



Immigrant Council
of Ireland



Child Migration Matters

Executive Summary

Children and Young People's Experiences of Migration

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The Convention on the Rights of the Child (CRC) is a universal blueprint for the treatment of children under 18 years. With its ratification of the CRC in 1992, the Irish Government undertook to take all appropriate legislative, administrative, and other measures for the implementation of CRC rights and committed to respect and ensure CRC rights to each child within its jurisdiction without discrimination of any kind. Since 1992, much progress has been made in the implementation of children's rights in Ireland and many concrete steps have been taken to incorporate the principles of the CRC into Irish law. The Constitution now underscores that the best interests of the child must be paramount in decision-making in family law matters and expects that children's views are taken into account in such cases in line with their age and understanding.

Despite this and other progress, concerns remain about the treatment of migrant children as one of the most vulnerable groups of children in Ireland. In 2016, the Committee on the Rights of the Child expressed concern at the 'continued inadequacy of the framework' to fully address the needs of migrant children. The Committee pointed, in particular, to the lack of timely advice and information for such children, highlighting the fact that this frequently resulted in such children not receiving timely clarification of their migration status. Emphasising the requirement that all children are entitled to the full protection and implementation of their rights under the Convention, the Committee urged Ireland to ensure that the rights enshrined in the Convention are guaranteed for all children, regardless of their migration status or that of their parents. It made specific recommendations to adopt a comprehensive legal framework to address the needs of migrant children in accordance with human rights standards, to ensure that the legal framework includes clear and accessible formal procedures for conferring immigration status on children and their families in irregular migration situations and to take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status.

These observations and recommendations from the Committee on the Rights of the Child form the backdrop to this detailed and comprehensive report from the Immigrant Council of Ireland on the situation of migrant children. Following on from

the Committee's recommendation that a legal framework be adopted to address the needs of child migrants, the Immigrant Council sought to document the migration experiences of children in Ireland with a view to identifying those needs. Crucially, the research heard from a number of young adults who had travelled to Ireland as children, recording their experiences of arriving in the State, engaging with the immigration system and living in the care of the State. The researchers also spoke to professionals who represent and support migrant children about the challenges they face supporting these young people. Taking into account the many national and international legal standards, the report draws conclusions about how the system needs to be reformed to properly meet the needs of migrant children. It concludes by setting out detailed and precise recommendations as to how this can be done.

There are many striking features of this study. First, the report provides a rich and honest testimony of the experiences of young migrants in Ireland. Although those who participated in the study were, by then, over 18 years, their accounts present important evidence of the contemporary experiences of migrant children in Ireland. Most importantly, the research speaks to the importance of hearing the voices of these young people, it facilitates the recording of their lived experiences as experts in their own lives. It presents an unequivocal case for reform as their experiences – positive and negative – highlight how best to shape our laws, policies and procedures.

Secondly, the case studies are varied and each one is a compelling narrative of a young life, full of challenge and complexity. They deal with the relationship between a child's migration status and other rights by highlighting the impact that precarious immigration status can have on a child's ability to access the right to education, right to access social welfare supports, right to earn a living and the right to respect for family relationships. The case studies illuminate how fundamental rights can be denied by default, when the lack of legal status deeply affects a child's human needs, ability to socialise and integrate, to have friends – basic needs so crucial to a person's health and well-being. The case studies also highlight the impact on these young lives of the lack of information, advocacy and support. The accounts of those young people who experienced abuse including sexual exploitation are

particularly harrowing and the reality that opportunities were missed to provide these vulnerable young people with protection is a shameful indictment of our lack of humanity.

