



# **Submission to the Migrant Workers' Committee and Committee on the Rights of the Child Joint General Comment on the Human Rights of Children in the Context of International Migration**

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## **1. Introduction**

Founded in 2002, the Immigrant Council of Ireland – Independent Law Centre (ICI) is the leading voice in securing improved rights and protections in the area of immigration, citizenship and anti-racism in Ireland. It offers support, advice and information, while also achieving positive change through strategic legal action and engagement with lawmakers to make immigration laws fit for purpose. Access to justice is the cornerstone of all of the ICI's work. It is committed to supporting individuals and families often at a vulnerable stage in their life, including victims of human trafficking and stateless persons. The ICI works in coalition with like-minded individuals, organisations, stakeholders and investors to deliver genuine change at both a national and European level. The ICI has contributed to a number of submissions and civil society shadow reports to UN and Council of Europe monitoring bodies on Ireland's compliance with international and regional human rights instruments, including the ICCPR, CERD, CEDAW, UPR and UNCRC.

Ireland ratified without reservation the UN Convention on the Rights of the Child in 1992 the Optional Protocol on the Involvement of Children in Armed Conflict in 2002 and the Optional Protocol on a Communications Procedure in 2014. Ireland's third and fourth combined examination by the UN Committee on the Rights of the Child under the Convention took place in January 2016. However, Ireland has not signed the UN Migrant Workers Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990).

Having regard to the current international and European migration context, this submission gives a brief overview of the ICI's main concerns regarding the rights of children affected by migration in Ireland, including the rights of Irish children who may be affected by the residence status of their parents or other primary caregivers. There is a particular focus in this submission on the guiding principles of the CRC non-discrimination, the best interests of the child, the right to life, survival and development and respect for the views of the child. There is also a particular focus on issues related to family life/family reunification, access to education, access to citizenship and trafficking, all of which are key issues arising in the ICI's services. By providing an overview of the issues which are most prevalent in our service provision this submission will inform the process with frontline data and provide an outline of the position on the human rights of children in Ireland in the context of international migration.

## **2. Need for Child Rights Approach in the Context of Migration**

Consideration is rarely given to the specific rights of children in the context of migration. This results in systems that are not tailored to their rights as children nor as individuals. The absence of child-sensitive migration-related legislation or policy results in an absence of appropriate immigration permissions or documentation for children and young people.

For example, in Ireland, children are not registered at all with immigration authorities until age 16. Once they turn 16, all non-EU citizen migrant children must register with the Garda National Immigration Bureau (GNIB) which issues immigration stamps<sup>1</sup>. Upon registration at age 16 children's immigration status is entirely dependent on that of their parents, and they are not registered with permission in their own right, regardless of the duration of residence in the state. There is however an exception in relation to migrant children in State care. However, there is no published guidance regarding appropriate registration/ immigration status for minors and there is no published guidance regarding applications for residence permission on behalf of minors, in particular non-asylum seeking minors in state care who have been the subject of child protection intervention.

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<sup>1</sup> Section 9(6) Immigration Act 2004. The Employment Permits Act 2014 introduced registration requirements for all minors but these have not been commenced to date.

The lack of appropriate, clear regulations in relation to provisions for migrant children can result in the issuing of inappropriate stamps to children who grew up in Ireland or those who are living with or joining parents who live and work in Ireland. The Immigrant Council is aware of such children being granted Stamp 2 or Stamp 2a which are intended for international students or children coming to Ireland for the purpose of undertaking secondary level education. If left unchallenged, this excludes those children from access to part-time employment and reckonable residence for citizenship.

Sometimes a migrant child might be issued with the type of stamp issued to dependents (a Stamp 3). This type of status, again, does not allow the child any option of seeking after school or weekend work.

Conversely, a lack of awareness that a registration card is not necessary before the age of 16 can also create problems for migrant children. There is a widespread lack of knowledge in the broader community about Ireland's immigration rules, and schools sometimes request a child's registration card be shown when none is necessary. This can create misunderstandings, confusion and anxiety.

