

## **Submission by the Irish Refugee Council to the European Commission against Racism and Intolerance**

### **1. Introduction**

- 1.1 The Irish Refugee Council (IRC) welcomes the opportunity to comment upon the Third Report on Ireland adopted by the European Commission against Racism and Intolerance (ECRI) on 15 December 2006.
- 1.2 The IRC is Ireland's only national NGO which is exclusively devoted to working to protect and enhance the lives of refugees, including those in the asylum process. It has been in existence since 1992.
- 1.3 The IRC maintains a particular focus on those in the asylum process rather than upon those who have obtained refugee status. This is out of a concern that the asylum system in Ireland militates against the rights of those seeking to establish that they are in need of international protection. This report therefore concentrates upon those in the asylum process, including those who are finally rejected and are subjected to deportation procedures. However, that is not to suggest that those who are granted refugee status, subsidiary protection or leave to remain on a humanitarian basis do not experience racism and intolerance and therefore elements of this report also address the particular problems faced by such individuals and families as they relate to areas of ECRI's concern.

### **2. Refugees and asylum seekers (paragraphs 63 - 77)**

- 2.1 *At paragraph 65 on page 20, ECRI recommended that the Irish authorities continue to provide training to persons working with asylum seekers and put in place permanent mechanisms offering both initial and ongoing training on refugee law and issues pertaining to racism, racial discrimination, cultural diversity and gender awareness.*
- 2.2 The UN Refugee Agency, UNHCR, continues to provide training both to those in the initial decision making stage of the asylum process (the Office of the Refugee Applications Commissioner (ORAC)) and the appeals stage (the Refugee Appeals Tribunal (RAT)). Both bodies are independent of the state. This is to be welcomed and its continuation encouraged, although there are other organisations, including the IRC, which have a particular expertise which can be called upon to assist in such training.

- 2.3 ORAC has also shown a willingness to engage with organisations that have a particular concern for the treatment of women in the asylum process. But neither ORAC nor the state have adopted gender-specific guidelines to ensure best practice when dealing with women. Adoption and implementation of such guidelines would be welcomed, especially if it led to a change in attitude and practice in the examination of asylum claims by women particularly those who are survivors of rape or victims of trafficking and in the type of accommodation and support offered to them during the asylum process (see below at paragraph 5.6 on women-only accommodation centres).
- 2.4 Whilst training of the nature previously implemented and recommended by ECRI is welcomed by the IRC, such training and practice by those who work with asylum seekers is undermined by a system that now works to deny protection to those who seek it in Ireland. The goodwill of individuals in the system cannot counter the negative impact of a system that, at best, is built on a culture of disbelief and, at worst, on a culture of contempt.
- 2.5 ECRI noted in its Third Report that the nature of Irish society had changed dramatically during the period covered by that report in respect of the number and variety of different nationals who had arrived in the state. The Third Report was adopted at a time when Ireland still had a strong economy and was indeed one of the strongest in Europe. The economic situation has changed dramatically since then. The profile of those claiming asylum has remained virtually the same throughout the last five years, with most claims being made by nationals of Nigeria, China and Pakistan. But the numbers being recognised as refugees and claiming asylum has declined considerably. The state and the independent decision-making bodies assert that this is a consequence of the profile of those seeking asylum in Ireland and the downturn in the economic situation in the country which makes it a less attractive destination for what the state assumes are in fact economic migrants and not refugees. In 2010, Ireland had the lowest recognition rate (1.1% of asylum applications determined that year by ORAC) in the EU. Even compared to countries which have a similar profile of nationals claiming asylum, Ireland compares badly. The assertion that the numbers claiming in Ireland has dropped as a result of the economic downturn, is not set alongside the effectiveness of the EU Border Agency, Frontex, in preventing arrival to within the borders of the EU, the use of the Dublin II Regulation (which allows a state to transfer responsibility to determine the asylum claim to another EU state) and

the geographical location of Ireland in the EU. Neither is the continued impact of fines for carriers' liability and the state's refusal to allow independent bodies to monitor arrivals at the ports taken into account.

