

Migrant Rights Centre Ireland

Ireland

Submission to the United Nations
Universal Periodic Review

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Human Rights Council
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EXECUTIVE SUMMARY

The Migrant Rights Centre Ireland would like to chiefly address issues relating to migrants and, using migrants as a lens, examine the issues of equality and non-discrimination, right to social security, the right to freedom of labour, the right to education and the rights of undocumented persons.

I. BACKGROUND AND FRAMEWORK

The Migrant Rights Centre Ireland (MRCI) is a national, non-governmental organisation working to protect the rights of migrant workers and their families, with a specific focus on those at risk of poverty, social exclusion and discrimination. Since our foundation in 2001, MRCI has sought to promote the right and to highlight the experiences of migrant workers who are undocumented, or at risk of becoming undocumented and those vulnerable to exploitation, including extreme forms such as forced labour and trafficking for forced labour.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A: Cooperation with human rights mechanisms.

Ireland has shown its commitment to international human rights by ratifying a number of human rights treaties, including: the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. Ireland has still to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and it is the recommendation of the MRCI report that they do so as to ensure compliance with the international human rights regime.

Ireland possesses a human rights commission, (IHRC), which is charged with monitoring human rights access across the country and the development of policies for the furtherance of human rights in Ireland. Ireland does not however have a body charged with monitoring racism and the MRCI strongly recommends that such a body be established in line with that proposed by Article 7 of the International Convention on the Elimination of Racial Discrimination. Cutting of the racism monitoring mechanism remains problematic, as does the amalgamation of equality bodies and the elimination of a Minister for Integration.

The Human Rights Council commented on the cut to the budget of IHRC in 2008, this situation regarding the resources of the Commission has now even further deteriorated, jeopardising the IHRC ability to conform the Paris Principles governing human rights commissions. The Cross Border Primary Human Rights Education Initiative (jointly funded by AIUK, Amnesty Ireland, Teachers Unions and Governmental Departments) is a positive example of placing human rights education on the primary level curriculum.

B: Implementation of International Human Rights Obligations.

Forced Labour and Human Trafficking.

Since MRCI opened in 2001 it has identified over 150 cases of forced labour. MRCI assists workers in the domestic, agricultural, restaurant, seafaring and construction sectors who have experienced forced labour. Forced labour begins with deception about working and living conditions, followed by low or no pay. Deception, coercion and abuse are also used to control workers. The process can also be gradual: working conditions may be initially decent but deteriorate over time.

Despite the requirements of Article 25 of the 1930 ILO Convention concerning Forced or Compulsory Labour¹ that forced labour shall be punishable as a penal offence, Ireland has failed to introduce penalties and effective remedies to victims of forced labour.

The Criminal Law (Human Trafficking) Act 2008 states that trafficking for labour or sexual exploitation is a crime with a maximum sentence of life imprisonment. In MRCI's experience, the current interpretation of this Act by the authorities is that trafficking into or within Ireland is a required ingredient for there to be an offence. The 2008 Act can, however, be read as criminalising forced labour without the ingredient of cross-border or internal trafficking. The act contains the standard definitions of trafficking (recruiting, transporting or harbouring a person), but its scope is expanded by including trafficking as "providing the person with accommodation or employment". An offence of forced labour is therefore committed if a person employs or accommodates a victim for the purpose of labour or sexual exploitation, and if coercion, deception or abuse of vulnerability is used against the victim.

MRCI submitted this interpretation to the authorities in June 2010, but unfortunately a response is still outstanding. Without a crime of forced labour, victims who have not been trafficked or where trafficking is difficult to prove, are not protected under Irish law. Many are undocumented and are then considered to be in breach of Irish immigration law rather than being viewed as the victim of a serious crime. MRCI has come across individuals who have been charged with immigration related offences, imprisoned and deported despite acknowledgement from the authorities including the judiciary that the person was subjected to serious and extreme exploitation.

MRCI recommend that, in order to ensure compliance with ILO Conventions and other human rights obligations, the interpretation of the Criminal Law (Human Trafficking) Act 2008 should be immediately accepted by the authorities, or if not, that a new law of forced labour is immediately drafted and passed.

MRCI recommend that when forced labour is recognised as a crime in Ireland, the labour inspectorate's power be extended to the investigation of forced labour consistent with Article 24 of the ILO

¹ A fundamental convention of the ILO according to the 1998 Fundamental Declaration

Convention concerning Forced or Compulsory Labour.

Access to Health.

Access to health care is a basic need and right for all human beings. The right to health touches on any number of rights in any number of human rights treaties, most notably Article 25 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Economic, Social and Cultural Rights and Article 12 of the Convention on the Elimination of Discrimination Against Women.

In the experience of MRCI most undocumented migrant workers will not access medical services due to the fear of becoming visible. Many undocumented migrants ignore minor illnesses and only attend hospital following accidents or emergencies. The coping mechanisms used by other migrant workers are not as available for this group, for example they cannot travel home to seek medical attention as without a valid permission to remain they are not able to move freely. This drives migrant workers to seek alternatives and in some cases use uncertified medical practitioners. Self-medication is also common place.