Additionally, the immigration status of migrant children in care, including separated children, is frequently neglected and children rarely receive independent legal advice. This can mean that children reach 18 without any clarification around their status, which delays their eligibility for citizenship.

The INIS Family Reunification Policy document noted the limitation of this system and seemed to propose reform: "*The 2004 Immigration Act does not provide for the registration of children aged under 16. The Immigration Residence and Protection Bill intends to abolish this limitation. However, in the interim, it is now proposed as part of policy on family reunification to provide for specific immigration permission for such children on an administrative basis. This will allow the children to establish their personal residence history at an earlier date*"<sup>2</sup>. Despite this policy statement, no steps have been taken as yet to enable this specific child permission.

### **3. Article 3 CRC: Best Interests of the Child**

States should respect Article 3 Convention on the Rights of the Child and ensure that in all actions, including those in relation to migration and deportation, the best interests of the child shall be a primary consideration. States should be reminded of the interpretation of the Committee on the Rights of the Child in relation to Best interests of the child as set out in the Note on the General Day of Discussion 2012: "States should conduct individual assessments and evaluations of the best interests of the child at all stages of and decisions on any migration process affecting children, and with the involvement of child protection professionals, the judiciary as well as children themselves. In particular, primary consideration should be given to the best interests of the child in any proceeding resulting in the child's or their parents' detention, return or deportation".

There is an inadequate understanding and application of the principle of the best interests of the child in asylum-seeking, refugee and/or immigration detention situations.

#### *The Irish Approach*

It is regrettable that the Irish courts have decided that the best interests of the child are not a primary consideration in decisions relating to the deportation of children. In the 2015 decision of *Dos Santos v. Minister for Justice and Equality* the Irish Court of Appeal held that "s. 3(6) [The Immigration Act, 1999] specifies matters to which the Minister must have regard which are relevant factors pertaining

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<sup>2</sup> See the INIS Policy Document (paragraph 31, page 9) here at <http://www.inis.gov.ie/en/INIS/Family%20Reunification%20Policy%20Document.pdf/Files/Family%20Reunification%20Policy%20Document.pdf> last accessed 29<sup>th</sup> February 2016

to the best interests of a child but that it cannot be construed as requiring that the best interests of the child be a “primary consideration” in determining whether or not to make a deportation order.<sup>3</sup>”

The appellants were a migrant family with children which had immigrated to Ireland and the children had become settled in their schools and communities. Deportation orders were issued to each member of the family and submissions were made to revoke those orders on the basis of the children’s schooling and the family having become integrated into Irish society. The appellants argued that the domestic legislation should be construed in accordance with Article 3 UN Convention on the Rights of the Child so that the best interests of the child were considered and treated as a primary consideration when making a decision whether or not to deport the child. This was not accepted either by the High Court or on appeal to the Court of Appeal.

The Court of Appeal held that given that the UNCRC had not been adopted into domestic law, the relevant provisions of Irish law could not be construed as requiring that the best interests of the child be a primary consideration in determining whether or not to make a deportation order. It was therefore held that the alleged interference with the right to private life under article 8 ECHR did not have consequences of such gravity to potentially engage its operation and was held to be reasonable.

Ireland’s dualist system of law is enshrined in Article 29.6 of the Irish Constitution, which provides that “no international agreement shall be part of the domestic law of the state save as may be determined by the Oireachtas”. Article 3 of the UNCRC states that “*in all actions concerning children ... the best interests of the child shall be a primary consideration*”. While accepting that Article 3 did not form part of Irish domestic law, the applicants argued that as Ireland had ratified the UNCRC, its terms could be used to inform a proper interpretation of relevant domestic law provisions, in this case s. 3 of the Immigration Act 1999, which sets out a number of considerations to which the Minister must have regard in making a deportation order. One such consideration is “the age of the person”. It was submitted that where the Minister learned from the age of the person that he or she was a child, s. 3(6) of the Immigration Act 1999 should be interpreted as requiring the Minister to consider the child’s best interests as a primary consideration. The Court of Appeal rejected this argument as s. 3 set out the relevant considerations which the Minister was required to consider and some of these related to the welfare or best interests of the child. It was found that in the context of the full section and scheme of the 1999 Act, the best interests of the child was one among a number of considerations, but not a primary consideration:

