



**Submission on Ireland's third periodic report to the UN  
Committee on Economic, Social and Cultural Rights**

**November 2011**

## **Submission to the Committee on Economic, Social and Cultural Rights**

Nasc, The Irish Immigrant Support Centre, is a non - governmental organisation established in Cork in 2000. Nasc is the Irish word for “link” and we link immigrants to their rights. Our mission is to “*enable migrants to access justice and human rights and to work to ensure a just and inclusive society*”.

Nasc operates Legal Clinics which deal with a hugely diverse range of issues pertaining to the migrant population. Last year alone Nasc conducted over 3000 one to one consultations with clients. The issues that come through our door inform all of our policy and campaigning work.

Nasc is grateful for the opportunity to make a submission to the Committee on Economic, Social and Cultural Rights.

It is our experience that the recession currently being experienced by Ireland has been adopted to justify an erosion of the enjoyment and realisation of the rights contained in the Covenant. This is particularly the case for non-Irish nationals residing in the State in the area of securing adequate standards of employment and accessing social security. We call upon the State to transpose the Covenant into domestic legislation and demonstrate their commitment to the protection of economic, social and cultural rights.

In this submission we will briefly comment in the current state of play of the reform of the legislative framework in the immigration context. We will then comment the following articles as they pertain to migrants, asylum seekers and refugees in Ireland.

- 1. Article 6 The Right to Work**
- 2. Article 9 – Right to Social Security**
- 3. Article 11.1 Right to Adequate Housing**
- 4. Article 2.2 Anti discrimination guarantee**

## **Legislation**

### **Immigration, Residence and Protection Bill.**

Reform of the Irish immigration and protection systems was first proposed in 2001. The first Bill was 2008. This was withdrawn when the government at the time fell. A new Bill was published in 2010, this was withdrawn when the last Government fell, we are currently awaiting the publication of an amended version of the 2010 Bill.

The current Minister for Justice, Equality and Defence has committed to re-introducing the IRP Bill 2010 with substantial amendments at an early date in the lifetime of the current government. Although the 2010 Bill contains some positive reforms, notably the introduction of a single procedure for the consideration of asylum and subsidiary protection claims, it also represents a missed opportunity to make real changes to the efficiency and procedural fairness of the Irish protection system.

### **Article 6 - The right to work and discrimination against legally resident long term asylum seekers**

**Article 2.2 The States Parties to present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race... national or social origin.. or other status.**

**Article 6 The States Parties to the Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain a living by work which he freely chooses or accepts, and will freely take appropriate steps to safeguard this right.**

#### **I. Protection applicants**

The State report states that “Asylum applicants are not entitled to take up paid employment pending a final decision being made on their applications. While their applications for refugee status are being considered, their accommodation, food, clothing and other needs are provided for by the State.”

We submit that, once an initial period of six to twelve months has passed, it is unreasonable that the state continues to deny legally resident persons seeking international protection in the state the right to enter paid employment.

## **II. Migrant Workers**

Migrant workers are required to have a work permit in order to work in the State. Work permits are tied to a particular employer and position pursuant to the Employment Permits Act 2006. It is our experience that migrant workers find it very difficult to change employers and are often subjected to workplace exploitation as a result of the inequitable power balance created by the work permit system. Migrant workers are required to remain with their initial employer for a period of 1 year, save in exceptional circumstances, before they can change employment. A change of employment requires the issue of a new work permit and given the difficulty in engaging an employer who is willing to employ a migrant who is subject to work permit conditions, many migrants chose to remain in exploitative work places.

## **III. Dependant Family Members of Migrant Workers**

Dependent family members, i.e. spouses or children, of work permit holders do not have the right to work in the State without a work permit and are therefore solely dependent upon their spouse or parent for their subsistence. The requirement to secure a work permit places a significant barrier on dependent family members accessing employment in the State as the majority of potential employers are unwilling to undergo the administrative procedures required before a dependent of a work permit holder may be employed. There is currently no procedure in place for dependent family members to gain free access to the work place unless they are become naturalised citizens, granted at the discretion of the Minister for Justice & Equality, or accrue a Stamp 5 immigration permission after 8 years of residency in the State.

In cases where the family relationship with the work permit holder breaks down, there is no formal procedure in place for dependent spouses or children to gain access to the work place as their immigration permission as a dependent precludes them accessing the work place and social security.

## **IV. Undocumented workers**

Undocumented are currently unable to seek redress through under current employment legislation. This places them in an extremely vulnerable position as they have no redress against exploitative employers and abusive workplace practices.

## **Article 9: The Right to Social Security**

**“The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”**

Nasc is concerned at the numerous barriers facing immigrants who attempt to access social protection in Ireland. The entitlement to access social protection is dependent on the type of immigration permission held by the immigrant. This affects, in particular, immigrants resident in the state on ‘dependent’ immigration permission, usually spouses or partners of work permit holders. In circumstances of domestic violence, the spouse or partner who does not have access to the labour market also cannot access social protection and is forced through financial necessity to remain in an abusive situation or to face a situation of homelessness and destitution. The inability to access social protection effectively precludes an entire category of immigrants from accessing sustainable State services and supports for homeless people.

