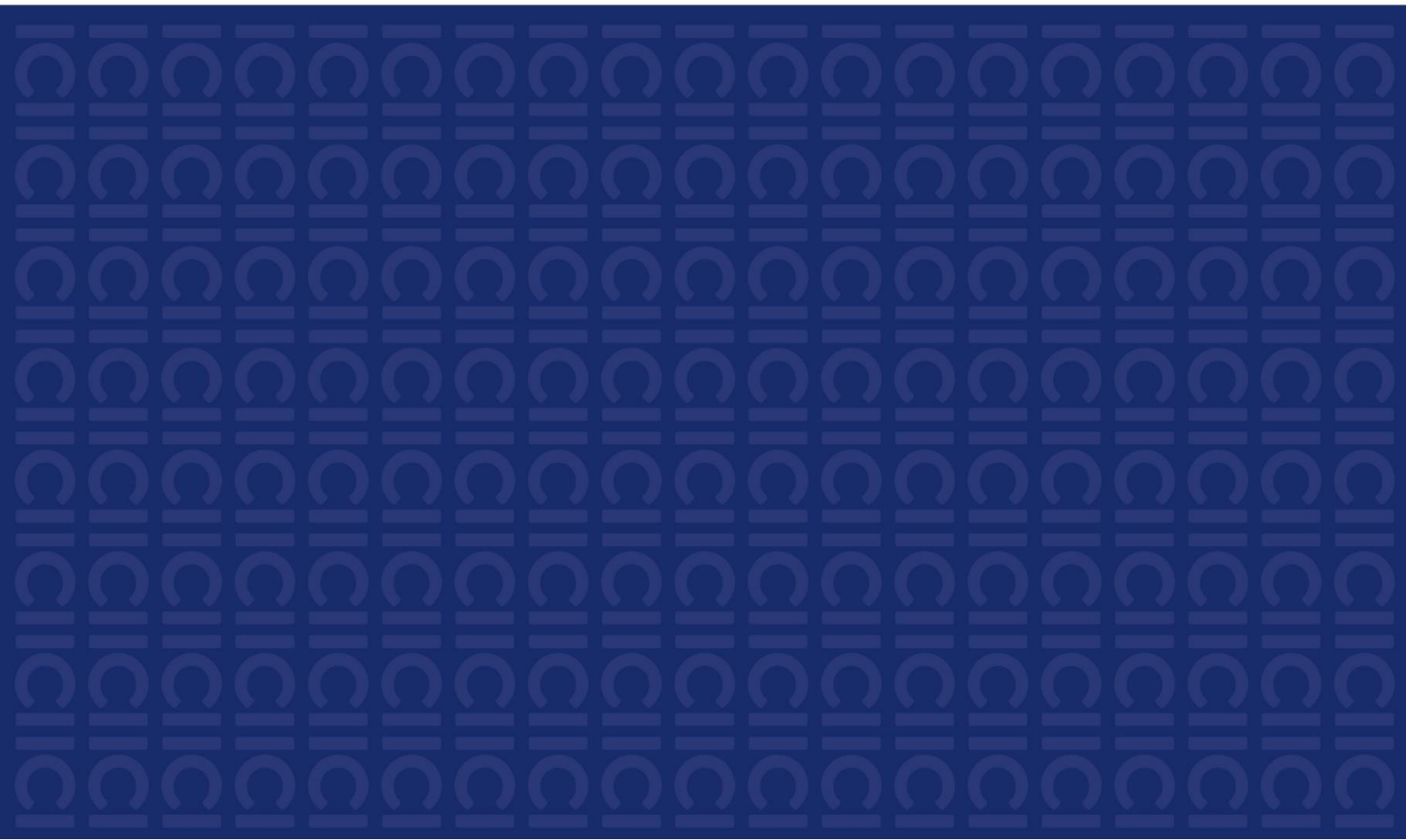


Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland

Immigrant Council of Ireland
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Working for **equality**