It is also relevant to note that in the leave decision of the Irish High Court in *C.I. v Minister for Justice and Equality*, it was held that as no EU law or rights affected the applicants in that case, the EU Charter of Fundamental Rights and Freedoms did not apply and thus Article 24(2) of the Charter, which makes clear that “in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration”, was not relevant and so the best interests of the child were not treated as a primary consideration.

The interpretation is neither in line with international law nor with the law on family life as developed by the European Court of Human Rights. Recent case law of the ECtHR has put increasing emphasis on the best interests of the child as a factor to be considered as part of Article 8 analysis, which requires that best interests be given sufficient weight. Analyses of how certain children’s rights are considered in Ireland are set out in greater detail below.

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<sup>3</sup> Dos Santos v. Minister for Justice and Equality [2015] IECA 210

#### 4. Due process guarantees and access to justice for migrant children

The rights of migrant children to due process in Ireland are limited. Immigration-related decisions, outside international protection, are based on Ministerial discretion with provisions for an internal appeal in some areas, but without an independent appeals mechanism. While children and their families may challenge decisions by means of judicial review in the High Court, that action is limited and does not review the merits of a case or questions of fact. The High Court does not have the power to alter or replace the decision. Further, civil legal aid is generally limited<sup>4</sup> to issues such as family law, child protection and asylum and does not extend to general immigration or other issues which may be relevant to migrant children and their families such as housing, debt or employment.

##### *Access to Legal Representation*

The absence of a right of access to independent legal advice and representation for children in relation to their immigration status acts as a barrier to children realising their rights.

A particular difficulty arises for migrant children in care, including separated children, in that their immigration status is frequently neglected and children rarely receive independent legal advice in relation to their immigration status. This can mean that children reach 18 without any clarification of their immigration status, which delays their eligibility for citizenship and impacts their access to third level education or employment.

Separated children or children who are in State care following child protection interventions should therefore in all circumstances have their migration status addressed prior to attaining age of majority and their discharge from care, especially if a decision was taken by the allocated social worker not to make an application for asylum on behalf of an unaccompanied minor.

Where allocated social workers from the Child and Family Agency, Tusla, form an opinion that a child should apply for asylum and would therefore benefit from legal representation, they refer the children in their care to the State provided Legal Aid Board. Children do not enjoy a right to access legal advice in order to establish their rights or to investigate whether appropriate immigration-related applications should be made on their behalf. With a growing number of migrant children in State care, this is an important issue.

##### *Decisions on immigration and asylum applications*

The absence of a statutorily based immigration framework negatively impacts children's ability to realise their rights. The Irish system for the administration of immigration and naturalisation decisions, including the refusal of visas, leave to land and residence permits, is based on ministerial discretion.

When children become undocumented, there are no clear paths to regularisation of their immigration status. While provisions exist within Irish immigration procedures that allow the Minister for Justice and Equality to confer, at her/his discretion, immigration status on an undocumented person – a clear, accessible formal procedure for doing this is lacking. The result of this uncertainty is that many undocumented families avoid seeking to remedy their situation and will often remain undocumented in the State.

In its concluding observations on Ireland, issued on 29<sup>th</sup> January 2016 the Committee on the Rights of the Child recommended that Ireland “*Expediently adopt a comprehensive legal framework which is in accordance with international human rights standards for addressing the needs of migrant children in the State party*” and “*Ensure that the said legal framework includes clear and accessible*

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<sup>4</sup> FLAC, Accessing Justice in Hard Times, February 2016

*formal procedures for conferring immigration status on children and their families who are in irregular migration situations”.*

Undocumented children face considerable vulnerabilities due to their lack of immigration status, including lack of access to legal recourse and the protection of their rights. They may also miss crucial opportunities for advancement, and be vulnerable to exploitation.

