

**MRCI's submission to the Committee on Migrant Workers and the  
Committee on the Rights of the Child Joint General Comment on the Human  
Rights of Children in the Context of International Migration**

**February 29<sup>th</sup>, 2016**



## **1. Introduction**

The Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote the rights of migrant workers and their families living in situations of vulnerability throughout Ireland. The MRCI works collectively with migrant workers to become involved in decision-making processes that affect their lives. We seek to influence policy, build public awareness on migration issues, undertake research and document the experiences of migrant families. The MRCI supports locally based initiatives and networks at a local, national, European and international level. In 2015 MRCI provided information and support to over 2,000 people from 117 different countries.

## **2. Migrant Workers**

MRCI works with migrants in low-paid and precarious work at risk of poverty, discrimination and social exclusion for over 14 years. We work predominantly with Non-EU migrants to ensure their access to rights and entitlements. According to the CSO, in 2015 there were 193,400 Non-EU migrants living in Ireland which represent 33.5% of the overall migrant population. The vulnerabilities and precariousness associated with immigration status merits special consideration when developing strategies to ensure equality outcomes for migrants.

### **3. Migrant Children in Ireland.**

According to the 2011 Census, there were 110,008 children living in Ireland with a foreign nationality, migrant children represent 14.7% of all children. Among them 33,716, or 30.6% indicated having a non-European nationality. Publically available data on migration and disaggregated by age is limited, with the Census remaining the most reliable source of information. Since the last Census, on average more than 9,000 PPS numbers (social security numbers) were allocated annually to children under the age of 15 with a foreign nationality. The proportion of migrant children among the overall migrant population stood at 18.6%, significantly higher than the EU average of 11%.

### **4. Scope of the Submission**

The MRCI welcomes the opportunity to contribute to the development of a Joint General Comment on the Human Rights of Children in the context of migration. By means of Article 29.3 of its Constitution, Ireland recognises the principles of international law as its rules of conduct in relations with other States. These principles include human rights law as insofar as it forms part of customary international law.

Ireland acceded to the Convention on the Rights of the Child in 1992; its protocol on the involvement of children in armed conflict in 2002 and its optional protocol on a communications procedure in 2014. Ireland has not yet ratified the optional protocol on the sale of children, child prostitution and child pornography.

Ireland's progress in relation to the CRC was reviewed by the Committee on the Rights of the Child in January 2016. The Committee published its Concluding observations on January 29<sup>th</sup> 2016.

Ireland has yet to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

### **5. Best Interest of the Child**

In 2012, through the means of a referendum, Ireland introduced the right of the child to have his or her best interest taken as a primary consideration in decision-making. As recommended by the Committee on the Rights of the Child (CRC) by means of its General Comment No 14 and in the recent Concluding Observations on the third and fourth periodic reports of Ireland, we believe the best interested of the child should be appropriately integrated and applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant and have impact on children; including those related to migration.

## **6. Focus on Undocumented Children**

Undocumented children are little considered in either migration or social policies. Important developments have been made in the area of migration recognizing the need for additional protections for certain categories of migrant children. However, children, and child rights, are not yet adequately integrated into migration law, policy or practice. At the same time, while migrant children are increasingly targeted in public social policies, undocumented children are usually not considered or specifically excluded. Therefore, some children – in particular undocumented children – are falling through the gaps in protection in both policy frameworks.

As a result, children are more at risk of becoming undocumented, as their status is linked to their parents' and their individual situations are rarely considered in decisions to grant or refuse residence permits or claims for international protection. Once undocumented, children are usually subject to the same immigration control measures as their parents, including detention, deportation and restrictions on basic social rights, without due consideration of the impacts on children, their rights, and their well-being and development in the short and long term.

In Ireland, MRCI estimates there are between 2,000 and 5,000 undocumented children and young people; children born to undocumented parents, along with those who have come with their parents at a young age and grew up in Ireland face very uncertain futures. They consider Ireland to be their home, yet have no right to residency or citizenship.

Ireland's ad-hoc and discretionary immigration system leaves very few and limited ways for undocumented young people to regularise their status. Significant barriers to regularisation exist, including a fear of deportation and lack of independent and reliable information on the immigration system. Once adults, young people who came to Ireland with their parents, cannot make separate applications to regularise their status but are tied to their parents' situation and considered as part of a family unit; limiting their chances of success.