- 2.6 So whilst the IRC welcomes training of the nature recommended by ECRI, our main focus of concern remains on the decision-making system itself, both at the first stage (ORAC) and the appeals stage (RAT). It is to be noted that Ireland was referred by the European Commission to the Court of Justice of European Union in 2010 for failure to implement the Asylum Procedures Directive [(European Commission v Ireland (Case C-431/10), 7 April 2011), part of the legislative framework of the Common European Asylum System. Ireland has since introduced regulations that purport to implement the Procedures Directive but there are significant safeguards or procedural protections missing from the Irish asylum system that lead to those claiming asylum to be at a disadvantage.
- 2.7 These include: the absence of early legal advice, pre-interview and first decision (and therefore the necessity for individuals to complete their own questionnaire explaining their reasons for claiming asylum, to obtain and translate evidence supporting their claims and attend interviews without proper legal advice and assistance); the lack of independently-accredited interpreters (and therefore the poor quality of some interpreting and translation services used by the state and independent bodies); the lack of either legal representation at interview and/or tape recording of interviews; the refusal by ORAC to provide the asylum seeker with a copy of their interview record prior to appeal following refusal (which therefore denies them any opportunity, pre-decision, to check its accuracy). At the appeals stage, there is a lack of transparency in the appointment of members of the Tribunal and in the allocation of cases to them; hearings are routinely held in private (preventing any independent observation of the conduct of appeals); there are no published rules for the conduct of such hearings; decisions are not published in an open manner. In addition, and despite the existence of the European Convention of Human Rights Act 2003, there is no opportunity to challenge a decision that a person is not a refugee on wider human rights grounds. Furthermore, as legislation to introduce a single protection procedure has still not been passed (see paragraphs 4.3-4.5 below), there is no opportunity to appeal a negative decision on an application for subsidiary protection (which comes after the Minister has decided to deport the person).

- 2.8 *At paragraph 70 on page 21, ECRI recommended a reduction in the length of the asylum process and that the appeals process be reformed to improve transparency and accountability.*
- 2.9 The recommendation about the length of the asylum process was based on a finding that the process took, on average, four years. Reference was also made to the concerns about the operation of the Refugee Appeals Tribunal (RAT).
- 2.10 The Immigration, Residence and Protection (IRP) Bill 2010 (the third incarnation of the legislation aimed to consolidate and amend previous legislation on immigration and asylum) proposes to introduce a single protection procedure for those who claim asylum and/or subsidiary protection. The Bill also plans to replace the RAT with a Protection Review Tribunal which will have the power to hear appeals against refusal of subsidiary protection as well as asylum. If and when the legislation is passed and implemented, this will speed up the process for those seeking international protection in Ireland. But it will only apply to those who apply after the change in the law is implemented, not to those in the system already.
- 2.11 ECRI noted the number of asylum seekers in the system of direct provision. Those numbers have fallen below 6000 (5740 at July 2011) but at least a third of those in the direct provision system have been there for at least three years. In addition, at least a third of residents are children, many of them born in Ireland who are growing up not only in a form of institutionalisation but also in poverty (see below at paragraph 2.21). There are no known recommendations from the state as to how it proposes to deal with the backlog or the problems which are exacerbated or indeed created as a result of the system of support and accommodation that it utilises.
- 2.12 The length of time therefore spent in the asylum process has not changed since ECRI made its recommendation. The state is not alone responsible for delays in the process but where it is (for example, in the length of time taken to determine an application for subsidiary protection and/or leave to remain), there is no explanation available. Where delays lie with independent bodies such as the RAT or the High Court (it currently takes 27 months for the first stage of an application for Judicial Review in the High Court to be dealt with), the fact remains that it is the state that has oversight of a system of decision making that is so defective that it leads to challenges in the court.

- 2.13 In proposing to replace the RAT with a Protection Review Tribunal, the new appeals body will have all of the defects outlined in paragraph 2.7 above. A lack of transparency and accountability therefore persists in the appeals system and will not be addressed by proposals in the IRP Bill as it stands.
- 2.14 ***At paragraph 71 on page 21, ECRI also recommended that a system be established for monitoring deportation procedures and that officers receive training.***
- 2.15 No such system exists. The IRC would again, however, make the point that if the system is defective and potentially dangerous to the health and welfare of those subjected to deportation (as has happened in other countries with similar systems), monitoring will not be sufficient. The process of deportation needs amending first.
- 2.16 Like other organisations before, the IRC called for an independent enquiry into the process of deportations following a failed deportation flight to Nigeria in December 2010. The Irish group on the flight (which was aborted in Athens due to a technical problem with the plane) included 13 children, many taken from home in the early hours of the morning (some in bed clothes), some from school. One of the children was an Irish citizen. The IRC collated the testimonies of some of those on the flight, detailing the lack of regard for their health and welfare by the Garda officers who accompanied them. The IRC also submitted a complaint from one of the women (who had two young children and was allegedly handcuffed and restrained in her seat before being sedated) to the Garda Ombudsman Commission (see below at paragraph 3.2). In addition, in the light of that experience and subsequent deportations, the IRC made several practical proposals to the state as to how deportations could be carried out in a more humane manner. The system remains the same and the state has not entered into any discussion with the IRC or, to our knowledge, any other body which monitors deportations about alternative methods of effecting the removal from the state of those not given permission to remain.
- 2.17 ***At paragraph 72 on page 21, ECRI recommended that the Irish authorities ensure that proposals by NGOs and civil society concerning the Heads of Scheme for the IRP Bill concerning asylum seekers and refugees are taken into consideration.***
- 2.18 The coalition government which came into power in March 2011 has shown a greater inclination to engage with NGOs and civil society on a