## **5. The right to life and development (Access to territory, safe passage)**

The impact of barriers to safe transit and to lawful access to territory on refugees’ and migrants’ right to life is the defining issue of international immigration of our time. The tragedy of deaths in the Mediterranean of asylum-seekers and migrants seeking entry to Europe is a shocking reflection of global inequality, the impact of war and persecution and the absence of safe, legal migration paths to Europe. Between September 2015 and February 2016 more than 340 children, many of them babies and toddlers, have drowned in the eastern Mediterranean.<sup>5</sup>

For the rights of children to be protected, legal migration routes must be put in place, resettlement programmes for refugees implemented and relocation mechanisms<sup>6</sup> operationalised. There must be systems in place to grant families entry visas enabling families to travel safely as a unit as well as family reunification opportunities. UN High Commissioner for Refugees Filippo Grandi has observed: *“As many of the children and adults who have died were trying to join relatives in Europe, organising ways for people to travel legally and safely, through resettlement and family reunion programmes for example, should be an absolute priority if we want to reduce the death toll”<sup>7</sup>*. President Juncker outlined in his Political Guidelines, that *“a robust fight against irregular migration, traffickers and smugglers, and securing Europe’s external borders must be paired with a strong common asylum policy as well as a new European policy on legal migration”<sup>8</sup>*. The European Agenda on Migration, adopted in May 2015, notes that *“A clear and well implemented framework for legal pathways to entrance in the EU (both through an efficient asylum and visa system) will reduce push factors towards irregular stay and entry, contributing to enhance security of European borders as well as safety of migratory flows”<sup>9</sup>*. With migration at the top of the EU agenda, it is an appropriate time to ensure that the rights of children affected by migration are respected, protected and fulfilled in each of the systems and procedures being developed and implemented.

While the surge of asylum-seeker flows to the EU pushed the reception capacities of some EU Member States into crisis, the numbers of asylum-seekers in Ireland has remained low. Ireland and the UK availed of an opt-out of Title V, Part Three of the Treaty on the Functioning of the European Union. Therefore Ireland is not bound to participate in the EU’s emergency response. However, the Department of Justice and Equality stated on 20<sup>th</sup> July 2015 that a motion for Ireland to opt-in, will be brought before the Oireachtas<sup>10</sup> and it has since been agreed that Ireland will accept up to 4,000 persons overall under EU Resettlement & Relocation Programmes.

- 520 programme refugees are currently being resettled in Ireland directly from refugee camps.
- 600 persons will come from Relocation from other EU States such as Greece and Italy.

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<sup>5</sup> Joint UNHCR, UNICEF, IOM Press Release, <http://www.unhcr.org/56c6e7676.html>, 16 February 2016

<sup>6</sup> Temporary EU Relocation System for the redistribution of asylum-seekers between EU member states. The slow pace of relocation has been criticised.

<sup>7</sup> Joint UNHCR, UNICEF, IOM Press Release, <http://www.unhcr.org/56c6e7676.html>, 16 February 2016

<sup>8</sup> President Juncker’s Political Guidelines ‘A New Start for Europe’, [http://ec.europa.eu/priorities/docs/pg\\_en.pdf](http://ec.europa.eu/priorities/docs/pg_en.pdf)

<sup>9</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A EUROPEAN AGENDA ON MIGRATION,

<sup>10</sup> Minister Fitzgerald welcomes comprehensive package of measures on Mediterranean migration – Ireland to join other Member States in new solidarity measure to Greece and Italy, 20th July 2015 (see: <http://www.inis.gov.ie/en/INIS/Pages/Minister%20Fitzgerald%20welcomes%20comprehensive%20package%20of%20measure%20on%20Mediterranean%20migration>).