In its concluding recommendations for the periodic reports for Ireland the CRC emphasised that all children are entitled to the full protection and implementation of the Convention, irrespective of their or their parents' legal status. It recommended that Ireland expeditiously adopt a comprehensive legal immigration framework in accordance with international legal standards and ensure that it provides for formal procedures for conferring immigration status to children and their families who are in irregular migration situations; including the provision of independent legal advice on their immigration status.

Over the past number of years, the MRCI has been advocating for the passage of comprehensive immigration legislation conferring rights to migrants including independent status to their children; as well as pressing for the introduction of a regularisation scheme for the estimated 23,000 to 30,000 undocumented migrants in the State.

## **7. Issues of Concern**

- Lack of legislative framework relating to migration in Ireland.

Ireland continues to lack a consolidated framework relating to immigration and asylum issues and this in spite of recommendation 106.60 of the Human Rights Council (HRC). Currently, the Irish immigration system is based on piecemeal legislation and ad-hoc administrative policies and practices and underpinned by Ministerial discretion. The system should be transparent, robust and fair, with rights and entitlements clearly outlined and enshrined; comprehensive legislation is urgently needed to ensure this.

Children are disproportionately affected as they are not registered until they reach the age of sixteen; once registered their permission to remain is linked and dependant on that of the main parent in the family. The CRC has urged the State to adopt a legal framework which is in accordance with international human rights standards and addresses the needs of migrant children.

Currently, in spite of recommendation 107.21 from the HRC there are no legislated rights to family reunification or permanent residency. Legislation should introduce rights to dependent family members as well as an independent appeals mechanism.

- Lack of entitlement to Family Reunification (Right to Family Life)

Currently, in spite of recommendation 107.21 of the HRC there are no legislated rights to family reunification. Family Reunification is granted at the discretion of the Minister for Justice; the guidelines for the granting of applications including the financial threshold are too onerous and effectively separate families, sometimes for life, which cannot meet the recommended income levels. There is no appeals mechanism for negative decisions, and a review is only granted at the discretion of the Minister's office and carried out by the Supervisor of the initial deciding officer, and as such lacking independence.

- Access to PPSN (Right to Social Security)

In Ireland the Personal Public Service Number (PPSN) acts as the gateway for engagement between individuals and the State and its services. Although there is no legislative requirement to provide proof of lawful residence to obtain a PPSN, the State has in recent times insisted in the provision of proof of immigration registration to grant PPSN. Children of Irregular migrants have been denied social security numbers and their access to social protection entitlements is made significantly more difficult.

➤ Access to Child Benefit (Right to Social Security)

Child Benefit has been conceived as an universal payment to all children in the Irish State, yet since the introduction of the Habitual Residence Condition, parents have to satisfy of a clause of two-year residence in the State before qualifying for payment, this rule and its application have systematically disadvantage children of migrants; both in regular and irregular status. Furthermore, other categories of migrants such as international students and irregular migrants will never be in a position to satisfy the Habitual Residence Condition: effectively they are barred from accessing Child Benefit.

Child Benefit often represents a safety net from poverty or an exit strategy for spouses experiencing situations of domestic violence, the CRC has recommended that the fulfilment of the HRC be removed and made accessible to all children irrespective of legal status.

➤ Access to Education (Right to Education)

Undocumented children face a number of difficulties in accessing education. Although access to primary and secondary education is by law accessible to all children, issues related to PPSN can result in difficulties registering children in school. Certain State exams also require a PPSN effectively prohibiting undocumented children without PPSN from completing their educational curriculum.

Upon completion of secondary level, adolescents and young people may face additional difficulties in pursuing third-level education. As citizenship is the deciding factor for fee-structure, migrant some children face higher costs than their Irish counterparts and cannot apply for grants and tuition relief. Those with an irregular status may be unable to register with third level institutions or face the same fees as international non-European students even if they were born in Ireland and completed their entire education in the State.

➤ Right to Health

Currently in Ireland, primary care is free of charge for all children up to the age of 12; there are plans to increase this until the age of 18. Yet, as outlined above, lack of a social security number can represent a barrier for accessing health care. The otherwise prohibitive costs of primary care in Ireland make it difficult for a number of families and children to realise their right to the highest attainable level of health.

Access to secondary care is dependent on whether a person is ordinarily resident in the State or not, although the legislation does not require proof of immigration status to determine ordinary residence, proof of the parent's status is often requested, effectively preventing many children and their families from care.

