

**Submission to the
United Nations High Commissioner for Human Rights
Committee on the Rights of the Child
2012 Day of General Discussion**

“The Rights of All Children in the Context of International Migration”



Immigration and Young People

About the Immigrant Council of Ireland

The Immigrant Council of Ireland (ICI) is an independent, non-governmental organisation that advocates for the rights of migrants and their families.

Our approach aims to bring about change in public policy, or the law, its interpretation or its application - typically correcting a perceived injustice or achieving specific legal or policy change. We are an Independent Law Centre and to effect change we use case-work, strategic litigation, public policy advocacy, campaigning and communications to advocate for the equal rights of migrants living in Ireland.

The ICI provides information and advice to migrants and Irish citizens through its Information and Referral Service and its Legal Service. Requests for information and support have grown year on year and the ICI has responded to more than 60,000 enquiries from individuals, organisations and legal practitioners about immigration issues since we opened.

The ICI also promotes migrants' rights through advocacy, lobbying and campaign work and undertakes research on migrants' experiences in Ireland. The ICI analyses issues that present themselves via its services and this information influences the organisation's policy, research and campaign priorities. The ICI also provides training on migrants' rights and entitlements to service providers and other groups and has produced a number of publications which have advanced the debate on immigration and integration issues.

This paper has been prepared by the Immigrant Council of Ireland as a submission to the Office of the United Nations High Commissioner for Human Rights Committee on the Rights of the Child 2012 day of general discussion and has been informed by the experiences of migrants accessing the ICI's information and legal services.

Section 1: Immigration rules impacting on children

The ad hoc nature of Ireland's immigration rules becomes immediately apparent when the experiences of migrant children are examined.

Once they turn 16, all non-EU citizen migrant children must register with the Garda National Immigration Bureau (GNIB), a fact which immediately reinforces that they are different from



their classmates. They must produce their registration card when requested and may not be allowed to seek after school or weekend work like their classmates. In the majority of cases, the GNIB registration card costs €150 a year.

The lack of appropriate, clear regulations in relation to provisions for migrant children leaves few options for the GNIB when deciding how to register a child. The GNIB are required to issue the child with an immigration stamp. There are a number of different types of stamps available and each comes with different rules and entitlements.

Usually, migrant children will be issued with an immigration stamp which is actually intended to be issued to students who come to Ireland for the purpose of undertaking second level education (Stamp 2A). Sometimes, the child will be issued with the type of stamp normally intended for issue to migrants who come to Ireland to study at a third level institution (a Stamp 2). These stamps are issued despite the fact the child might have lived in Ireland for years and undertaken most, or even all, of their education here. These types of immigration stamps are designed for children or young people who come to Ireland specifically to study, for example, to attend a boarding school, or to attend university. They were not designed, nor are they appropriate, for children who have grown up in Ireland or those who are living with or joining parents who live and work here. 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, 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, perhaps because the child is under the age of 16, or has become an Irish citizen, for example, and is not required to register with the GNIB. This can create misunderstandings, confusion and anxiety.

Issues intensify once a child turns 18. At this point, they enter uncharted territory and Ministerial and Garda National Immigration Bureau (hereinafter GNIB) discretion, guides what status individual young migrants may be granted. The ICI is aware of instances where some young migrants have been misinformed that they are required to leave the country after they turned 18. However, if a young migrant's parents are lawfully resident in Ireland, and the child has entered the State legally and as a minor, the young person normally will be given some kind of immigration status. The lack of certainty as to what will occur, and lack of clarity about what type of status the young person will receive, if any, can cause enormous stress. Some young migrants have been asked to enrol in a college to have the right to stay in Ireland. Most are warned that they must not work, although, very occasionally, a young person might receive an immigration status that gives them residency rights with full access to the labour market (Stamp 4). However, this is extremely unlikely to occur if the parents do not have this type of residence permission (Stamp 4) as the Irish Naturalisation and Immigration Service (hereinafter INIS) considers this to be a case of the young person "overtaking" their parents' status. The process under which Ministerial or GNIB discretion may allow young people to receive a "better" immigration status than their parents is unclear, bureaucratic and fraught with delays and uncertainty.