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INTRODUCTION

Founded in 2001, the Immigrant Council of Ireland is the leading voice in securing improved rights and protections in the area of immigration, citizenship and anti-racism in Ireland. It is a human rights organisation and Independent Law Centre which provides support, information, legal advice and representation. We support and advocate for the rights of immigrants and their families and act as a catalyst for public debate, legal and policy change through advocacy, engagement with lawmakers and strategic legal action. Access to justice is the cornerstone of all of the Immigrant Council's work. We support individuals and families often at a vulnerable stage in their lives, including unaccompanied children, victims of human trafficking, victims of domestic violence and stateless persons.

The purpose of this submission is to provide the Committee Against Torture with information to inform its preparation of the List of Issues Prior to Reporting for Ireland, due to be examined by the Committee in its 69th session, ahead of its third periodic review of Ireland.

RATIFICATION OF THE OPTIONAL PROTOCOL

CAT recommendation 2017

The State party should:

- (a) Immediately ratify the Optional Protocol and establish a national preventive mechanism, ensuring that this body has access to all places of deprivation of liberty in all settings;**
- (b) Ensure that existing bodies which currently monitor places of detention as well as civil society organizations are allowed to make repeated and unannounced visits to all places of deprivation of liberty, publish reports and have the State party act on their recommendations.**

In the concluding observations on the second period report of Ireland, the Committee expressed concern about the lack of independent monitoring of places of deprivation of liberty. Since then Ireland has still not ratified the Optional Protocol to the UN Convention against Torture and All Forms of Cruel, Inhuman or Degrading Treatment of Punishment (OPCAT) despite signing it over 12 years ago.

The Immigrant Council of Ireland invites the Committee to ask the State about:

- Will the State ratify the Optional Protocol and establish a national preventive mechanism (NPM).

MIGRANT WOMEN AND DOMESTIC VIOLENCE (ARTICLE 2)

CAT recommendation 2017

Ensure that State funding for domestic and gender-based violence services is sufficient to ensure that all victims of these offences, including migrants and the indigent, have access to medical and legal services, counselling, safe emergency accommodation and shelters

In families where domestic abuse exists, very often the victim is dependent on the abuser and securing independent residence permissions for immigrant victims of domestic violence remains a problem. The introduction of the Immigration Guidelines for Victims of Domestic Violence by the Irish Naturalisation and Immigration Service in 2012 provided guidelines on applications for independent residence permission where the victim is a foreign national whose immigration status is dependent on that of the perpetrator of domestic violence. However, the policy does not have a legislative footing and significant gaps remain in the protection of migrant women, who are the vast majority of victims. The permission is granted at the discretion of the Minister. In providing legal advice and support to victims of domestic violence we have found the majority of applications for independent status are treated sensitively and positively by the immigration authorities, however applications can take up to six months to be processed and migrant women are often left in very difficult circumstances during that period. It would be more efficient and effective for all involved if the guidelines were put on a statutory footing and temporary protections were introduced to deal with the realities faced by those seeking to escape domestic violence.

Dependent migrant women experiencing domestic violence should be granted access to a temporary residence permission pending a decision. At a minimum this would permit access to emergency social services such as healthcare and housing. Ideally this would allow them to access the labour market to facilitate them not becoming dependent on the welfare services of the state. Domestic Violence Guidelines are unclear and set out that generally the immigration status granted would be “at the same level as that which was previously held as a dependent (normally Stamp 3)”. This type of residence permission does not confer access to social services. It does not allow access to the labour market and does not enable women to become economically self-sufficient. Recognising the need of victims of violence to become economically and legally independent from the abuser, and taking into account the prevalent practice to date, we argue that the guidelines need to be amended to clearly stipulate independent residence status for victims.

