

**MRCI's submission to the Third Cycle of the Human Rights Council Universal
Periodic Review for Ireland
March 2021**

Introduction

Founded in 2001, MRCI is a leading national community work organisation working at the intersection of immigration and employment policy and law with migrants predominantly in non-unionized low paid and precarious sectors of employment; we work 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. In 2020, through our Drop-in Centre, MRCI provided information, support and advocacy on 2,898 cases across 125 different nationalities. For the past 20 years, MRCI has been bringing issues of discrimination, exploitation and social exclusion into public view.

Scope of the Submission

By means of Article 29.3 of its Constitution, Ireland recognises the principles of international law as its rule of conduct in its relations with other States. These principles include human rights law as insofar as it forms part of customary international law. Ireland is party to the following human rights treaties adopted under the auspices of the United Nations;

- The International Covenant on Civil and Political Rights and its First and Secondary Optional Protocols
- The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol
- The Convention on the Rights of the Child and its Optional Protocol
- The Convention on the Elimination on All Forms of Discrimination Against Women
- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol

This submission is in the context of the third cycle of the UN Universal Periodic Review, focusing largely on the implementation of the recommendation made by peer states in 2016 and following the publication of the National Interim Report 2020.

Recommendations and Issues of Concern

We are concerned about the implementation of human rights obligations across the following areas.

- **Equality and non-discrimination**

Anti-racism

A new Anti-Racism Committee was announced in 2019, with a mandate to review current evidence and practice, and make recommendations to the Government on how best to strengthen its approach to tackle racism and develop an action plan against racism, yet despite recommendations 135.103 - 135.114, no plan has yet been produced. As part of a new National Action Plan against Racism, the State should introduce targeted measures to strengthen access to the labour market to address discrimination and progression, as well as measures to address exploitation. Although employment discrimination is outlawed by Irish equality legislation, it remains a persistent feature of the labour market. Ireland continues to operate a guest worker model for employment permits, which lacks parity between different types of permits and with few rights enshrined in law. Family reunification remains restrictive, and discriminates on the basis of income.

Ireland has still yet to ratify the Optional Protocol to the International Covenant on Economic and Social Rights, despite recommendation 135.7.

Detention of migrants in prisons

The rise in numbers of people detained in prison for immigration breaches – both in country and on arrival – is concerning. The use of prisons for this purpose is a disproportionate response to an administrative breach, as held by European Committee on the Prevention of Torture. This includes the imprisonment of people who have been denied leave to land/permission to enter the state. In line with recommendation 135.125, MRCI advocates the use of alternatives to detention e.g. reporting requirements, community supervision arrangements, surety, and residence requirements.

Denial of Leave to Land [permission to enter]

There is little transparency in granting leave to land (permission to enter). The 2004 Immigration Act gives officials a wide discretion to refuse permission to enter. At a basic level individuals should have the reasons for their refusal clearly explained in a language they understand. Section 4.4 of 2004 Immigration Act requires explanation in writing, but does not address translation into another language. The broad discretion on refusals also raises concerns of infringement around the right to claim asylum and the principle of non-refoulement. Detaining people refused leave to land in prisons is an inappropriate and disproportionate response in the majority of cases.

Gender Equality

Dependents of General Employment Permit holders are unable to access the labour market, which is a critical area for concern in terms of gender equality. Non-EU/EEA nationals in the State on the basis of their Irish or EU spouse or de facto partners (sponsors) are given residence which intrinsically links immigration status to remaining with and continuing to reside with the sponsor. Therefore if domestic violence exists within the relationship it is not an easy transition to seeking independent status or residence in the State.

MRCI continues to be concerned for the lack of multidisciplinary support for migrant victims of domestic violence in the State. There continues to remain few provisions to ensure migrant victims of domestic violence, can safely leave a domestic violence situation, without financial, social, family or immigration implications. Robust policies must be put in place to support and protect migrant women, such as a Domestic Violence Act, as recommended in 135.9 and 135.100.

Migrant women in particular marginalised within the care and domestic sector. The perception of care and domestic work being low skilled has resulted in the sector being low paid and attributing to poor working conditions. Migrant care workers showed high levels of exploitation, poor terms and conditions, contractual issues, racism and discrimination, particularly for black and ethnic minority workers. In spite of recommendation 135.91, migrant women are more likely to be marginalised in the labour market, unable to move away from low-wage sectors and don't have equal access to social protection.