- 2,880 additional persons in need of international protection as part of the new EU Relocation programme

397 persons, including Syrians and Iraqis of both Christian and Muslim faiths were selected for resettlement during selection missions to Jordan in 2015<sup>11</sup>, and a Syrian family of ten were relocated to Ireland as part of the European Commission's plan to relocate 160,000 refugees from Greece and Italy.

Ireland's general immigration system is characterised by lack of clarity, overreliance on discretionary decision-making, the absence of an independent appeals mechanism and the absence of clear pathways to regularisation of status. Long-awaited legislative reform proposals which the Department of Children and Youth Affairs hoped would "*address in a comprehensive way the interaction of migrant children with the immigration system*"<sup>12</sup> have lapsed while the International Protection aspects of the Bill were prioritised and enacted.<sup>13</sup>

## 6. The right to family life

Children in the context of migration should have their right to family life meaningfully fulfilled through the implementation of legal immigration routes which allow for maintenance of the family unit when heads of households migrate, and which do not place undue time delays before family reunion is permitted, or unnecessary financial barriers.

Ireland is the only EU Member State that does not have specific legislative provisions conferring an entitlement on any family members of Irish nationals or non-EEA nationals resident in Ireland to enter or reside in the State. This is in contrast to the family members of refugees, subsidiary protection holders, scientific researchers or EEA citizens in respect of whom family reunification rights are set out in law. Ireland did not opt into the EU Directive on the Right to Family Reunification<sup>14</sup>. The Minister for Justice and Equality retains extensive discretion in granting permission for family members of Irish citizens and people resident in Ireland. The situation of third-country nationals and Irish nationals with regard to family reunification remains unclear, leading to confusion and frustration on the part of applicants and their family members. This also means that many families are forced to live apart.<sup>15</sup>

The INIS Family Reunification Guidelines<sup>16</sup>, at 71 pages long and with many inconsistencies, have not brought the necessary clarity and transparency to Irish citizens and migrants who are separated from their family members. The guidelines impose family separations with a provision that certain employment permit holders and persons permitted to work with "Stamp 4" only become eligible to sponsor their immediate family members after 12 months of residence and employment, and members of their non-nuclear family after five years.<sup>17</sup> A further barrier to children joining their parents working in Ireland is the high level of income requirements imposed. Research carried out by the ICI in 2013 found that income requirements in Ireland were excessive, and ranked as the second highest in a group of European Member States surveyed with some applicants' earnings required to be

<sup>11</sup> <http://www.integration.ie/website/omi/omiwebv6.nsf/page/resettlement-pgs>

<sup>12</sup> BETTER OUTCOMES BRIGHTER FUTURES The national policy framework for children & young people 2014 - 2020

<sup>13</sup> For a link to the International Protection Act 2015 see here: <http://www.irishstatutebook.ie/eli/2015/act/66/enacted/en/pdf> this legislation was enacted on 30 December 2015 and only certain provisions have commenced pursuant to the commencement order contained in S.I. 26 of 2016 which is available here <http://www.irishstatutebook.ie/eli/2016/si/26/made/en/pdf>

<sup>14</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

<sup>15</sup> For further information, see Family Reunification Country Report on Ireland and a summary written by ICI as part of Family Reunification Project: Family Reunification - a barrier or facilitator of integration? [http://immigrantcouncil.ie/files/publications/ea09f-final\\_online\\_version\\_ireland\\_country\\_report.pdf](http://immigrantcouncil.ie/files/publications/ea09f-final_online_version_ireland_country_report.pdf)

<sup>16</sup> See note 2 above

<sup>17</sup> 16.4, 16.5 Family Reunification Document,

<http://www.inis.gov.ie/en/INIS/Family%20Reunification%20Policy%20Document.pdf/Files/Family%20Reunification%20Policy%20Document.pdf>

€1,000 above the median equivalent net income.<sup>18</sup> Another category of sponsor, “all other non-EEA nationals” is not eligible to sponsor family members at all, including their children.