None of these options reflects the fact that Ireland is home to the children and their families in this situation. Nor does this current approach reflect the fact that the children and young

people have a real attachment to Ireland. In many cases, the turmoil and confusion generated in this crucial phase of a young person's life can deeply affect them and impact on their motivation and career or educational progress. The ad hoc nature of the immigration system as it impacts on children can cause an early realisation in young people that their sense of belonging in Ireland is not reciprocal. Many migrant children have grown up in Ireland, developed fluency in the English language and established local networks of friends. It is a great injustice that this natural integration process is interrupted and jeopardised through the failings of our immigration system.

When applying for Irish citizenship problems of appropriate immigration status also become an issue. Irish citizenship¹ by naturalisation is awarded at the absolute discretion of the Minister for Justice and Law Reform. To be eligible to apply for naturalisation, an applicant must have five years' "reckonable residency". Reckonable residency is time spent lawfully resident in Ireland, but not including time spent living here as an asylum seeker or student on a student immigration stamp (Stamps 2 or 2A). Migrant children and young people who have been given these types of immigration stamps (Stamps 2 or 2A) generally, but not always, have been able to apply for citizenship with time on these stamps included as reckonable residency. . However, the lack of written rules about this issue adds to uncertainty and anxiety and could be resolved by setting out clearly the eligibility for the granting of Irish citizenship by naturalisation.

Section 2: Undocumented Children

Undocumented children in Ireland face some of the harshest challenges of any young people in the State. Whether the child entered the state unaccompanied, or with a family that did not have an immigration status (or had an original immigration status that has now lapsed), the options for that child having a clear path to regularise their status in the State are severely limited. 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 will avoid seeking to remedy their situation and will often remain undocumented in the State. As is well documented globally, undocumented persons face considerable vulnerabilities due to their lack of immigration status, this can include exploitation in the workplace, lack of access to education, healthcare and lack of access to legal recourse and the protection of their rights. Where children are involved these problems are magnified, and a child may not only miss crucial opportunities for advancement, but also be vulnerable to exploitation in any number of settings.

Section 3 : Education

If a migrant child has not been naturalised by the time they reach third-level education age, they generally are required to pay either EU citizen or international student fees to continue their studies.²

¹ Cosgrave, Catherine (2011) *Living in Limbo: Migrants' Experiences of Applying for Naturalisation in Ireland* Dublin: Immigrant Council of Ireland

² Linehan, Margaret, Hogan, Eileen (2009) *Migrants and Higher Education in Ireland* Cork: CIT Press

In some cases, colleges will decide that, if an applicant has resided in Ireland for a number of years, they may qualify for a lower level of fees. However, this practice is not universal and varies from college to college and occurs at the institution's discretion. The Department of Education has stated that the fees charged for migrant children and young people are a matter for the college concerned. This situation creates a minefield for young migrants. The ICI has been contacted by parents of young people who received 500 points in their Leaving Certificate, but are unable to progress to third-level education. In some cases, a young migrant has progressed to third-level but has not been able to complete a course as the family has been unable to continue paying fees at international student rates for the duration of a degree course. This is clearly not only a massive personal loss for the young person involved, but also for their family. The Irish State loses too. In many cases, the parents of the young people have paid taxes in Ireland for years.

Other obstacles to access to education for young migrants include the fact that they are often not eligible to apply for college scholarships distributed by local authorities and that many scholarships are tied to proficiency in the Irish language.

Section 4: Trafficking and children

Trafficking of children for sexual exploitation is outlawed in Ireland and yet children continue to be exploited through prostitution due to the tolerant laws on paid sex. There have been clear warning signs about the involvement of children throughout the years. Most recently, in 2009, the National Advisory Committee on Drugs published a report³ based on 35 interviews with Irish drug addicted people in street prostitution, and concluded that a “significant number” of them entered prostitution as minors. A concerning report on prostitution in the Tallaght area was published by the Tallaght Drug Task Force⁴ in 2011 referencing the prostitution of children. The ICI report “Globalisation Sex Trafficking and prostitution: The Experiences of Migrant Women in Ireland”⁵ revealed that in 11 of the 102 documented cases, the victim of trafficking were minor girls. The annual statistical report on human trafficking of the Department of Justice and Equality in 2011⁶ reported that 15 of the 56 suspected victims were children. In 2010, during the Court proceedings against Thomas Joseph Carroll⁷, it was revealed that his brothel operation was selling a girl aged 15 and another aged 17 in Ireland. By now, the presence of children in the indoor sex industry is an undisputed fact in the State. Recently, the Geoffrey Shannon/Norah Gibbons report⁸ on death of children in State care contained references towards the recruitment of children cared for by the State into prostitution, which could be substantiated by the ICI law centre experiences with clients. The Irish evidence coupled with the internationally established findings that the average age of entry into prostitution is 14-16 has to prompt the legislators to act to prevent this from