- **Right to life, liberty and security of the person**

Trafficking in human beings, including trafficking for the purposes of criminal activities.

MRCI's recommendations for trafficking are the same as for the last UPR. Ireland has been operating without a new national action plan against trafficking for 5 years, in spite of recommendation 135.150; identification is still within the remit of law enforcement alone, so victims cannot access the protections of the National Referral Mechanism without engaging with law enforcement. There is no legislative basis for victim protections.

The non-prosecution clause envisaged by EU Directive 2011/36 still requires proper provisions to ensure against detention and prosecution of victims of trafficking. Victims of trafficking continue to be housed in direct provision centres, an inappropriate environment for traumatised individuals.

There have been no successful prosecutions in Ireland for the crime of human trafficking.

- **Right to work and to just and favourable conditions of work**

Despite the presence of a legislative framework related to discrimination in the labour market, it is acknowledged this is not consistently applied. While the Employment Equality Acts, 1998-2007, along with the Equal Status Acts, 2000-2004, seeks to protect employees from discrimination in employment on the grounds of gender, marital status, family status, age, disability, race, sexual orientation, religious belief, and members of the Traveller community, there remain still many limitations in the protection of workers.

Workers Rights and workers conditions

Covid-19 has also shone a light on essential work across the labour market – care, retail, agri-food, manufacturing and processing. It put a sharp focus on migrant workers in meat factories, one of the hardest hit sectors under COVID-19. It also laid bare deficiencies in institutions set up to protect workers. The Health and Safety Authority came under huge scrutiny and pressure in its inability to inspect workplaces and protect workers.

This period also amplified the social exclusion and has embedded exploitation in the experience of migrant workers, in particular homecare workers. Migrant workers are overrepresented in the meat processing and agri-food sector. Many non-EU/EEA workers are tied to their employers due to the inflexible employment permit, and risk of precarious immigration status if they seek to change their employer. The lack of mobility for workers on general employment permits continues to put workers at risk of poor working conditions and exploitation.

A new report from MRCI detailed the “dangerous working conditions” in the meat sector in Ireland reveals a sector with low pay, poor terms and conditions and a disgraceful health and safety record. Almost 60 percent of respondents have been injured at work, including regular lacerations and bruises, repetitive strain, bone fractures, loss of fingers and limbs, burns, and respiratory problems.

The report highlighted the poor health and safety practices and often lack of training of equipment use in meat processing plants. Bullying and discrimination are commonplace across the industry. 90% of workers are not covered by occupational sick pay schemes in the event of injury or illness. Not a single worker surveyed said they felt valued.

Workers’ voices and concerns remain absent from the Agri-Food Strategy 2030 Stakeholder Committee and the Beef Taskforce. This is of great concern to us, as it seeks to undermine workers’ rights.

Work Permit System

As part of its labour migration strategy, Ireland operates a work permit system for non-EU/EEA workers. In this system, a non-EU/EEA worker’s immigration status is dependent on them maintaining his/her employment which ties him/her to a specific single employer. To change employers, workers have to go through complex administrative procedures which involve undertaking a Labour Market Needs Test, a minimum salary threshold and an ineligibility for certain sectors of employment. This complex process of changing employers

puts non-EU/EEA workers at huge risk of falling out of the immigration system and at risk of poor working conditions and exploitation. Many migrant workers accept poor conditions of employment as they fear losing their immigration status. This unequal relationship often results in breaches in employment law, non-compliance and severe exploitation. Non-EU/EEA workers are clearly in a more vulnerable position in comparison to other workers, and employers often use this to their advantage. The state must introduce gradual mobility for all workers by changing the general employment permit conditions similar to critical skills permits which allow full access to the labour market after two years and immediate family reunification rights. Finally MRCI is also concerned about moves to amend legislation to introduce new seasonal employment permits with few rights and no provision to move to other work in the State.

Work in the Private Home

Many migrant care and domestic workers in Ireland are undocumented and working in precarious employment situations. Being without immigration status results in increased risk of exploitation and an inability to access redress, and perpetuates barriers in asserting one's human rights. Since 2009, despite growing demand for care, the Department of Business, Enterprise and Innovation continue to categorise this work under the 'Ineligible List of Occupations for Employment Permits'. Migrants are over-represented in care and domestic work, labour market demand will continue to draw on migrant workers to meet Ireland's home care needs into the future. The failure of the state to recognise this demand by establishing safe and fair labour migration policies facilitates exploitation of this highly vulnerable cohort of invisible workers.