The issue of access to emergency supports is also critical for victims of domestic abuse. In circumstances where the immigration status decision is pending, or where the status prohibits access to public funds, or where the ‘habitual residence condition’ in Ireland is unmet, women are left without any financial means to support their basic needs. Social services make unreasonable requests for information, which in cases of domestic abuse may not be available to the victim, or the victim may not wish (or indeed, be afraid) to contact their abuser in order to obtain it. Where an applicant cannot provide that information they may be refused access to social services and become homeless. Shelters for victims of domestic violence may not be able to offer ongoing accommodation to ineligible migrant women, while an application for independent residence status is considered.

The Immigrant Council of Ireland invites the Committee to ask the State about:

- Would the State consider putting the Immigration Guidelines for Victims of Domestic Violence by the Irish Naturalisation and Immigration Service on a statutory footing to provide greater clarity and efficiency for both victims and State services providing support services.

- Will the State amend the policy on dependency between family members in general and in cases of domestic violence, in line with the EU standards enshrined in Directive 2003/86/EC on the right to family reunification.
- Will the State confer an autonomous status to migrant women victims of domestic violence, conferring the right to work and eligibility to social welfare as well as access to general services for victims of domestic violence, such as women's refuges.
- Will the State ensure that any decision-making on granting an autonomous status to a migrant experiencing domestic violence will be limited in time and that appropriate services and financial subsistence would be ensured during this period.

INTERNATIONAL PROTECTION ACT 2015/ DIRECT PROVISION (ARTICLE 3)

CAT recommendation 2017

The State party should:

- (a) Enshrine in its legislation the principle that asylum seekers should be detained only as a measure of last resort, for as short a period as possible and in facilities appropriate for their status;**
- (b) Establish a formalized vulnerability-screening mechanism for torture victims and other persons with special needs and provide them with care and protection to avoid retraumatization, including during international protection procedures;**
- (c) Provide adequate funding to ensure that all persons undergoing the single procedure under the International Protection Act have timely access to medico-legal documentation of torture, ensure that all refugees who have been tortured have access to specialized rehabilitation services that are accessible countrywide, and support and train personnel working with asylum seekers with special needs;**

Direct provision accommodation administered by the International Protection Accommodation Service (IPAS) (formerly the Reception and Integration Agency), was originally conceived as a short term accommodation for individuals seeking international protection. The continued use of IPAS centres is unsatisfactory due to concerns regarding safety, privacy, re-victimisation, children and young people's safety, accessibility for pimps and traffickers, the propositioning of female residents for prostitution, the sexualisation of younger residents and other considerations. The Immigrant Council cautiously welcomed the introduction of a women-only centre, noting that the location is removed from any specialised gender-based violence services and thus inappropriate to some of the more vulnerable women, but is dismayed by the lack of progress in this area and remains concerned at the number of unsuitable mixed-gender centres used to accommodate vulnerable persons, in particular women victims of trafficking for sexual exploitation. The housing in direct provision accommodation centres of vulnerable persons, including victims of trafficking for sexual exploitation, has been widely criticised by many civil society organisations both nationally and internationally, most recently in our [submission and associate presentation to the Joint Oireachtas Committee on Justice and Equality](#).¹

Presently in Ireland, the IPAS is tasked with provision of accommodation and material assistance to all victims of human trafficking, regardless of whether or not their apply for

¹ <https://immigrantcouncil.ie/sites/default/files/2019-11/2019SubmissiontoJOConVictimsofHumanTraffickinginDirectProvision.pdf>

international protection (please refer to section on Victims of Trafficking for additional information). In this context, our priority concern lies with women (in some cases underage girls in age determination processes) trafficked for sexual exploitation that are referred to Direct Provision through the national referral mechanism for the support of suspected victims of human trafficking. For such women, appropriate gender sensitive accommodation facilities represent an assistance element of central importance. It is the position of the Immigrant Council that Direct Provision centres do not represent appropriate housing for victims of trafficking. At the same time, shelters and other services for domestic and sexual violence are not resourced and formally involved in responding to migrant women victims of trafficking as an issue of gender-based violence. This position is unsatisfactory and hinders the recovery of trafficked women, and in our experience often adds additional trauma.

