



Migrant Right Centre Ireland's Submission

1st July 2020

List of Issues Prior to Reporting (LOIPR) on the occasion of the fifth State Reporting Procedure on the Implementation of the UN Convention on the Rights of the Child in Ireland

Migrant Rights Centre Ireland

Founded in 2001, MRCI is a leading national organisation working directly with migrants who become undocumented, with people who have been trafficked for forced labour, with minority ethnic young people, and with migrant workers in domestic work, homecare, restaurants, hotels and catering, cleaning, agriculture and fisheries. Our work combines frontline services, policy, and advocacy with a community development approach that builds deep connections with migrants and supports their participation and leadership on migrant rights issues. MRCI provides information, supports and advocacy on over 2,200 cases a year through our Drop-in Centre.

Introduction

MRCI has a long history of working for rights and recognition of children and young people whose parents are undocumented, who work in low paid employment and live in insecure housing. Children of undocumented families are impacted by their legal status. They are more likely to have poorer outcomes in terms of access to third level education and the labour market, and they are more at risk of poverty and social exclusion. To date the State has taken a piece meal approach to regularising children; to safeguarding their rights and access to services; with no comprehensive solution developed to address this pertinent issue.

Section 1

Coordination

In 2016, the Committee welcomed the fact that the State party established the Department of Children and Youth Affairs¹, and furthermore recommended that the *'State party maintain the post of Minister for Children and Youth Affairs, with full Cabinet status'*².

As of June 2020, this Department is now being reshaped under the new Coalition government omitting young people from its agenda³. Key stakeholders called for the retention of the Department

¹ UN Committee on the Rights of the Child (20016) Concluding Observations Ireland, CRC/C/IRL/CO/3, para. 13

² UN Committee on the Rights of the Child (20016) Concluding Observations Ireland, CRC/C/IRL/CO/3, para. 14

³ <https://www.rte.ie/news/2020/0627/1150063-new-cabinet-latest/>

- Ombudsman for Children⁴, the Chair of the Child and Family Agency⁵ and a broad network of stakeholders⁶. While a focus on children has been retained, this new Department of Children, Disability, Equality and Integration now has a huge remit, which has the potential to decrease the focus on the specific needs of children. Furthermore, young people are no longer named as part of this Department. This sends a message clear message that the voices of young people are not a priority for the government. The National Youth Council of Ireland has called for this decision to be reversed⁷.

Question:

- Will the government reverse this decision and include young people in the Department's remit, with full ministerial responsibilities?

Section 2 General Principles

Non-discrimination

Habitual residence condition

The introduction of the Habitual Residence Condition in 2006, restricts access to certain social welfare⁸ payments to those who can prove a close link to Ireland⁹. As a result, undocumented children are denied access to the Child Benefit payment – a monthly cash payment to support children. The Child Benefit payment is intended to be a universal payment. However due to the immigration status, or lack thereof, or migration history of their parents, these children are being discriminated against and not eligible to receive this support. Omitting these children is contradictory to the legislation under the Children First Act 2015¹⁰ which recognises all children living in the state. Exclusion from this State support puts a vulnerable cohort of children and their families at greater risk of poverty and exclusion.

Question:

- Will the State review and assess the impact of the Habitual Residence Condition has on children?
- Can the State provide data on the numbers of children in the State affected by the Habitual Residence Condition?
- Will the State remove the Child Benefit Payment from the confines of the Habitual Residence Condition, as its intended purpose to be a universal payment that's neither means tested or dependent on a child's migration history?

⁴ <https://www.oco.ie/news/childrens-ombudsman-issues-letter-to-party-leaders-expressing-concern-over-suggested-abolition-of-department-of-children-and-youth-affairs/>

⁵ <https://www.breakingnews.ie/ireland/tusla-chair-calls-for-retention-of-department-of-children-and-youth-affairs-1005508.html>

⁶ <https://www.childrensrights.ie/resources/press-release-sixty-children-and-youth>

⁷ <https://www.youth.ie/articles/concern-youth-affairs-omitted-from-name-of-new-department-of-children/>

⁸ These include Child Benefit, Jobseeker's Allowance, Disability Allowance and Carer's Allowance. For a full list see, Citizen's Information Board, Citizens Information, Residence requirements for social assistance in Ireland, http://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/social_assistance_payments/residency_requirements_for_social_assistance_in_ireland.html

⁹ The Social Welfare and Pensions Act 2007 sets out five criteria to determine habitual residence: 1) the length and continuity of living in the State or another country, 2) the length and reason for any absence from the State, 3) the nature and pattern of the person's employment, 4) the person's main centre of interest and 5) the future intentions of the person applying for the social welfare payment.