- **Right to Social Security and adequate standard of living**

Access to PRSI Contributions

A number of workers do not have access to their insured contributions, which they have paid through their wages in the form of PRSI contributions (Pay Related Social Insurance) due to their immigration status or lack of – these include international students, undocumented migrants and those registered as family dependents of employment permits holders. Employment contributions are designed to provide a safety net which diminishes people's exposure to economic and social risks. In spite of recommendation 136.57, by denying them and their families' access to their personal insurance contributions, the State is effectively leaving them and their families at great risk of poverty, insecurity and social exclusion.

Access to Child Benefit

The Child Benefit payment is intended to be a universal payment which is payable to children under 18 years of age. However due to the immigration status, or lack thereof, or the migration history of their parents, children of non-Irish parents are being discriminated against and not eligible to receive this support. Omitting these children is contradictory to the legislation under the Children First Act 2015 which recognises all children living in the state and recommendation 135.129. Exclusion from this State support puts a vulnerable cohort of children and their families at greater risk of poverty and exclusion.

Habitual Residence Condition

The Habitual Residence Condition (HRC) is used to determine whether or not a person possesses an entitlement to apply for certain social protection payments, including social insurance payments, means-tested payments and universal payments.

The HRC is not defined in legislation. The HRC has proven to disproportionately affect migrant workers, especially from non-EU/EEA countries or undocumented migrants because of the conditions associated to their status. Despite these conditions being administered and monitored by Immigration services, it is unreasonably used in determining social welfare entitlements by statutorily appointed Deciding Officers under the Department of Social Protection as a part of HRC assessment. As a result non-EU/EEA migrants are disqualified from social welfare payments that are subject to HRC conditions on the grounds of their immigration status. This condition is used as a predominant ground for refusals in social welfare applications, despite being outside of the scope and remit of the Department of Social Protection Services.

Lack of provision of adequate housing for migrants.

Immigrants more often than not find themselves in the poorly-regulated private rental market, which leaves them at greater risk of housing inadequacy. The Habitual Residence Condition disproportionately affects both EU and non-EU/EEA nationals from accessing social housing supports, and leaves very few options in accessing basic housing support. In order to access the Housing Assistance Payment or access the social housing list, non-EU/EEA nationals are required to show evidence of 5 years of reckonable residence in the State, while people undocumented in the State have no option to access any housing supports in the State. Therefore, there are very few provisions available to ensure housing needs are met for migrants in the State.

- **Issues relating to Undocumented Migrants**

Irregular Migration/Undocumented workers

Undocumented migrants' lack of legal status prevents them from accessing their fundamental rights to housing, health, education and employment. The great majority of undocumented migrants have entered the State legally yet they are unable to keep their immigration status despite the demand for their labour. Estimates of the undocumented population are between 15,000 and 17,000 people. Based on a survey of 1,000 undocumented people in 2020, over 93% of undocumented people are working, but over 26% don't even receive the minimum wage for this work and over 46% work over 40 hours to make ends meet. Undocumented people cannot safely report a crime committed against them, access healthcare or report unsafe working conditions.

MRCI has long been advocating for the introduction of a regularisation scheme, where undocumented people can come forward safely and apply for a status. In line with recommendation 136.87, this scheme should be broad and inclusive and use clear and simple criteria. The government committed to introduce a regularisation within 18 months in June 2020. We welcome clarity in the Justice Plan 2021, on a timeline for announcement of a

scheme in Q3 and accepting applications Q 4 of 2021. No details of the criteria have been announced and it is imperative that this is board and inclusive.

Children's Rights

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 not implemented any of the recommendations set out by the Committee on the Rights of the Child in their Concluding Observations for Ireland in 2016. 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. There are no formal procedures to retrospectively address the situation of children with an irregular migration status. Equally no provisions have been made for children who may be born to undocumented parents in the future.

- **International Convention of the Protection of the Rights of all Migrant Workers and Members of their Families.**

To date Ireland has failed to ratify the UN Migrant Workers Convention, in spite of recommendation 136.8 and 136.48. In our submission made in 2015, we recommended the establishment of a working group with the view of establishing a pragmatic avenue for ratification of the Convention.

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