (Dublin: Akidwa, 2010).

<sup>4</sup> Irish Refugee Council, *State Sanctioned Poverty and Exclusion: the case of children in accommodation for asylum seekers* (2012).

produced guidelines to prevent this kind of abuse being repeated. The *Children First* guidelines state: "The threshold of significant harm is reached when the child's needs are neglected to the extent that his or her well-being and/or development are severely affected."<sup>5</sup> We believe the system of direct provision has a detrimental effect on migrant children's well-being and development.

Special Rapporteur on Child Protection Geoffrey Shannon released a report to the Oireachtas (Irish Houses of Parliament) in 2012 which specifically noted the situation for children living in direct provision.<sup>6</sup> The report highlighted:

- Concerns about the detrimental effect on children growing up in a form of institutionalised poverty with parents unable to adequately care for their children
- Lengthy delays in the asylum system, calculated as an average of three years, giving rise to concerns about the welfare and development of children
- The high number of child protection referrals relating to children in Direct Provision
- The wide variation amongst residents in such centres, with single parents sometimes required to share with strangers and families with teenage children of opposite gender sharing one room
- The absence of appropriate supervision and support leading to a real risk of child abuse.

We are deeply concerned about the situation of children living in direct provision. We agree with the recommendations of the Special Rapporteur on Child Protection that research is urgently needed to assess the vulnerability of children accommodated in this system and the inevitable damage resulting from long-term institutionalisation.<sup>7</sup> We also strongly support the recommendation that the "best interests of the child" should be incorporated into Irish immigration and asylum law so that every decision conforms to that principle; and that in the interim, the state should implement without delay an independent complaints mechanism and independent inspections of Direct Provision centres.<sup>8</sup> We call on the government to recognise the almost 2,000 children living in direct provision by their status as children first, protection applicant second. We join the Special Rapporteur in asking that the State expand the remit of the Ombudsman for Children to include these children, affording them the same protection as their Irish counterparts.

## **2) Separated Children and Aged Out Minors**

There is a need for greater visibility regarding the specific needs of separated children and aged out minors in Irish legislation and policy. According to Article 20 of the UN Convention on the Rights of the Child, separated children are entitled to special protection and assistance provided by the State.

We believe separated children must be approached first and foremost as children, and that state assistance that takes into account the best interests of the child must be provided. This includes providing adequate residency options and support for the particular immigration needs of separated

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<sup>5</sup> Department of Health and Children, *Children First: National Guidance for the Protection and Welfare of Children*

<sup>6</sup> Geoffrey Shannon, *Fifth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas* (2012), p. 13, available at: <http://www.nascireland.org/wp-content/uploads/2012/07/5-Rapporteur-Rep-Child-Protection.pdf> (date accessed: 6 September 2012).

<sup>7</sup> Shannon 2012, p. 18

<sup>8</sup> Shannon 2012, p. 72

children, from temporary residency upon arrival through to recognition of the need for protection as a refugee or trafficked person, or someone otherwise in need of protection, to the long-term needs of aged out minors. This also includes a clear definition of separated children in the proposed Immigration, Residency and Protection (IRP) Bill, which is due to be debated in the Oireachtas in the upcoming year. In addition we believe the IRP Bill must include a clear rule that suspected separated children should never be refused entry or turned away at the point of entry.

Further, we do not believe it is in the best interests of separated children that immigration decisions often take years to process, leaving the child in legal 'limbo' or even unlawfully present in the State. Immigration decisions for separated children should be prioritised and correspond to the UNHCR *Guidelines on Determining the Best Interests of the Child*,<sup>9</sup> which suggests that any solution should be identified within 2 years. We have found in many cases, decisions are taking so long to process that the separated child reaches their majority, becoming an aged out minor, such that the Irish Naturalisation and Immigration Service can then make their decision on an adult rather than a child – a child who has now spent several years in the care of the Irish state. Aged out minors – i.e. separated children who have now reached the age of eighteen – have complex needs that must be met, whether they are eventually given permission to remain in the State or not.<sup>10</sup> Due consideration must be made in relation to the unique status of separated children and aged out minors, taking into account child-specific persecution, the risks of repatriation and the amount of time many of these children and young people have now spent in the Irish state.