Despite the introduction of the European Communities (Reception Conditions) Regulations 2018, there is no evidence to suggest that vulnerability assessments are carried out systematically or even when vulnerable applicants make their circumstances known to state authorities.

The Immigrant Council of Ireland invites the Committee to ask the State about:

- Will the State ensure all individuals receive a vulnerability assessment within a reasonable period of time after an application for international protection is made, and prior to their placement in a Direct Provision or emergency accommodation centre.
- What is the State doing in the short-term to ensure victims of trafficking currently housed in the Direct Provision system are adequately and sensitively supported, for example including private rooms.
- What has the state done to date to assess the special needs of vulnerable protection applicants.
- What is the state doing long term to assess and cater to the special needs of vulnerable protection applicants.
- What is the State doing in the long-term to develop a specialised shelter which safely and sensitively houses victims of trafficking, while also providing the necessary supports and services.

VICTIMS OF TRAFFICKING* (ARTICLE 14)

***See also section above: Migrant Women and Domestic Violence**

Identification; Early legal intervention & access to legal aid; accommodation in Direct Provision

The present system of identification for victims of trafficking, Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking of 2011 (AIAs), preclude the vast majority of those affected from its benefits by operating a nationality and immigration status led categorisation approach. Of particular concern is the manner in which the process interferes with the right of victims of trafficking to seek and enjoy asylum.

The AIAs have a long list of provisos. They provide that a non-EEA foreign national formally identified as a suspected victim of trafficking can be granted a 60 day recovery and reflection period, a six month renewable temporary residence permission (TRP) on condition of cooperation with authorities in an ongoing investigation, voluntary repatriation and changes of immigration status, after certain conditions have been met.

They are also of limited scope, precluding EU citizens and individuals who have applied for international protection from the full scope of services and benefits established for formally identified victims. A major barrier is the inability of individuals to concurrently avail of the AIAs and apply for international protection.

Ireland has been criticised for the way it responds to victims by international monitoring bodies evaluating the State's Anti-Trafficking measures. In its 2018 report, the US Department of State Trafficking in Persons unit downgraded Ireland's response to trafficking from Tier 1 to Tier 2² (essentially meaning that Ireland is not meeting the agreed minimum standards), to a large extent due to the chronic deficiencies in responding to victims. It retained the lower Tier 2 grade in its 2019 report.³ Similarly, the first and second round of evaluation of the Council of Europe monitoring mechanism (GRETA) contained explicit criticism of the lack of gender-specific assistance to victims of trafficking.⁴

The Immigrant Council has long called for a simpler identification procedure that applies to all victims without exception. This procedure must include formal acknowledgement in writing offering a recovery and reflection period to all identified. Of similar importance to the improvement of the identification procedure is the issue of who identifies victims, what the threshold for evidence is and how long it takes to reach a conclusion and to notify the victim and their legal representative.

The Immigrant Council is of the view that immediate access to legal advice and intervention is critical to ensuring that all victims of trafficking are fully informed of their rights and obligations at the earliest possible opportunity and are able to make an informed choice regarding the multiple issues they are facing in relation to immigration, family safety, investigation, compensation, repatriation and others.

Ireland would benefit from an independent national rapporteur in trafficking - recognised as the international best practice approach. The appointment of a national rapporteur, who would evaluate all anti-trafficking policies and legislation to measure their effectiveness, collate real data and report directly to the Irish Parliament, would increase the effective implementation of the Second National Action Plan to Prevent and Combat Human Trafficking in Ireland.⁵ The anti-trafficking response in Ireland has to be integrated within the overall gender-based violence strategy of the State, in recognition that trafficking is one of the forms of violence that disproportionately affects migrant women. Persistent failure to treat human trafficking as a form of gender-based violence has led to inadequate decisions to accommodate victims of trafficking, including women recovering from sexual exploitation, in gender-neutral settings.