¹⁰ <http://www.irishstatutebook.ie/eli/2015/act/36/enacted/en/pdf>

Racism

In 2016 the Committee recommended that the State ‘*establish an appropriately high-level and comprehensive successor to the National Action Plan against Racism 2005-2008.*’¹¹ It expressed concern that no action plan has been enacted since 2008. In December 2019, the Irish Human Rights and Equality Commission published its report on Ireland and the UN Convention on the Elimination of Racial Discrimination:¹² “*The report sets out that the State is failing to sufficiently tackle racism and discrimination and to live up to its international human rights obligations in combating racial discrimination.*”

The State established an independently chaired Anti-Racism Committee (ARC) in June 2020 tasked with drafting a National Action Plan against Racism for Ireland within one year.¹³

To give effect to protecting the rights of ethnic minority children, this committee must place children at the centre of its policy development and implementation, making specific reference to undocumented children, children in the asylum process, Traveller and Roma children. The plan should reflect the needs of all children living in the State, across all government departments, spanning access to education, health, social service and protections. Furthermore, school curricula must be reformed and underpinned by anti-discrimination, equality and human rights.

Question:

- Will the ARC engage young people and youth sector directly to ensure their needs and lived experience are informing work of ARC and a National Action Plan Against Racism?
- Will the ARC consult with external key stakeholders about the implementation, design, remit of the plan in its development process throughout the year?
- Will the ARC conduct a needs analysis as part of its research and development?
- Will the ARC make recommendations to legislative policies that need to be updated and amended?
- Will the ARC commit to the completing the draft National Action Plan Against Racism within one year of commencement?
- Will this ARC recommend the establishment of an independent funded body with resources and expertise to tackle racism in Irish society and support the implementation of a future Anti-Racism strategy?

Family Environment and Alternative Care

Children in the care of the State

The Committee expressed concerns about the inadequate measures in place to address the migration status of undocumented children in care¹⁴. Undocumented children in the care of the state are particularly vulnerable. The legal status of children in Ireland is assumed on that of their parents or legal guardian. If they have not been granted residency upon turning 18 and are no longer in the care of the state, they are at greater risk of a precarious immigration status. They are also at

¹¹ UN Committee on the Rights of the Child (2016) Concluding Observations Ireland, CRC/C/IRL/CO/3-4, para. 28(b).

¹² <https://www.ihrec.ie/reports-international-bodies/un-convention-on-the-elimination-of-all-forms-of-racial-discrimination/>

¹³ <https://www.gov.ie/en/press-release/6bedb-action-plan-against-racism-for-ireland-to-be-drawn-up-by-new-independent-anti-racism-committee/>

¹⁴ UN Committee on the Rights of the Child (2016) Concluding Observations Ireland CRC/C/IRL/CO/3-4, para 67

high risk of homelessness due to social exclusion and lacking the rights/ entitlements to work or to receive state support.

Furthermore, social workers assisting undocumented children and young people in care have reported¹⁵ they have been instructed to delay an application until the child turns 18, to the detriment of the outcome of that child's life. According to a publication by the Immigrant Council of Ireland, *"There is no right to independent legal advice for children in State care and there is no formal system or clear routes for children or their social workers to access legal representation"*¹⁶

Question:

- Can the government ensure that this extremely vulnerable cohort is provided with necessary legal and social supports prior to leaving state care, to ensure that they are not undocumented in the state?
- Can the State provide data on undocumented children in the care of the State?
- Will the State commit to providing access to legal representation for undocumented children in the care of the State?

**Special Protection Measures
Children in Situations of Migration**

Undocumented Children

In 2016, the Committee expressed its concern that *"there are no clear and accessible formal procedures for conferring immigration status on persons in irregular migration situations."*¹⁷

As a result, the Committee made clear recommendations to the State party¹⁸:

(a) Expeditiously adopt a comprehensive legal framework that is in accordance with international human rights standards to address the needs of migrant children in the State party;

(b) Ensure that the said legal framework includes clear and accessible formal procedures for conferring immigration status on children and their families who are in irregular migration situations;

(c) Take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status.

To date the State has not implemented any of the recommendations from the Committee. Undocumented children and young people in the State are being denied their basic human rights. They have no rights to residency, despite being born in the State or having spent their formative years in primary and secondary education in Ireland. As of June 2020, there are no clear pathways to residency. There are no formal procedures to retrospectively address the situation of children with

¹⁵ Office for the Ombudsman for Children, Pathways to Irish Citizenship, pg 17
https://www.oco.ie/app/uploads/2020/06/OCO_Pathways_to_Tirish_Citizenship_.pdf

¹⁶ Child Migration Matter, Immigrant Council of Ireland, p.36 <https://www.immigrantcouncil.ie/sites/default/files/2017-10/CMM%202016%20Child%20Migration%20Matters.pdf>

¹⁷ UN Committee on the Rights of the Child (20016) Concluding Observations Ireland CRC/C/IRL/CO/3-4, para 67

¹⁸ UN Committee on the Rights of the Child (20016) Concluding Observations Ireland CRC/C/IRL/CO/3-4, para 68 (a, b,c)

an irregular migration status. Equally no provisions have been made for children who may be born to undocumented parents in the future.