At the same time, the case studies showcase positive outcomes. They highlight that when accurate information and advice is provided, when a Guardian ad Litem or social worker are appointed, or where structured supports are put in place, these measures can make a real difference to the realisation of young people's rights. In this way, the case studies are not all about what the State does wrong or badly, they shine a light on the positive outcomes that can be achieved when we get things right – many of the case studies highlight how small measures can have a positive effect, not just on the person concerned but on their ability to contribute to society through educational achievement and work. Everyone gains. What is remarkable perhaps is that despite the challenges faced by these young people, their stories are so often full of hope, resilience, ambition and self-respect. Amidst this enormous adversity, these children have shown adults how to challenge despair and abandonment. Their stories suggest that we must never give up hope in finding a key to unlock the door to a new life of certainty and fulfilment.

Beyond the individual stories, the research illustrates very effectively how, in the immigration setting, the right to control borders frequently trumps the rights of migrant children. While Ireland is not unique in this – immigration law is often the least likely area to be permeated by children's rights – it is nonetheless disappointing that we care less for migrant children than we do for 'our own'. This report clearly highlights that we need to reflect more carefully on our priorities, to re-evaluate our commitment to be humane and respectful to all children as our commitment under the CRC requires. This must be followed by concrete and immediate action.

This research will stand out as a milestone in our understanding of the needs of migrant children. Its many important conclusions and practical recommendations will ensure the implementation of a legal framework is consistent with children's rights. It is the stories of the young people captured here that are most powerful.

FOREWORD

Having recorded the testimonies of these young migrants, we can never say that we did not know what they went through or that we did not understand how little was required to address their needs. We can only say that we decided not to respond. Unless that is, we decide to take the opportunity now to put the Convention on the Rights of the Child at the heart of the immigration system in the interests of migrant children. The decision is ours.

Professor Ursula Kilkelly

School of Law,
University College Cork

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I would like to express my sincere thanks to the many people who contributed to this report.

I am deeply indebted to all of the young people who graciously gave their time to share their personal experiences and reflections for this project. Their thoughtful responses and insights allowed us to glimpse the reality, joys and frustrations of making Ireland their new home, and to identify steps that can be taken to improve the lives of migrant children in the future.

I am further grateful to the social workers, guardians ad litem, aftercare workers, youth advocates and others who participated in our outreach sessions for their honesty and helpful contributions. Thanks to Nasc, the Irish Immigrant Support Centre, for hosting the outreach session in Cork. Thank you to the legal practitioners and guardians ad litem who were interviewed on an individual basis.

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Lastly, thank you for reading. I hope that this report assists in our collective efforts to ensure that the rights of all children in Ireland are respected, protected and fulfilled.

Katie Mannion

Solicitor
December 2016

This document provides an executive summary of the full report. For any of the chapter references included, please see the relevant chapters in the full report. An electronic version of the full report can be accessed online at www.immigrantcouncil.ie.

Background

The Immigrant Council of Ireland is an independent, non-governmental human rights organisation that advocates for the rights of migrants and their families and acts as a catalyst for public debate as well as legislative and policy change. The Immigrant Council is an independent law centre that provides legal services to migrants and their families.

Over the past 15 years, much of our legal support and representation have included issues and rights that greatly affect children, either directly or indirectly. In the past 10 years, we have increasingly been asked to provide information, legal advice and representation directly to children and young people, and to their social workers and guardians ad litem.

Through our casework we found that many young people had arrived in Ireland as children but had reached adulthood without the appropriate steps being taken to secure their immigration status or apply for naturalisation as Irish citizens. In many cases, they found themselves as undocumented adults or with inappropriate permissions to reside. This was causing them significant hardship.

Reasons for research

In January 2016, the United Nations Committee on the Rights of the Child examined Ireland's compliance with the UN Convention on the Rights of the Child (UNCRC). It recommended that Ireland adopt a legal framework to address the needs of migrant children. This research was undertaken to document what those needs were and how the absence of a framework for legal migration impacted children's and young people's lives. Until now, research and policy analysis on child migration has focused almost exclusively on the particularly vulnerable group of migrant children – those who are

separated children seeking asylum.¹ This means that the broad range of experiences and needs of migrant children who have arrived in Ireland without seeking international protection have not been investigated. This includes children who travelled alone, those who moved with their families or travelled to join their families after they had settled. If policy and legislation is to be formulated to consider the needs of all migrant children, their particular needs must be researched, discussed, and understood. We hope this report will get the discussion started.