Finally, irregular status disproportionately impact on the mental health and well-being of young people growing up undocumented in Ireland and facing an uncertain future. Many children and young people are not open about their lack of status due to a fear of stigma

and rejection from friends and fear of exposure to the authorities and ultimately deportation. Being undocumented, they cannot travel and as such are separated from their extended family and miss from important family moments, like weddings and funerals.

Once they start to become more aware of their limited option available after leaving secondary school they can experience frustration, hopelessness and mental health problems. Undocumented children and young people face significant barriers in accessing mental health support services, most services involve high costs and residence status is often required to access subsidised services.

## **8. Community Work Practices**

Over the number of years, MRCI has sought to use Community Work methodology to address some of the issues experienced by migrant children and young people irrespective of status:

### ➤ Community Work

Community work aims to address poverty, social exclusion and inequality. It is defined as a developmental activity comprised of both a task and a process. The task is social change to achieve equality, social justice and human rights, and the process is the application of principles of participation, empowerment and collective decision making in a structured and coordinated way.

MRCI's community work values and methods are fully reflective of Art 12 of the CRC – emphasising the right of children and young people to express their own views on issues that affect their lives.

Here are examples of some promising practices carried out with migrant children and young people.

### ➤ mPower - <https://vimeo.com/31951767>

Mpower, MRCI's youth empowerment project, brought together young non-EU migrants to share their experiences and stories about growing in Ireland. Through Mpower and its participative and creative youth work process, a group of young people shared their stories and documented on film their experiences of having made Ireland their home. *Making Ireland Home* explores contemporary themes such as identity and diversity from a migrant youth perspective in a multicultural Ireland. These stories, shared with humour and honesty, give insight into the some of the problems young migrants experience in Ireland: racism, difficulties accessing third level education and barriers in securing long term residency and citizenship. What all of these young people had in common is that whilst none were born in Ireland, all had grown up here, put down roots and called Ireland home. Excerpts of the

documentary have been added to the National Curriculum in the field of interculturalism and used in schools across Ireland.

- Migrant Education Access - <https://vimeo.com/75200361>

In response to this growing problem facing migrant families, MRCI formed the Migrant Education Access Campaign Group in April 2012. MEA is made up of concerned parents and young people, who along with allies and supporters, are campaigning for equality of access to third level education for children of non EU migrants. MEA has achieved a lot in a short period, outreaching to hundreds of migrant families, raising awareness of the problem in national media and supporting leaders to emerge through its leaders group which meets regularly to plan and advance actions.

- Young Paperless and Powerful - <https://vimeo.com/132984011>

MRCI engages and supports young undocumented people to come together, share their experiences and develop skills, knowledge and analysis around the issues they face because of their status and the immigration system in Ireland. MRCI's Young, Paperless and Powerful youth project is a fun, safe space specifically for undocumented young people to share, create and have their voice heard. Through this project young people campaign and strategise ways to challenge the inequality and discrimination they face in Ireland. It is essential young people are given the opportunity to participate and lead discussions on the systems and laws which impact their lives. Neither the Department of Justice and Equality nor the Department for Children and Youth Affairs provides specific funding or resources for targeted youth work with people from a migrant or ethnic minority background. State funding and structures in anti-racism and integration work have been cut continuously. Despite 17% of the population being born outside Ireland and many children and young people of a migrant background growing up and living in Ireland, the Government has failed to acknowledge or set in place any policies to examine or analyse the experience and issues facing young people of a migrant background in Ireland. In this climate young people have very little power or say in the way systems and policies are designed or treat young people.

## **9. Recommendations.**

1. Introduce a legislative framework relating to immigration as per recommendation 106.60 of the Human Rights Council and recent recommendations by the Committee on the Rights of the Child.
2. Afford legislated rights to family reunification as per recommendation 107.21 of the Human Rights Council
3. Introduce a regularisation scheme for undocumented migrants, with particular attention to children and their parents who are in an irregular situation as recommended by the Committee on the Rights of the Child.
4. Ensure all children irrespective of status have access to a social security number.
5. Ensure all children irrespective of status have access to Child Benefit as recommended by the Committee on the Rights of the Child.
6. Ensure all children irrespective of status have access to health care, including primary, secondary and emergency care.
7. Make available support services for the mental health of children in a situation of migration, particularly for those with an irregular status.
8. Make access to third-level education fees and grants conditional on residency rather than on citizenship.
9. Ensure all children irrespective of status have access to primary and secondary education and relevant State exams.
10. Promote and resource practices where children in a situation of migration irrespective of legal status can have their voices heard.
11. Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.