³ Cox, Gemma, Whitaker, Teresa, (2009) *Drug Use, Sex Work, and the Risk Environment in Dublin*, Dublin: Government Publications Sale Office

⁴ Nelson, W. McGrath, K and Giaquinto, F. (2010) *Review of Service Provision for Women involved in Prostitution in Dublin 24* Dublin: The Tallaght Drugs Task Force

⁵ Kelleher, Carmel, Kelleher, Patricia, O'Connor, Monica, Pillinger, Jane, *Globalisation Sex Trafficking and prostitution: The experiences of migrant women in Ireland*, Dublin, Immigrant Council of Ireland.

⁶ Website of the Department of Justice and Equality ‘The Blue Blindfold’ campaign. Date of Access July 2nd 2012: <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/whatisbeingdone-datastrategy-en>

⁷ Website of The Irish Times: date of access July 2nd 2012: <http://www.irishtimes.com/newspaper/ireland/2012/0324/1224313823720.html>

⁸ Shannon, Geoffrey, Gibbons, Norah, (2012) *Report of the Independent Child Death Review Group*.

happening. A consultation process on the future of the prostitution legislation in Ireland has been recently launched and presents an ample opportunity to curb this deplorable exploitation of primarily young and poor people.

Section 5: Racism and bullying

Research on racism and bullying of migrant origin children in Ireland is now 10 years old. This growing body of work has produced remarkably consistent results across contexts and age groups which can be collated as

- Children from visible minority groups experience greater levels of bullying in schools.
- Children with English as a second language experience higher than average levels of bullying from their peers.
- Children use racially motivated slurs and names to marginalise and shame migrant young people.
- Racial bullying takes place out of view of teachers and authority figures.
- Adults seriously underestimate the extent of racial bullying and its short and long term impacts on children.
- Teachers do not feel equipped or capable of addressing racial bullying in their schools.

Further to this though, research within the Irish context is also at pains to emphasise the more covert forms of bullying and exclusion which many migrant young people contend with:

- A tendency for separateness within children's interactions, through which children from migrant backgrounds and the established community do not play together or form friendships, has been noted in all research.
- Negative attitudes towards migrant children's countries of origin has been found to be widespread.
- Migrant children's full or partial identification as 'Irish' is undermined by their peers and by adults, as 'what' and 'who' can constitute an 'Irish' identity has not been problematized or expanded within society in general or within the education system in particular.

However, one of the greatest barriers to tackling racial bullying is the reluctance of adults and authorities to acknowledge its existence and prevalence, as there remains an opinion that bullying happens to all children and therefore the experiences of migrant children are not unique or distinct. Therefore not only is racial bullying not being tackled, but there is a risk of developing a culture of victim blaming in which reports of racial bullying fall on deaf ears, as they are presumed to be overstatements from the victims themselves.

Therefore without significant and innovative policy reform, the current approach to integration within the education system seems to at least partially rely on children's capacities for resilience, which in effect requires young children to remain unaffected, altruistic and deal with racial bullying in isolation. In light of this at least four policy reforms need to be urgently implemented (please see below in recommendations).



Section 6: Recommendations:

Due to limitations on the permitted word count for submissions, this paper has focussed primarily on identifying some of the main issues for children and young people in Ireland who are from a migrant background. To read more and see the ICI's recommendations for change and reform in all of these areas please see the 'Recommendations' section of the ICI policy paper 'Immigration and Young People' available here: <http://tinyurl.com/ICIyoungpeople>