variety of issues, including the IRP Bill as it affects asylum seekers and refugees. It is not known, however, if the recommendations and concerns of organisations such as the IRC will be taken into consideration.

2.19 ***At paragraph 76 on page 22, ECRI recommended that asylum seekers be allowed to engage in paid employment, that the allowance paid to them be equality and poverty proofed and that alternatives to the direct provision system be considered. In addition, ECRI encouraged the harmonisation of the management of direct provision centres and the review of the complaints mechanism.***

2.20 Ireland has, in line with just one other EU country, Denmark, never signed up to the Reception Conditions Directive, part of the Common European Asylum System. It is this Directive which contains the right to work if there is no decision on the asylum application within 12 months. Although the right to work can, at the discretion of the state, be given at any time, the Irish authorities show no inclination to provide such a right.

2.21 In addition, the allowance of €19.10 per adult and €9.60 per child remains at the same rate as when it was introduced in 2001. This is despite the fact that the allowance is notionally based on a social welfare payment that has increased on several occasions in the last ten years. Although asylum seekers receive full board and lodging, the small payment made to them to cover most other expenses leaves them excluded from society. This is particularly difficult for children and their parents. As ECRI noted, children are allowed to go to state school. But they are unable to participate fully in their local community as their parents simply are not in a position to provide them with the means to participate.

2.22 Alternatives to direct provision were considered by the Reception and Integration Agency (RIA) which is part of the Department of Justice. In its report of May 2010, *Value for Money & Policy Review: Asylum Seeker Accommodation Programme*, it concluded that the direct provision system was the best for value and money<sup>1</sup>. The impact on residents, not

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<sup>1</sup> According to the report, direct provision is: “less costly, it is less likely to act as an incentive to new asylum seekers (asylum shopping) and it allows the State to manage the challenge of asylum seekers in a way that reduces pressure on local services.” *Value for Money & Policy Review: Asylum Seeker Accommodation Programme*, RIA, May 2010, at p.65. Available at

least children and the mental health and well-being of adults and the long term implications of that, was not a consideration. In addition, the report, whilst referring to consideration of other systems, did not outline which were considered or why they were less beneficial to the Irish state. The IRC with other NGOs has undertaken research on alternatives and presented the result of that report to the Department of Justice. It is not known if the substance of it has ever been considered by the state.

- 2.23 If harmonisation of the management of the direct provision has been considered or taken place, the IRC is not aware of it. There is a process of rationalisation and reduction in hand, leading to closures and dispersals, but the system continues to be primarily in private hands and operated at considerable public expense.
- 2.24 RIA did review the complaints system but the revised system lacks independence and integrity and is not generally trusted by residents. NGOs again have proposed an alternative form of independent complaints mechanism but it is not known if this has been considered.
- 2.25 ***At paragraph 77 on page 22, ECRI recommended that integration measures should be aimed at asylum seekers to prepare them for their possible new life in Ireland.***
- 2.26 Local government integration and social inclusion programmes and policies work hard to include asylum seekers in their activities and value their contribution, although this is not universal. This is in contrast to national government.
- 2.27 Asylum seekers are generally excluded from national integration policies and programmes. When the last government introduced a Ministry for Integration, whilst a welcome measure in itself, asylum seekers (and irregular migrants) were excluded from the regional representative bodies that were established. Furthermore, the system of direct provision and dispersal, with some centres remote in location, and whereby people can be moved at short notice without consultation or regard to their needs, works against not in favour of integration. Some would say that that is part of the reason for the system. Given the apparent assumption that most asylum seekers are not genuinely in need of protection and will at some point be removed, there is little incentive to include them in integration plans.