Immigrants who are not *prima facie* barred from accessing social protection due to their immigration status are faced with other barriers. The Habitual Residence Condition was introduced on 1<sup>st</sup> May 2004. Although the Paragraph 248 of the State’s submissions notes that “[T]he legislation applies equally to nationals and non-nationals”, it is our experience that the Habitual Residence Condition has disproportionately affected immigrants. The implementation of the Habitual Resident Condition has been both inconsistent and inaccurate and has resulted in large numbers of migrants being denied their entitlement to access social protection. The statistics published by the Social Welfare Appeals Office in 2010 show that the number of appeals relating to the habitual residence condition increased from 1,383 in 2009 to 4,146 in 2010. Although no statistics have been released by the Social Welfare Appeals Office as to the number of appeals relating to the Habitual Residence Condition allowed, the figure for the overall number of appeals allowed in 2010 is 42.7% (12,029 favourable appeals).

The delays occasioned in the appeals process place appellants in real risk of poverty. The 12,029 people who were incorrectly denied social protection at first instance in 2010 will have faced significant delays in receiving payment. The social welfare appeals office gives the average processing time for an appeal as 7 months however it is our experience that some favourable appeals can take up to and over 16 months to process. During that time the appellant often will be ineligible to access any State supports and can become destitute.

**Nasc submits that the implementation of the Habitual Resident Condition has been both inconsistent and inaccurate and has resulted in large numbers of migrants being denied their entitlement to access social protection and as such the State is in breach of its obligations under the covenant.**

## **Article 11.1 and Article 2.2**

### **Right to adequate standard of housing without discrimination as to national origin**

**Article 2.2 – The States Parties to present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to ... national or social origin...**

**Article 11.1 – The States Parties to present Covenant recognize the right to everyone to an adequate standard of living for himself and his family, including adequate... housing...**

#### **I. Housing Regulations**

The Social Housing (Miscellaneous Provisions) Act 2009 (hereafter referred to as “the 2009 Act”) governs the management and allocation of social housing in the State. The 2009 Act does not deal explicitly with non-EEA nationals, and the legislation does not make any explicit distinction between Irish nationals and non-nationals in relation to the provision of housing.

Urban and rural Local Authorities are charged with administering the allocation of social housing. The Application Form prescribed for use by the Local Authorities under the 2009 Act contains a checklist which includes the following provision:

*“Proof of citizenship or leave to remain in Ireland. [Where applicable, evidence of having Stamp 4 Immigration Stamp Endorsement on a passport for a period of 5 years should be provided.]”*

Instructions which have been issued to the Local Authorities by the state Department of Environment Heritage and Local Government have included instructions which explicitly discriminate against non-EEA nationals. Circular SHIP 2010/19 stated as follows:

*“The two main changes to policy set out in this Circular relate to access to social housing support for non-EEA nationals, who are **not** classified as either refugees, programme refugees or who have subsidiary protection status”*

The following rules apply to such persons:

1. an non-EEA national applicant for social housing must have a Stamp 4 endorsement<sup>1</sup> for at least 5 years in order to be eligible for consideration for social housing support; and
2. the spouse and/or dependents of an eligible non-EEA national applicant, who are usually given a “Stamp 3”<sup>2</sup> endorsement, must have that endorsement for at least 5 years in order to be eligible for consideration as part of an application for social housing support.”

We submit that it is not within the discretion of the local authority to make such an administrative rule. Because the purported rule is not within the principles and policies of the parent statute, it falls foul of the parent legislation, is *ultra vires* and thus invalid.

Under sections 3, 20 and 32 of the 2009 Act, the Minister is entitled to periodically revise the eligibility thresholds and mechanisms for assessment of eligibility for social housing by introducing ancillary legislation governing those details. Revised governing regulations were promulgated pursuant to the 2009 Act in the form of Statutory Instrument No. 84 of 2011 on 1<sup>st</sup> of April 2011, the Social Housing Assessment Regulations (hereafter referred to as “the 2011 Regulations”). The 2011 Regulations include a revised Application Form, which unfortunately includes the unamended checklist referred to above. The Circulars issued in conjunction with the Regulations fail to correct the policy outlined above.

We are aware of several applicants whose applications for social housing have been formally refused on the basis that they have not held “Stamp 4” residency permission for a period of 5 years prior to their application.

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<sup>1</sup> “Stamp 4” is endorsed on the “Certificate of Registration”, a card carried by legally-resident non-EEA nationals in the State, and it serves as evidence that the holder has permission to live and work in the State, for a stated period of time.

<sup>2</sup> “Stamp 3” is evidence that permission has been granted to live but not to work in the state, usually on foot of an application for family unity, where the spouse or parent of the holder holds some form of permission to live and work in the state.

**We submit that the State is failing to fulfil its obligations under Section 2 of the Covenant, namely to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to national or social origin.**