Children affected by migration face particular difficulties and barriers. Ireland's immigration processes and policies are unclear and inconsistently applied. They do not address the wide range of situations in which migrant children find themselves or provide the support they need. We look at the steps that must be taken in law, policy and practice to respect, protect and fulfil the rights of children from migrant backgrounds. The Immigrant Council has devised a list of recommendations (see chapter 11) for key stakeholders in terms of processes, and law and policy reform.

Research methodology

We conducted research on the experiences of migrant children and young people in Ireland using both qualitative and quantitative methods of research. We spoke to young adults who had moved to Ireland as children about their experiences of migration, integration and navigating the immigration system in semi-structured, one-to-one interviews. We also examined case files from our independent law centre.

We also spoke to professionals who represent and assist children and young people about the challenges they met in supporting young migrants, and the gaps they observed in the protections for children.

¹Publications include: Quinn, E, Joyce, C and Gusciute, E, Policies and Practices on Unaccompanied Minors in Ireland, Economic and Social Research Institute, November 2014 available at: http://emn.ie/files/p_201506041138592014%20UAMs%20in%20Ireland.pdf; Ní Raghallaigh, M, Foster Care and Supported Lodgings for Separated Asylum-Seeking Young People in Ireland: The views of young people, carers and stakeholders. Barnardos and the HSE, Dublin, 2013; Arnold, S and Sarsfield Collins, L, Closing a Protection Gap, Irish Refugee Council, 2012; Mooten, N, Making Separated Children Visible - The Need for a Child-centred Approach, Irish Refugee Council, 2006; Smyth, C, European Asylum Law and the Rights of the Child, Routledge Research in Asylum, Migration and Refugee Law, 2014.

EXECUTIVE SUMMARY

We received feedback from participants of training and outreach sessions with social workers, guardians ad litem (GALs) and other professionals working with migrant children. Questionnaires were completed by social workers and other professionals working with migrant children, and we held in-depth interviews with various professionals working with and representing migrant children.

We also reviewed literature and international, EU and domestic laws and policies relevant to the experiences of child migrants, and contrasted comparative practices.

Case studies

In this report, we include 32 case studies (see chapter 2) that reflect the experiences of the individuals who participated in this study. They include young people who moved to Ireland with their families who were taking up employment; who moved independently; who joined their parents after they had settled in Ireland; who were trafficked to Europe as children, who were stateless on arrival, and who were seeking international protection.

They provide an insight into some of the issues and difficulties that are uniquely experienced by migrant children and young people in Ireland.

Legal background

While States have the sovereign power to control their borders and formulate migration policies, they also have a duty to respect the human rights of migrants when implementing immigration law and policy. Ireland has obligations under international human rights law, EU law and the European Convention on Human Rights to respect children's rights. These obligations include hearing the voice of the child, considering children's best interests in decisions and policy-formation, and respecting children's

rights without discrimination of any kind, including on the basis of nationality or immigration status. Ireland's Constitution also expressly affirms the rights of all children. Despite these obligations, the interaction of migrant children with the immigration system is not addressed in a coherent way.² Ireland's law relating to immigration is based in a number of different instruments. Many aspects are not covered directly by legislation. Immigration law remains largely on an administrative basis. Immigration decisions on issues such as visas, residence permissions, type of permission granted, leave to land and naturalisation are based on Ministerial discretion and there is no independent appeals mechanism. This results in immigration decisions being made in an inconsistent manner. It also means that Ireland's immigration law lacks transparency and clarity.