Much of our current legal work is around reuniting families who have been separated through the migration process. If it is in the best interest of the child, migrant children with protection status should have the opportunity to be reunited with family members, including parents, siblings or other close relatives. Reuniting a separated child, or a child who has been trafficked, with their families is a priority in our work, and is the preferred option if it is in the best interests of an individual child.

Finally, we have found that in many cases separated children are not receiving the benefit of the doubt when it comes to assessment of age. In the past, invasive medical testing was used to determine age, but in recent years practices used to assess a young person's age can be subjective and arbitrary. According to the children's rights researcher Alice Farmer, "many EU countries that receive high numbers of unaccompanied migrant children have instituted age determination proceedings. But the practices vary greatly."<sup>11</sup> Farmer concludes that, "best practices suggest relying on multi-disciplinary assessments from professionals such as psychologists, social workers and paediatricians to gauge a child's age." Age assessment should not be the sole responsibility of immigration officers or An Garda Síochána, especially when incorrect assessment can result in detention and removal. We also believe giving aged out minors the benefit of the doubt in age assessment is essential.

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<sup>9</sup> UNHCR, *Guidelines on Determining the Best Interests of the Child* (2008), available at: <http://www.unhcr.org/4566b16b2.pdf> (date accessed: 6 September 2012).

<sup>10</sup> P+L+U+S (Please Let Us Stay) Campaign and Dun Laoighaire Refugee Project, *Leave to Remain For Aged-Out Minor Asylum Seekers* (2005), available at: <http://www.drpf.ie/AgedOutMinor.pdf> (date accessed: 6 September 2012).

<sup>11</sup> Alice Farmer, 'Guilty of Adulthood Until Proven A Child' *The Jurist* (11 August 2012), available at: <http://jurist.org/hotline/2012/08/alice-farmer-malta-children.php> (date accessed: 6 September 2012).

### **3) Residency Status, Employment and Education Access for Migrant Children**

We have found in our work with migrant families and migrant children that a lack of clear policy around the immigration status of dependent migrant children has a profound impact on children's ability to access education and employment in the state.

Children of migrant workers are not required to register with immigration authorities until the age of 16 when they are granted an immigration permission that is dependent upon a parent. These children are usually granted a Stamp 2 or 2A as the dependent child of a migrant worker.

Dependent children who hold Stamp 2 or 2A immigration permission face significant barriers if they wish to access third level education or enter into employment in the State. Many Stamp 2 or 2A holders will be required to pay international fees as opposed to EU fees in order to enter into third level education. The prohibitive disparity in EU and non-EU fees means in many cases, third level education becomes impossible for many migrants who have spent the majority of their childhood being educated in the Irish system.

The immigration permission currently granted to dependent children of migrant workers restricts access to the labour market. Children of migrant workers who hold Stamp 2 immigration permission are entitled to enter into employment for 20 hours per week. Children of migrant workers who hold Stamp 2A immigration permission are not entitled to enter into employment in the State.

The Irish Naturalisation and Immigration Service (INIS) does not have clear stated policy whereby dependent children may apply for a change of immigration permission which would allow them to enter into education and employment on the same basis as Irish or EU citizens. Applications for a change of immigration permission in order to allow access to education and employment are dealt with on a discretionary and case by case basis by INIS.

### **4) Social Protection**

Access to social protection, including social welfare, medical cards, child benefit and supplementary welfare payments, is an ongoing issue for migrant families. The social protection system does not adequately address the risks of child poverty and homelessness. Those who are unable to access mainstream payments in the social protection system can be put at risk of homelessness and/or destitution. A parent's inability to access social protection due to issues with residency, significant delays in processing applications, and lack of documentation, means that migrant children can be living at risk of destitution or removal into the care of the state. No guidelines are in place to ensure that the best interests of the child are considered when assessing applications for social protection.