These restrictive family reunification rules impose unnecessary family separations. Financial requirements will be unachievable for many people with disabilities, older people and single parents. The work restrictions placed on spouses of legal migrants additionally create an undue dependency and increased vulnerability for both spouses and children.

The right of refugees and persons qualifying for subsidiary protection to family reunification is currently set out in Section 18 of the Refugee Act 1996 or Regulation 25 or 26 of the European Union (Subsidiary Protection) Regulations 2013. Sections 56 and 57 International Protection Act 2015, when commenced, will provide for “*permission to enter and reside for member of family of qualified person*”.<sup>19</sup> This will set down the legal eligibility of a child to act as a sponsor for the purpose of seeking family reunification with their parents and any dependent children of their parents. It will also give legal recognition to the requirement to take into account the best interests of the child as a primary consideration<sup>20</sup>. However, the Act narrows the family members in respect of whom qualified applicants will be eligible to apply for family reunification, removing provisions for dependent family members which are included in the Refugee Act 1996.

## 7. Right to a name, identity and to a nationality

### *Access to naturalisation for Migrant Children in Care*

Certain migrant children continue to encounter barriers to naturalising as Irish citizens despite meeting the residence requirements.

Part III of the Irish Nationality and Citizenship Act 1956, as amended, provides for the naturalisation of “non-nationals” at the discretion of the Minister for Justice, upon satisfaction by the applicant of conditions of residence, good character, declaration of fidelity to the State and intention to continue to reside in Ireland. Section 15 (3) provides that “applicant” means, “in relation to an application for a certificate of naturalisation by a minor, the parent or guardian of, or person who is *in loco parentis* to, the minor”.

Children’s access to naturalisation is therefore dependent on their parents’ satisfaction of the relevant criteria, even where that child is in care, where parents have left the State leaving the child behind or where the parent cannot otherwise satisfy the conditions.

There are 3 different forms provided by the Department of Justice and Equality for naturalisation of children in Ireland. Form 9<sup>21</sup> “should be completed by a naturalised parent on behalf of their minor child” and therefore excludes children whose parents have not naturalised themselves. Form 10<sup>22</sup> is relevant for children of Irish descent or Irish associations, meaning “related by blood, affinity or adoption to a person who is an Irish citizen or entitled to be an Irish citizen.”<sup>23</sup> Form 11 is relevant only to children born in the State<sup>24</sup>.

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<sup>18</sup> Family Reunification Country Report on Ireland and a summary written by ICI as part of Family Reunification Project: Family Reunification - a barrier or facilitator of integration? [http://immigrantcouncil.ie/files/publications/ea09f-final\\_online\\_version\\_ireland\\_country\\_report.pdf](http://immigrantcouncil.ie/files/publications/ea09f-final_online_version_ireland_country_report.pdf)

<sup>19</sup> <http://www.irishstatutebook.ie/eli/2015/act/66/enacted/en/pdf>

<sup>20</sup> Section 58 (2).

<sup>21</sup> [http://www.inis.gov.ie/en/INIS/Form%209%20\(Ver%205.0%20Jan%2014\).pdf/Files/Form%209%20\(Ver%205.0%20Jan%2014\).pdf](http://www.inis.gov.ie/en/INIS/Form%209%20(Ver%205.0%20Jan%2014).pdf/Files/Form%209%20(Ver%205.0%20Jan%2014).pdf)

<sup>22</sup> [http://www.inis.gov.ie/en/INIS/Form%2010%20eform%20\(Ver%205.0%20Jan%202014\).pdf/Files/Form%2010%20eform%20\(Ver%205.0%20Jan%202014\).pdf](http://www.inis.gov.ie/en/INIS/Form%2010%20eform%20(Ver%205.0%20Jan%202014).pdf/Files/Form%2010%20eform%20(Ver%205.0%20Jan%202014).pdf)

<sup>23</sup> Section 16 (2)