Need for child-sensitive legal framework for migration

The inadequacy of safe, legal migration paths to Europe has meant that people have risked their lives taking irregular migration routes on un-seaworthy boats or across land. This has resulted in the deaths of thousands of migrants and asylum seekers, including more than 600 children who died trying to cross the Mediterranean in the first nine months of 2016.³

For the rights of children to be protected, legal migration routes must be put in place, resettlement programmes for refugees implemented and relocation mechanisms⁴ put into operation. There must be transparent systems in place to grant families entry visas to enable them to travel safely as a unit, as well as family reunification opportunities with reasonable requirements.

² Proposed legislation to comprehensively reform the immigration, residency and asylum systems in a modern and coherent legislative framework has not been enacted. Instead, the aspects of the previous Bills relating to international protection were singled out and enacted. Better Outcomes Brighter Futures – The national policy framework for children and young people 2014-2020 envisaged that the proposed legislation enactment of the Bill would “address in a comprehensive way the interaction of migrant children with the immigration system”.

³ Save the Children press release <https://www.savethechildren.net/article/600-children-have-died-mediterranean-year>, 3 October 2016.

⁴ Resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement. For further details, see <http://www.unhcr.org/resettlement.html>. Relocation is the transfer of asylum seekers who are in clear need of international protection from one EU Member State to another European State. Their asylum application will only be examined once the relocation has taken place. For further details, see <https://www.easo.europa.eu/>; http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf.

Immigration law issues for migrant children in Ireland

Children in Ireland are directly affected by the absence of a comprehensive legal framework on immigration in Irish primary law. The absence of legal provisions setting out appropriate immigration status and rights for children in different situations, combined with a lack of guidelines and the reliance on Ministerial discretion results in different outcomes for children in similar circumstances. The system is not fair or transparent and creates confusion for children, their parents and other advocates.

International law requires that “all children, including children accompanied by parents or other legal guardians, must be treated as individual rights-holders, their child-specific needs considered equally and individually, and their views appropriately heard”.⁵ States are required to ensure due process and access to effective remedies.⁶ This includes the availability of an independent appeals mechanism.⁷ The Committee on the Rights of the Child recommends that children leaving care should be ensured access to long-term regular migration status and reasonable opportunities for completing education and integrating into the labour market”.⁸

However, children are largely invisible in Ireland’s immigration system. Their specific, individual rights and needs are not given adequate consideration. Their rights to due process are limited, and they do not have access to an independent appeals mechanism.

⁵ Committee on the Rights of the Child, day of general discussion on the rights of “all children in the context of international migration”, 2012, Para 74.

⁶ Article 2 ICCPR, Article 13 ECHR, Article 47 EU Charter on Fundamental Rights: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.”

⁷ Committee on the Rights of the Child, Day of General Discussion on the rights of “all children in the context of international

⁸ UN Committee on the Rights of the Child, Day of General Discussion on the rights of “all children in the context of international migration”, 2012, Para. 69. migration”, 2012, para 74.

Inconsistencies in stamps

Immigration decisions go to the heart of a child's wellbeing. Yet, little policy consideration appears to be given to the appropriate type of permission to grant children when they are required to register at 16. The Irish Naturalisation and Immigration Service (INIS) does not provide guidance to its staff or to Garda National Immigration Bureau (GNIB) officers on the appropriate immigration permission or stamp to issue to children resident in the State.

The lack of policy guidance has resulted in stamps being issued to young people in an inconsistent manner as well as inappropriate stamps being granted. For example, young people have been inappropriately granted Stamp 2 for international students when their primary purpose in the State is as dependents of their lawfully resident non-student parents, rather than for study.

Young people granted Stamp 3 reported frustration that they could not access part-time employment or work experience to earn pocket money and gain experience.

Children under 16

Until a child reaches the age of 16, their immigration permission is assumed to be the same as that of their parents. They are not granted child-specific permissions and cannot access any confirmation that they have permission to reside in the State. This can lead to difficulties in establishing their personal residence history. Children in the care of the State face particular challenges in this regard where they may not have contact with the parents from whom their immigration status is assumed to derive, and in the absence of legal provisions specifying that children in care are lawfully resident in the State.