Immigration status also plays a key part in accessing pre and post natal care. Many women after they give birth report that they do not consistently return for medical checkups, impacting in the long term on their gynecological and reproductive health. This has clear implications for the health of migrant women and is contrary to right to health provided to all women in Article 12 of the Convention on the Elimination of Discrimination against Women and the positive obligation to protect women as stated by Article 25 (2) of the Universal Declaration of Human Rights.

The proposed Immigration Residence and Protection Bill provides that undocumented workers should only be allowed to access the emergency services. This runs contrary to Article 12 .2 (D) of the International Covenant on Economic, Social and Cultural Rights in relation to all participants of society being supported to access basic level of medical services, as well as being contrary to a range of policy commitments by successive Irish governments.

MRCI submits that access to health services for migrant workers, particularly undocumented migrant workers is an area of concern in Ireland today. It is also respectfully submitted that undocumented migrants should not be limited to emergency services. Undocumented migrant workers and those working in an irregular situation should have the right to access basic health and social care services in Ireland. This must include culturally and language-appropriate counseling and psychological support, as well as services for women experiencing violence. This would be in keeping with best international practice and the international human rights regime of which Ireland is part.

Access to Education.

The Universal Declaration on Human Rights provides for the right to education, equally accessible to all (Article 26). The rights to education is contained in the International Covenant on Economic, Social and Cultural Rights (Article 13), the Convention on the Rights of the Child (Article 28), the Convention on the Elimination of all forms of Racial Discrimination (Article 5).

Child dependants of non-EU workers in Ireland are not issued with an immigration stamp until they turn 16. Long term residency status which is earned by parents cannot be transferred to their children, and children cannot earn long term residency status in their own right. International (non-EU) students are subject to a different fee regime for higher education, a difference which amounts to several

thousand Euros. The decision on whether an applicant has to pay Non-EU fees is made by individual universities on a case-by-case basis after applying a residency test. It is almost impossible for a child dependent of non-EU migrant workers to get access to financial assistance for their studies as a nationality requirement has to be satisfied to be eligible for a grant.

The lack of a coordinated and transparent procedure in issuing stamps to child dependents, the ad-hoc approach of universities and the inability of children to earn long term residency in their own right often leads to children being subject to excessive university fees when they have been resident and schooled in Ireland for many years and can also lead to the loss residency and the denial of the right to education.

Irregular Migration.

The ILO Charter provides for the protection of the interests of the workers when employed in countries other than their own. A General Comment of the Human Rights Council in relation to Article 2 determined that it was a general rule that each right must be guaranteed without discrimination between citizens and aliens. The Convention on the Elimination of Discrimination Against Women provides for no distinction between citizens and non citizens, with General Recommendation 26 of the Committee stating that all categories of female migrant workers fall within the scope of obligations of State parties.

There are approximately 30,000 undocumented people in Ireland today, facing a greater risk of exploitation, poverty, social exclusion and they often live in situations of forced destitution. Undocumented migrants disproportionately experience poor and exploitative working conditions, often working long hours, under dangerous and unhygienic conditions.

The Habitual Residency Condition on which much access to social protection depends prevents undocumented migrants accessing such protection. Access to social protection is central to a person's ability to seek redress. If migrant workers feel they have been discriminated against while accessing social welfare services, they cannot make a complaint to the Equality bodies because these services are exempt from the equality legislation. Migrant workers who have paid social insurance contributions should be able to access benefits regardless of their legal status.

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

Provisions in the Immigration, Residence and Protection Bill 2010 relating to Long Term Residency would replace the standard work permit eligibility requirements with a requirement to be resident in Ireland for 4 years during the 5 years immediately preceding the application date. This would have opened the door for children of migrants to earn residency in their own right, however this did not enter into force.

Introduction of a Bridging Visa Scheme and a process to allow for permission to remain for those who have become undocumented through no fault of their own has allowed a pathway back into the work permit system.

The introduction of language support teachers in primary education has helped bridge gaps in integration and equality for children of migrant workers. However, current budget cuts will see these positions removed in a worrying setback for integration.

The State faces challenges in the form of budgetary constraints during the economic crisis. It must

ensure that human rights standards do not fall as a result of upcoming budgetary adjustments. Ireland has international obligations which, despite financial constraints, cannot fall below a certain basic level.

RECOMMENDATIONS.

- Ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.
- Vote for and then ratify the ILO Convention on Domestic Workers which is before the ILO in June 2011.
- Issue an authoritative statement confirming that forced labour is a crime.
- Increase the human rights standards and protections granted to suspected victims of human trafficking.
- Reintroduce a state sponsored racism monitoring mechanism, ensure that all State bodies are covered by equality legislation.
- Introduce a regularisation scheme to enable undocumented migrants to re-enter the immigration system.
- Reform the Habitual Residence Condition to ensure that it does not discriminate against migrant workers.
- Introduce legislation to replace the ad hoc university decision making in relation to fees for third level education.