The Immigrant Council of Ireland invites the Committee to ask the State about:

- Will the State consider reforming the existing AIAs with the introduction of an effective identification procedure that enables all victims to be formally identified

² Trafficking in Persons Report 2018, US State Department, <https://www.state.gov/reports/2018-trafficking-in-persons-report/ireland/>

³ Trafficking in Persons Report 2019, US State Department, <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/ireland/>

⁴ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, Group of Experts on Action Against Trafficking in Human Beings, Council of Europe, <https://rm.coe.int/greta-2017-28-fgr-irl-en/168074b426>

⁵

http://www.justice.ie/en/JELR/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf/Files/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf

and granted access to social assistance and protection irrespective of nationality and immigration status. Putting these on a statutory footing should also be considered.

- Will the State recognise and treat human trafficking as a form of gender-based violence and respectively offer gender-specific assistance to victims as appropriate, including safe single-gender accommodation.
- Will the State ensure legal advice and representation is provided to all victims of trafficking prior to their engagement with An Garda Síochána.
- Will the State consider the appointment of an independent National Rapporteur for the evaluation and monitoring of policies, which is recognised as the international best practice approach.

IMMIGRATION RELATED DETENTION (ARTICLES 3, 11, 16)

CAT recommendation 2017

The State party should:

(d) Ensure that persons detained for immigration purposes are not held together with remand and convicted prisoners, are informed about their situation in a language they can understand, and have effective access to legal advice and to the process of application for international protection;

(e) Ensure that all persons who are refused leave to land are provided with access to legal advice and information regarding international protection in a language they can understand, and provide the Committee in its next periodic report with data on the countries of origin of the persons denied leave to land and their point of embarkation for the State party, to which they were returned.

Outside of international protection, it remains a significant concern that Irish immigration legislation provides for immigration-related detention in a wide range of circumstances. It is of particular concern that migrants can be kept in detention on immigration-related matters for periods of up to eight weeks in aggregate and that certain periods of time spent in detention do not count as part of the eight-week maximum, including time spent on remand awaiting trial or serving a sentence.⁶ Detainees still do not enjoy an express right to notify a person of their choice for their situation or to access a lawyer, although this may be facilitated if specifically requested. There is no right of appeal against decisions that may result in a migrant being placed in detention, for example, a decision to refuse entry on arrival in the State. There are also concerns ensuring those refused leave to land are given information in a language they can understand, as per international human rights guidelines. The numbers of individuals refused leave to land in recent years has been increasing with 4,776 refused in 2018 and 3,908 refused in 2017.⁷ Civil society organisations have expressed concern that these figures have included nationals of Syria, Afghanistan, Iran, Iraq and Eritrea who were removed from the State, although it is reported that in some cases the individuals were subsequently permitted to apply for international protection.

International standards are clear that immigration detention should only be used in exceptional circumstances and for the minimum possible time. Plans to open a dedicated immigration detention facility at Dublin Airport have been in train since 2017, but the

⁶ Government of Ireland. Immigration Act 2003, Section 5.2, <http://www.irishstatutebook.ie/eli/2003/act/26/section/5/enacted/en/html#sec5>

⁷ Sinnott Solicitors, <https://sinnott.ie/refusals-of-permission-to-enter-ireland-leave-to-land/>

centre is not yet in operation after a number of delays.⁸ While the Immigrant Council has serious concerns regarding the overuse of a facility once it is in operation, the current situation of housing immigration detainees in prisons, is untenable. Once open the centre must adhere to basic human rights standards, individuals must have access to legal advice, have access to the international protection process if requested, access to clear written notification of the reasons for their detention and a right to a proper appeals process. All information must be provided in a language which the individual can understand. Safeguards must be put in place to detect possible incidents of trafficking.