The absence of individual immigration permission for children under 16 is poorly understood and can lead to confusion. The position is not clearly set out on the INIS website. Some young people were asked to present proof of individual residence permission to Government Department bodies and to educational institutions. The provision of a standard letter to children confirming their lawful presence without the need for individual permission could alleviate this problem. Clear information and guidelines to GNIB and INIS regarding immigration permission for under 16s should be widely distributed and easily available from the Department of Justice. It should also be clarified that children who are in the care of the State have permission to reside in Ireland as well as clarifying the form such permission should take to ensure full access to rights.

Barriers to regularising immigration status

Practical challenges can sometimes prevent people from registering for the first time or keeping their immigration status up to date, which results in them being undocumented in the State.

Many of the young people experienced difficulties in obtaining a valid passport from their country of origin which they required in order to register. This meant that they did not register and became undocumented. It is vital that procedures are clarified and that young people and support workers can access information on applying to register without a passport in exceptional circumstances.

When young people turn 18, they are no longer exempt from the registration fee of €300. This emerged as a significant hurdle for many young people, particularly care-leavers, to remain documented.

Assistance with immigration matters while in care

Where children are in the care of the State, timely assistance in securing their immigration status or applying for naturalisation is essential to their ability to access services.

The support provided by the social workers while children are in care is crucial in engaging with immigration procedures. As one social worker observed: “You’re their ‘everything’. You’re their support, their mother, their advocate... who would do that if they’re adults?”

Many young people spoke of their social workers’ support in securing their immigration status or applying for citizenship. Action taken early resulted in positive outcomes for those young people. Others expressed frustration that they had received inadequate assistance in relation to immigration matters while they were in care.

Social workers reported that they had received advice to wait until a child reached 18 years to address their immigration status or apply for Irish citizenship. They outlined how this advice had been relied upon to the detriment of children and young people. As a barrister working in the areas of both immigration law and child care law has stated, failure to apply for formal permission for a child in care to live in Ireland before they reach 18 means they “may go into the general immigration process without the assistance and the weight of the Child and Family Agency behind them and in support, and it may leave the child very vulnerable in trying to navigate this incredibly complex and difficult system”.⁹

⁹ Speaking at the Independent Guardian Ad Litem Agency conference, March 2016.

Being undocumented, and the resulting uncertainty about the future, can cause young people significant stress.

Unresolved immigration status also limits life opportunities, affecting a young person's capacity to engage in further education and employment, and access social welfare and housing support.

Comparative practice: granting children independent residence status

Many countries recognise children's rights as individuals and grant children appropriate permissions independently of their parents' permissions. For example, Germany and Canada allow children to hold independent residence permits in their own right.¹⁰

Many countries also grant specific permissions to children in State care, recognising their special position and need for individual consideration. In Spain, children who are protected by the Civil Service or under court order by any other entity are considered to be regularly and lawfully resident in Spain.¹¹ In the Czech Republic, the law provides an independent right of permanent residence to children who have been placed in the care of the State.¹² Norway and the US have public policies or guidelines that outline the actions that social workers and other child welfare practitioners should take to determine and resolve the immigration status of children in care.¹³

Ireland can learn from these practices to develop appropriate permissions for children, particularly those in the care of the State.

¹⁰ Government of Canada, Humanitarian and compassionate grounds (Government of Canada, modified 16 June 2016), <http://www.cic.gc.ca/english/refugees/inside/h-and-c.asp>. Residence Act in the version promulgated on 25 February 2008 (Federal Law Gazette I p 162), last amended by Article 3 of the Act of 6 September 2013 (Federal Law Gazette I p 3556).

¹¹ Article 35 (7) of the Spanish Organic Law 2/2009.

¹² Czech Republic Act on residence of foreign nationals (No 326/1999 Coll).