In 2019, MRCI carried out a survey¹⁹ of undocumented children and young people in the State, the first of its kind in Ireland. It found, that of the 185 children²⁰, 68% of them were born in Ireland, the remaining 32% were born outside of Ireland. Of those born in Ireland 58% are over 5 years old and a further 20% are over 10 years old. Of those born outside of Ireland, 78% have been here over 5 years, and in some cases for more than 16 years.

A number of high profile cases in 2018 and 2019 of undocumented children, garnered public and cross party political support, in particular for children born in Ireland to undocumented parents. Despite calls for legislation and solutions nothing has advanced to date.

In 2018, the State introduced a *Special Scheme for Non-EEA Nationals Who Held a Student Permission during the Period 1st January 2005 to 31st December 2010 Student Scheme*²¹. This scheme applied a specific set of criteria and allowed some undocumented people and their dependents apply for residency status. It was welcome that the State adopted a family approach to this scheme. However, the numbers of people who were granted a temporary immigration status were far less than the State had anticipated. This is due in part to exclusions in the scheme, dissemination, and an extremely short time-frame. Furthermore, the restrictive criteria meant that some families were ineligible to apply for the scheme, despite being in the state for many years.

In June 2020, the new coalition government made a commitment to:

*“Create new pathways for long-term undocumented people and their dependents, meeting specified criteria to regularise their status within 18 months of the formation of the Government, bearing in mind EU and Common Travel Area commitments.”*²²

MRCI welcomes this very recent development. There are concerns however, that this commitment, will be narrowly interpreted and exclude some dependent children and families. The wording of ‘long-term undocumented people’, and under ‘specified criteria’, can be broadly interpreted. While MRCI welcomes a commitment to a timeframe in the Programme for Government (PFG), waiting a further 18months for a solution is untenable for children and families living in limbo. The commitment also does not make reference to children who will be born in the state after this to regularise their immigration status.

Question

- Will the State detail why it has not taken any steps to implement the recommendations of the Committee from 2016?

¹⁹ <https://www.mrci.ie/2020/01/21/ypp2018/>

²⁰ Children aged 0-24 of undocumented parents0

²¹ <http://www.inis.gov.ie/en/INIS/Pages/special-scheme-for-non-eea-nationals-who-held-a-student-permission-in-the-state-during-the-period-1-january-2005-to-31-december-2010>

²² https://www.greenparty.ie/wp-content/uploads/2020/06/2020-06-15-ProgrammeforGovernment_Corrected-Final-Version.pdf [pg 76, accessed on June 27th]

- Will the state introduce processes for children who are currently in the state to undocumented parents, children who have aged out and children who will be born in the future to regularise their immigration status?
- When will the State commit to implementing the recommendations of the Committee in 2016?
- Can the State provide data on the number of undocumented children living in Ireland?
- Can the State provide information on how it proposes to support this cohort of children and young people?
- Can the state provide a final report on the number of people, including dependents, who were granted permission to reside under the - Special Scheme for Non-EEA Nationals Who Held a Student Permission during the Period 1st January 2005 to 31st December 2010 Student Scheme²³?
- When will the State implement the commitment, as outlined in the Programme for Government and how does it propose to treat children in this process?
- Will the State commit to an inclusive approach to incorporate both a retrospective and prospective process to grant residency to undocumented families and their dependent children?
- Will the State consult with NGO's and relevant stakeholders in the planning, design, and implementation of the PFG commitment to create new pathways for regularisation?

Registration at immigration

Children are required to register with immigration at the age of 16. This is extremely problematic because their immigration status is assumed of that of their parents/legal guardian. This puts children and their families at great risk of coming to the attention of the authorities, which can be to their detriment.

Question:

- Will the State commit to providing formal procedures for children under 16 registering at immigration?

Access to essential services

During the pandemic COVID-19, MRCI lobbied²⁴ for undocumented people in the State to access essential services, without fear of Immigration Services of the Department being notified:

“As such immigration concerns of undocumented foreign nationals should not be construed as a barrier or “firewall” to seeking essential healthcare”²⁵

There is no commitment from the incoming government that such ‘firewall’ will remain in place. Accessing services, such as healthcare, is a basic and fundamental human right. It is crucial that this remains the case.

Question

- Will the State commit to maintaining a ‘firewall’ between government departments?

²³ <http://www.inis.gov.ie/en/INIS/Pages/special-scheme-for-non-eea-nationals-who-held-a-student-permission-in-the-state-during-the-period-1-january-2005-to-31-december-2010>

²⁴ <https://www.mrci.ie/2020/04/22/rights-of-undocumented-workers-to-access-social-welfare-supports-during-covid-19/>

²⁵ <http://www.inis.gov.ie/en/INIS/Immigration-Service-Delivery-Covid-19-FAQ4.pdf/Files/Immigration-Service-Delivery-Covid-19-FAQ4.pdf> ,(q.12, pg25)

- Can the State guarantee that any undocumented people who have accessed essential health and social welfare services during COVID-19 will not be reported to the Immigration Services?

Ends

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