<sup>24</sup> [http://www.inis.gov.ie/en/INIS/Form%2011%20eform%20\(Ver%203.0%20Jan%202014\).pdf/Files/Form%2011%20eform%20\(Ver%203.0%20Jan%202014\).pdf](http://www.inis.gov.ie/en/INIS/Form%2011%20eform%20(Ver%203.0%20Jan%202014).pdf/Files/Form%2011%20eform%20(Ver%203.0%20Jan%202014).pdf)



The above provisions give rise to a difficulty for migrant children in care, particularly where the Department of Justice has been reluctant to accept applications from Tusla, the Child and Family Agency and the organ of the state in whose care children are placed. It has been the position of the Department that to proceed with applications would be contrary to Article 41 of the Irish Constitution. It is reported that the Department of Justice agreed to process an application for naturalisation for a girl who had no nationality or passport in one case<sup>25</sup> after the matter was brought before the District Court. However, this matter was *in camera*, does not establish precedent and has not been followed with a change of policy or law.

Children in care therefore continue to rely on their parent having been lawfully resident in Ireland and successfully applied for naturalisation themselves and on their parent completing the child's application for naturalisation. If co-operation is not forthcoming, or their parent has not naturalised, a child who has been in full time care in Ireland for many years will not be able to apply for naturalisation until after reaching 18.

### *Statelessness*

While Ireland is party to the UN Conventions on Statelessness, Ireland has not enacted any legislative or administrative measures to address child statelessness, and there is no formal determination procedure for statelessness, neither for adults nor children.

The Irish Nationality and Citizenship Act 1956 provides that a person born in Ireland is an Irish citizen from birth "*if he or she is not entitled to citizenship of any other country*"<sup>26</sup>. Since 2004, the constitutional right of persons born in Ireland to Irish citizenship is limited to persons who, at the time of their birth, had at least one parent who is an Irish citizen or entitled to be an Irish citizen. The 1956 Act also gives the Minister for Justice the power to dispense with the conditions for naturalisation in cases involving stateless persons. While the 1956 Act provides a safeguard for stateless children born in Ireland there are significant practical obstacles to accessing that discretionary mechanism in the absence of a specific regime governing statelessness. The provision is of no assistance to stateless children who migrate to Ireland.

## **8. Right to work and protection from forced labour, all forms of exploitation, child labour and child abduction, sale or traffic**

Increasing evidence suggests that children have become victims of trafficking as a result of their own migration, where they may expose themselves to new dangers and exploitation while "on the move"<sup>27</sup>. Accompanied migrants as well as unaccompanied and separated children are vulnerable to trafficking.

Child victims of trafficking should be accorded special measures of protection and support. In line with Directive 2011/36/EU<sup>28</sup>, child victims should fall under the care of the protection authorities. They should be provided with a guardian when the holders of parental responsibility are precluded from ensuring the child's best interest, and legal representation. Child victims should be entitled to assistance and support taking account of their special circumstances. Durable solution decisions

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[http://www.inis.gov.ie/en/INIS/Form%2011%20eform%20\(Ver%203.0%20Jan%202014\).pdf/Files/Form%2011%20eform%20\(Ver%203.0%20Jan%202014\).pdf](http://www.inis.gov.ie/en/INIS/Form%2011%20eform%20(Ver%203.0%20Jan%202014).pdf/Files/Form%2011%20eform%20(Ver%203.0%20Jan%202014).pdf)

<sup>25</sup> <http://www.childlawproject.ie/publications/social-worker-can-apply-for-naturalisation-for-non-national-girl/>

<sup>26</sup> Section 6(3) 1956 Act

<sup>27</sup> UN Commentary on EU Trafficking Directive, 2011, referring to M. Dottridge, 167 Kids Abroad: Ignore them, Abuse Them or Protect Them? Lessons on how to protect children on the move from being exploited, Terre des Hommes International Federation, 2008.

<sup>28</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

should be based on an individual assessment of the best interest of the child. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, should prevail.