3. Conduct of law enforcement officials (paragraphs 113 - 120)

3.1 ***At paragraph 118 on page 31, ECRI recommended that the Irish authorities continue to provide the Garda Ombudsman Commission with the necessary resources to enable it to function to its full capacity.***

3.2 As mentioned above at paragraph 2.16, the IRC submitted a complaint to the Commission on behalf of the Nigerian mother of two young children who was on a failed deportation flight to Nigeria. At the time that the complaint was submitted, there was a possibility that a further attempt might be made to deport her and her children (one of whom is Irish). Despite this and the seriousness of the complaint (which included an allegation that she was sedated and therefore unable to care for her two young children), the matter is still outstanding almost 12 months later. Whether this is due to a lack of resources or can be explained in any other way is not known.

4. The scheme for the Immigration, Residence and Protection Bill (paragraphs 127 - 131)

4.1 ***At paragraph 130 on page 130, ECRI recommended that the Irish authorities take into consideration the various suggestions made by NGOs and civil society organisations regarding the scheme for the IRP Bill and continue the consultative process.***

4.2 NGOs have closely monitored and engaged with the process of attempting to reform immigration and asylum legislation in Ireland, a process which has been going on for more than ten years. The suggestions for change or details of the concerns of NGOs by and large went unheeded by the last government but opposition parties were more receptive.

4.3 The Immigration, Residence and Protection Bill 2010 is the third attempt to substantially revise the immigration and asylum laws in Ireland. It was originally introduced by the last government and was fiercely debated by the parties which now form the coalition government. The new government has proposed to re-introduce it to the parliament, along with substantial amendments but neither a timeline nor the contents of these amendments are known.



- 4.4 There are major concerns about the contents of the Bill as it was originally published, not least the introduction of a procedure for summary removal whereby an ordinary Garda or immigration officer could remove someone from the state if they are not satisfied that the person is legally resident. This is without notice and without a right of appeal. This raises the issue of racial profiling as well as the lack of a remedy against what may be a fairly arbitrary but nevertheless life changing decision.
- 4.5 In addition, the Bill as presented fails to address the concerns outlined above concerning the decision making processes, both initial and on appeal. Whilst the introduction of a single protection procedure will be welcome, unless it addresses the very real concerns the state will continue to fail to provide protection to asylum seekers and refugees.

## 5. Additional matters

- 5.1 The IRC has concerns which were not covered in the Third Report and which therefore we wish to highlight at this stage.
- 5.2 Separated children. Children and young people under the age of 18 are, if they are accepted as minors, cared for by the Health Service Executive (HSE). In 2009, in a very positive and welcome development, the HSE accepted that such children should be treated on the same basis as Irish children who enter the care system and has since been allocating a social worker to each child and providing care where it can within families, not institutionalised settings. The IRC also welcomed the level of expertise that was built up in the social work team in Dublin. Unfortunately, by moving children into foster homes across the country, some of that expertise has been lost and a concentrated effort will be needed to ensure that social workers new to dealing with this particularly vulnerable group gain the skills that they need in a short period of time. There is also a disparity in the way in which children are treated in terms of the legal provisions applied and a greater consistency, arising from a recognition of their particular vulnerability, would be welcome.
- 5.3 A greater area of concern when dealing with separated children is the fact that age can be disputed, sometimes on the basis of physical appearance and demeanour. This can mean a child being treated as an adult and placed in to the direct provision system not in to the care of

the HSE (and sometimes in detention until an age assessment is carried out). It is questionable to make judgments about young people from very different cultural, religious, linguistic, racial and geographical backgrounds, not least when some of them will have experienced trauma or violence which will inevitably change their conduct and behaviour. The IRC would hope that the state would err on the side of caution and give benefit of the doubt to the young person.