¹³ US Department of Homeland Security – US Citizenship and Immigration Services, Eligibility status for SIJ <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> and European Migration Network (EMN) ad-hoc query on issues related to care orders (EMN, 2014, p11), http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/miscellaneous/536_emn_ahq_care_orders_17032014_en.pdf

Family Life

The right to family life is a fundamental aspect of EU law¹⁴, international human rights law¹⁵ and Irish constitutional law.¹⁶ The Committee on the Rights of the Child recommends that “States should ensure that their migration policies, legislation and measures respect the right of the child to family life and that no child is separated from his/her parents by State action or inaction unless in accordance with his/her best interests”.¹⁷ However, immigration law and policy increasingly dictates that parents migrate first, leaving their children behind in the country of origin until they establish

¹⁰ Government of Canada, Humanitarian and compassionate grounds (Government of Canada, modified 16 June 2016), <http://www.cic.gc.ca/english/refugees/inside/h-and-c.asp>. Residence Act in the version promulgated on 25 February 2008 (Federal Law Gazette I p 162), last amended by Article 3 of the Act of 6 September 2013 (Federal Law Gazette I p 3556).

¹¹ Article 35 (7) of the Spanish Organic Law 2/2009.

¹² Czech Republic Act on residence of foreign nationals (No 326/1999 Coll).

¹³ US Department of Homeland Security – US Citizenship and Immigration Services, Eligibility status for SIJ <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> and European Migration Network (EMN) ad-hoc query on issues related to care orders (EMN, 2014, p11), http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/miscellaneous/536_emn_ahq_care_orders_17032014_en.pdf

¹⁴ The Free Movement of Persons in the EU establishes the rights of EU nationals and their family members, including their children, to reside in Member States of the EU other than their own, subject to certain conditions. (Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. EU citizen children also enjoy the right to be joined or accompanied by their non-EEA national parents who are their care-givers. (Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department, Case C-200/02 (19th October 2004); Mary Carpenter v Secretary of State for the Home Department, Case C-60/00, (11th July 2002); London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department, Case C-310/08 (23rd February 2010); Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department, Case C-480/08, (23rd February 2010). As EU citizens, children have a fundamental right to reside in the EU, which is separate to the Free Movement Directive. This means that States are prohibited from removing the custodial parents of minor children from the children’s State of citizenship where such removal would result in those children being unable to enjoy their right to reside in the European Union.

¹⁵ Article 10 CRC: Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner; Article 8 ECHR (Right to private and family life). This is not an absolute right but the State must find a fair balance between the individual’s rights and the rights of the State to control its borders. The best interests of the child is increasingly a feature of the case law of the ECtHR.

¹⁶ Article 41.

¹⁷ Committee on the Rights of the Child, day of general discussion, 2012, para 83.

themselves legally, economically and socially.¹⁸ This causes prolonged family separations which can have negative effects on children's wellbeing.¹⁹

Ireland's provisions on family reunification for Irish citizens and non-EEA nationals who are resident in Ireland are not based in legislation.²⁰ Decisions are guided by the Family Reunification Policy document²¹, and extensive discretion is retained by the Minister for Justice and Equality.²²

The discretionary nature of decisions on family reunification, which is not rights based, the long processing times and the absence of an independent appeals mechanism for family reunification decisions are of concern.

The guidelines impose unnecessary family separations through restrictive eligibility criteria. Migrants working in Ireland, on the basis of work permits, and Stamp 4 holders can only sponsor members of their nuclear family after one year, and other family members after 5 years.²³ A further barrier to children joining parents who are working in Ireland is the high level of income requirements.²⁴

¹⁸ See Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law*, Oxford University Press, Chapter 4, A Framework for Family Reunification, p. 111, referring also to S Castles, 'Guestworkers in Europe: A Resurrection? (2006) 40 *International Migration Review* 741.