There should be a presumption of age in the case of children, as well as a presumption of victim status. The OHCHR explains that this "removes special or additional difficulties that would otherwise complicate the identification of child victims"<sup>29</sup>.

The UNICEF Guidelines and recommendations of the Council of Europe GRETA Committee<sup>30</sup> should be considered in relation to systems to rapidly and accurately identify child victims. Identification mechanisms should be placed on a statutory basis.

The GRETA Committee recommended that Ireland adopts a "*specific identification mechanism for child victims of trafficking which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists and ensures that the best interests of the child are the primary consideration*"<sup>31</sup>.

The Irish victim identification mechanism has not been given a statutory footing<sup>32</sup>, there are no specific provisions for children and the recovery and reflection periods for identified victims of human trafficking are of limited duration. Temporary residence permissions granted should not be conditional on any cooperation with the authorities and should be designed as part of a durable solution for the child, particularly where repatriation of the child is not a possibility and/or not in the best interests of the child. There are delays in the formal identification of victims of trafficking, and those victims of trafficking who are in the asylum process are precluded from receiving any acknowledgement to the effect that they are 'suspected victims of trafficking' pursuant to the Administrative Immigration Arrangements, despite co-operating fully with the competent authorities.

## **9. Right to an adequate standard of living**

Children from migrant backgrounds and asylum-seeking children and families experience indirect discrimination in access to social welfare payments as payment is contingent on the fulfilment of Habitual Residence Condition, which requires applicants to demonstrate a connection to Ireland including a "right to reside". The barrier that this raises to many vulnerable groups including migrants and asylum-seekers seeking access to a social security payments has been highlighted by the Irish Human Rights and Equality Commission<sup>33</sup>, the European Commission against Racism and Intolerance<sup>34</sup> and the former UN Independent Expert on Human Rights and Extreme Poverty<sup>35</sup>.

## **10. Conclusions and recommendations:**

The current position of migrant children in Ireland is that their specific needs, entitlements and rights as children are not met and they are not given sufficient regard. As is outlined above the general position within the context of a highly discretionary immigration system is that there is neither a clear policy nor any indicative data that a child's rights approach is employed when policy and legislation relating to migrant children's rights are considered and applied. Policy and legislation relating to migration and affecting children in migration should be analysed through a child-rights lens to ensure

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<sup>29</sup> Office of the High Commissioner for Human Rights, Fact Sheet No. 36, Human Rights and Human Trafficking 2014, p.20, [http://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS36_en.pdf)

<sup>30</sup> *Group of Experts on Action against Trafficking in Human Beings*

<sup>31</sup> Greta

<sup>32</sup> The Administrative Immigration Arrangements for Victims of Human Trafficking

<sup>33</sup> Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review May 2015, [http://www.ihrec.ie/download/pdf/icescr\\_report.pdf](http://www.ihrec.ie/download/pdf/icescr_report.pdf)

<sup>34</sup> European Commission against Racism and Intolerance (2013) *ECRI Report on Ireland (fourth monitoring cycle)*, Strasbourg: Council of Europe, para. 130.

<sup>35</sup> UN Office of the High Commissioner for Human Rights (OHCHR) (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland*, Geneva: OHCHR, p. 12.

that it complies with children's rights and meets the specific needs of children. The lack of access to independent legal advice is a critical issue for children in care. All migrants, and especially children, should be guaranteed due process rights and full access to justice, including access to legal representation in order that their legal needs are met. Navigating the discretionary system that currently exists for migrants in Ireland is especially difficult for children and their representatives, be they legal advisors, parents or state agents. States should put in place clear legislative guidelines on access to naturalisation for children, including children in the care of the State in order that legal certainty is provided. This is particularly important in the context of stateless migrants and States should put in place formal determination procedures for stateless adults and children. By providing this submission which is informed by the experience of this front-line organisation operating to improve migrants' rights it is intended that the rights of all migrant children will be a step closer to realisation than the reality described above.