- 5.4 Aged-out minors. These are young people who were in the care of the HSE as separated children but who have reached the age of 18 before a decision is made on their application to remain in the state. They are then moved in to the direct provision system which is not only an adult environment with which they are unfamiliar, but it can also mean being moved to an area of the country with which they are unfamiliar and therefore away from their place of study and their networks of support. The IRC would like the state to adopt a practice of granting a special form of leave to children and young people which reduces the time spent in the system out of recognition of their particular vulnerability and which reduces and possibly eliminates the need for a young person to move from care to an adult environment in a different part of the country.
- 5.5 Irish-born children in the asylum process. ECRI noted in its Third Report that the Irish constitution was changed which meant that children born in Ireland after 1 January 2005 are no longer Irish by birth. Their entitlement to citizenship now depends upon their parents' residence and status in Ireland. As a result, children born in Ireland to parents in the asylum process are required to claim asylum for those children and put them (or more often themselves) through the same decision-making process, despite the fact that the children's applications are most likely to be refused on the same grounds as their parents. This applies regardless of age and has therefore been applied to babies. Parents are informed that if they do not apply for asylum for their children, they will not be entitled to support or accommodation for them. This has the effect of unnecessarily increasing the numbers in the asylum system but equally it puts parents and sometimes children through the frustration of again being disbelieved and rejected. It is a system that needs to be changed as soon as possible, leaving the option to apply for the children, but not requiring it and certainly not threatening already vulnerable adults with the risk of losing what little support they have.
- 5.6 Women. Reference has been made above (paragraph 2.3) to the fact that neither the state nor the independent bodies have gender-specific

guidelines and this is a serious omission. In addition, and possibly because it does not have such guidelines, there is no apparent recognition of the particular vulnerability of women. Several organisations have advocated for women-only hostels but the state has yet to provide these. Women who have experienced sexual violence need to feel safe in their place of residence, no matter how temporary. The state should also consider the additional vulnerability that it creates by paying such a small amount of money to asylum seekers, particularly those with children, as the possibility of exploitation increases as they seek to meet the demands of living in an expensive consumer society.

- 5.7 Nigerian nationals. The state is allowed to prioritise certain nationalities in the asylum process and for several years, Nigerian nationals have been subjected to both accelerated procedures but also particular discrimination simply on the basis of their nationality. As a result, it is difficult for any Nigerian to receive a fair and independent assessment of their application to remain in the state.
- 5.8 Recognised refugees. There are several persistent problems for those who receive a declaration from the Minister that they have been accepted as refugees. The first relates to registration with the Garda National Immigration Bureau (GNIB). The Minister's declaration does not lead automatically to the issue of a residence document. Responsibility for that rests with a different section of the Department of Justice, namely the GNIB. The GNIB requires individuals to produce an original document to prove their identity. For refugees (and indeed for others who have been granted permission to remain in the state) this can prove difficult if not impossible. This means that the state is failing to facilitate that person's integration into society but is instead choosing to place barriers in their way. This applies equally to those refugees subsequently accepted as Irish citizens who cannot then produce such identification to obtain an Irish passport, severely restricting freedom of movement.
- 5.9 Family reunification for refugees, whilst allowed in law, is subject to severe delays and bureaucratic requirements. It frequently takes an average of 12 months for a decision to be made on an application. Again the state is apparently placing obstacles in the way of refugees, not assisting them.
- 5.10 Revocation of refugee status. The IRC has noted an increasing tendency for the state to continue to check the authenticity of statements made

by those recognised as refugees with a view to withdrawing their status and therefore their security in the state. For example, finger print analysis is conducted and if the state discovers an error in the information that they were given, such as a failure on the part of the refugee to advise that they had been in the UK, refugee status is withdrawn. The state may choose to still give leave to remain but the certainty that comes from the grant of refugee status is undermined by the apparent determination of the state to continue to examine the claims of those whom the Minister has already declared as refugees. Although the IRC sympathises with the state if it has been misled by an asylum applicant, we would question the motives and lengths to which the state is prepared to go to undermine its own decision.

## 6. Summary

- 6.1 The IRC acknowledges that Ireland has been required to respond to significant changes in its demographic in the last ten years and has sought to put in place systems that meet the demands placed upon it. We also recognise that immigration control, including asylum procedures, do require discrimination on the grounds of nationality. But there has been sufficient time for the systems to be reviewed and developed in a way which meets not just the perceived needs of the state, but which also meets the needs of those in the asylum system and those responsible for paying to maintain it, namely tax payers in Ireland.
- 6.2 Unfortunately the IRC's experience is that the state is prepared to maintain systems that are time consuming and costly to itself and therefore to the tax payer and which are hugely damaging, with as yet unforeseen consequences in the future, for those who apply for asylum in Ireland and who are granted refugee status or some form of leave to remain. The question therefore is whether the state's apparent desire to make itself an unattractive place to claim asylum is based on racism and/or intolerance or has some other justifiable motive.

24<sup>th</sup> November 2011