Child benefit, although described as a universal payment, is dependent on the status of the parents. Undocumented parents and parents who do not meet the habitual residence condition<sup>12</sup> are not eligible to receive child benefit payments. This has a disproportionate effect on migrant children.

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<sup>12</sup> The Habitual Residence Condition was introduced as a requirement for all means tested social welfare payments and Child Benefit payments in 2004. The HRC is a test to ascertain if an applicant has an adequately strong connection to Ireland.

Medical cards (free/subsidised medical care) are only issued to children where parents satisfy minimum residency and income thresholds. Children of undocumented migrants are put at risk by their inability to access sustainable long-term and sustainable healthcare.

Other barriers to accessing social protection include lack of appropriate documentation, for instance proof of means such as bank statements, and proof that the person is genuinely seeking work. These types of documentation can be difficult for migrants, particularly nomadic communities such as the Roma, to produce. Migrants may not have bank accounts; also literacy and language issues can significantly impact migrant people's ability to seek out employment and further to document when and where they have applied for work. Lack of these types of documentation, and welfare officers seeking inappropriately excessive amounts of documentation from migrants seeking social protection, cause significant and undue delays. Children can be forced to live in situations where the family household falls far below the minimum standard. In addition, access to supplementary welfare, intended to fill the gap while waiting for social protection payments, is often significantly delayed as well due to the inability to provide the requested documentation.

We have found in our work with the Roma community that Romas are experiencing significant difficulties in accessing social protection. We believe the undue delays and requests for excessive documentation particularly discriminates against the Roma community in their attempts to access social protection. For example, the child benefit payment – a universal payment given to every mother for a resident child – is extremely difficult for Roma families to access, as Roma women are often not considered resident. Requests for child benefit payments to be sent to the father, who would have residency based on a history of working in the State, are often denied or delayed in processing, which leaves the child without this often necessary additional payment.

In addition, women from migrant communities who experience domestic violence and who fail to satisfy the HRC have experienced difficulties in accessing supports. Although there have been significant advancements made in the Department of Justice in providing independent status to migrant women experiencing domestic violence, it is contingent on the woman taking her children out of the family home and going to a women's refuge, and getting a barring or protection order. A woman's ability to do this is contingent on not experiencing any difficulties in accessing social protection.

### **Recommendations**

Based on our experience and the information highlighted above, Nasc recommends discussion of the following in relation to the situation of migrant children in Ireland:

- Children should have access to adequate, safe and stable housing and should not be living in temporary refuges, or for overly long periods in 'direct provision' accommodation centres which were designed for temporary residency.
- Strong reliance on discretion in immigration policy means issues pertaining to migrant children are often dealt with on a case by case basis. Immigration policy and legislation must include specific reference to the rights of migrant children in line with the UN Convention on the Rights of Children.

- Any child coming into contact with state services should be dealt with from a child protection perspective, not as an immigration issue. The best interests of the child must be the primary consideration (Article 3 of the UN Convention on the Rights of the Child).
- States should be facilitating migrant children's access to long term residency, employment and education. If residency is determined by a parent's residency, it should be equal to parent's residency at age of majority. Children who grow up and are educated in a state should have access to third level education at a fee structure that is reflective of their long term residency.

### **Concluding Remarks**

The recent announcement of a proposed amendment to the Irish Constitution directly relating to the rights of children is a welcome advance for children's rights in Ireland. Also, the proposed Immigration, Residency and Protection Bill is scheduled to be debated in the Oireachtas this coming year. We hope that pressure from children's rights advocates and migrant NGOs, as well as Ireland's commitment to the UN Convention on the Rights of the Child, will help produce a positive, child protection oriented result to these proposed policy and legislative reforms. Further we hope that the rights of migrant children are explicitly addressed.

Although we will not be able to attend the discussion on 28<sup>th</sup> September 2012, we look forward to feedback from the Committee on the Rights of the Child and the organisations who are able to take part in the Day of Discussion on the rights of migrant children in the international context. We hope this process leads to significant improvement in international and national policies in relation to migrant children.

### **Further Information**

For further information or clarification of any of the above, please do not hesitate to contact:

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