The Immigrant Council of Ireland invites the Committee to ask the State about:

- The State to provide clarity on when the immigration detention facility at Dublin Airport will open and publish guidelines outlining how international human rights standards will be upheld in its operation.
- The State to provide reports on the use of immigration related detention, where that detention has occurred and the basis for such detention.
- The State to ensure that any persons so detained have access to written information in a language they understand which clearly states the basis of their detention, their rights while detained and information on support services to which they are eligible

DEPORTATION (ARTICLES 3, 16)

Before issuing a deportation order, the person concerned may make representations in writing to the Minister within 15 working days why they should be permitted to remain in the state rather than be deported.⁹ Even though a person wishing to remain in the state may need to make complex legal submissions regarding torture/refoulement, statelessness, respect for private and family life or other human rights issues, with the exception of persons who have previously applied for asylum/protection in the state, there is very limited access to legal aid for persons without financial means who require legal advice or representation regarding their situation.

There is no legal duty imposed on the Minister to process an application for permission to remain in the state in the context of proposed deportation within a specific period of time and it is not uncommon for applications to remain pending for periods of several years prior to being determined. During this period, the affected persons have no entitlements to work or to access social welfare or other support services in the state and, consequently, proposed deportees are at huge risk of destitution, homelessness and exploitation.

In the event that a person is issued with a deportation order, there is no right of appeal against the decision and the Office of the Ombudsman has no remit in any immigration-related decisions, including deportation decisions. The only legal remedy available is to seek judicial review in the High Court of the decision within 28 days. However, this is a very limited remedy, as the High Court is not in a position to review the merits of a case and cannot deal with questions of fact. In addition, the High Court does not have the power to alter or vary an administrative decision and the issuing of judicial review proceedings does not automatically have suspensive effect.

⁸ <https://www.irishtimes.com/breakingnews/ireland/dedicated-immigration-facility-due-to-open-at-dublin-airport-930395.html>

⁹ Section 3, Immigration Act 1999

Persons issued with deportation orders are obliged to cooperate with immigration officers and to make arrangements for their departure from the country. Notwithstanding cooperation with the authorities, persons are often arrested in their homes in the very early morning hours and removed from the state with little or no notice of the travel arrangements that have been made on their behalf and without much opportunity to inform immediate family members, including their spouse or minor children, or to pack personal belongings.

The Immigrant Council of Ireland invites the Committee to ask the State about:

- Will the State put on a statutory footing access to legal advice and information for anyone who has received a deportation notice.
- Will the State consider introducing a time restriction in which a deportation pursuant to a deportation order can be carried out.
- Will the State give consideration to the provision of access to effective remedies for those who seek to appeal a deportation order and provide an independent appeals mechanism for that purpose
- Will the State consider giving potential deportees sufficient notice as to when the deportation will be carried out.

STATELESSNESS (ARTICLES 3, 16)

Statelessness is not defined nor recognised as an act of persecution in the International Protection Act 2015. The lack of a statelessness determination procedure in Ireland equates to a form of discrimination. In the absence of a formal procedure, the Irish authorities deal with stateless applications in an ad hoc and inconsistent manner. In terms of access to justice, there are significant issues regarding procedural fairness in terms of lack of transparency, long processing times and lack of appeal procedures. While some rights are provided for stateless persons under domestic legislation, including potentially faster access to citizenship and waiver of the fees that are usually required of naturalisation applicants, in the absence of any determination procedure these rights remain inaccessible to the individuals they are intended to assist.¹⁰ Stateless individuals frequently remain in a legal limbo for a significant number of years and may experience acute destitution, detention and risks of forced removal/deportation. In the meantime lives are lived in limbo.

The Immigrant Council of Ireland invites the Committee to ask the State about:

- Will the State consider introducing a statelessness determination procedure

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¹⁰ Irish Nationality and Citizenship Act 1956 (as amended) and Irish Nationality and Citizenship Regulations 2011