¹⁹ See for example, Mazzucato, V, Cebatori, V, Veale A, While, A, Grassi, and Vivei, J, 'International parental migration and the psychological well-being of children in Ghana, Nigeria, and Angola', *Social Science & Medicine*, Volume 132, (May 2015) p 215-224.

²⁰ Persons granted international protection, EEA nationals and scientific researches enjoy a statutory right to family reunification.

²¹ See INIS Policy Document on Non-EEA Family Reunification, p 4, <http://www.inis.gov.ie/en/INIS/Family%20Reunification%20Policy%20Document.pdf/Files/Family%20Reunification%20Policy%20Document.pdf>

²² For discussion, see Becker H, Cosgrave C and Labor, M, *Family Reunification: A Barrier or Facilitator of Integration*, Immigrant Council of Ireland, October 2012. http://immigrantcouncil.ie/files/publications/ea09f-final_online_version_ireland_country_report.pdf. Children's Rights Alliance, *Are We There Yet?* para 211 and 212. http://www.childrensrights.ie/sites/default/files/submissions_reports/files/AreWeThereYet.pdf

²³ Green card holders, investors, entrepreneurs and business permission holders are eligible to sponsor family members immediately and without having accrued prior earnings. They must have a net income that is above the family income supplement. They only become eligible to apply for members of their non-nuclear family members after five years.

²⁴ Category B sponsors must have a gross income in each of the previous two years in excess of that applied by the Department of Social Protection in assessing eligibility for Family Income Supplement (FIS) See INIS Policy Document on Non-EEA Family Reunification, p 47-48.

14 of the young people interviewed moved to Ireland to join their parent or parents after they had settled in Ireland. In the absence of post-reunification family support, some of those reunifications later broke down and children were taken into the care of the State.

Child victims of trafficking

Four of the young people interviewed as part of this research – Emma, Hope, Harmony and Maria – were trafficked to Europe as children. Their experiences highlight many of the deficiencies of Ireland’s mechanisms for the protection of vulnerable children, the protection of victims of trafficking and the formal identification system for victims of trafficking.

Ireland’s identification system for victims of trafficking is based in Administrative Immigration Arrangements, rather than in law, and is linked to immigration permission.²⁵ Asylum-seekers, EU nationals and Irish nationals are excluded from the benefit of identification, in a discriminatory manner, which fails to respect their rights.²⁶ Failures or delays in identifying victims of trafficking can lead to further trauma for the victims. The arrangements do not have special identification guidelines for child victims and do not provide for long-term solutions for them. The Council of Europe Committee recommended that Ireland sets up a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists and ensures that the best interests of the child are the primary consideration”.²⁷

²⁵ The Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking

²⁶ Immigrant Council of Ireland, Asylum seeking victims of human trafficking in Ireland – legal and practical challenges (November 2011) p 4-8, https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/asylum_seeking_victims_of_human_trafficking_in_ireland_1.pdf

²⁷ Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, 26 September 2013, Greta (2013) 15, Para 166.

Age assessment

Age assessments are carried out by States to determine a person's age or age range to establish whether they are a child or an adult, so that appropriate protections are put in place.

There is currently no legal framework or standardised procedures for age assessment, and procedures are therefore unclear. The International Protection Act will introduce a medical model of age assessment in respect of international protection applicants, despite international and EU law stating that such a model should only be used as a last resort. It is regrettable that a social age assessment was not introduced. This would include psychosocial development and available documentation, undertaken by an independent interdisciplinary body consisting of people not involved with the child's care or protection needs.²⁸

The young people interviewed, who were engaged with age determination procedures, found the method in which their age was questioned intimidating and humiliating. One of the young people interviewed described how she was transferred to another country while her age assessment was ongoing. Due to an incorrect assessment, aged 17 and pregnant, she was placed in direct provision with adults and no support system, having escaped from a situation of trafficking.

Access to information for migrant children and care professionals

Access to information is an essential aspect of the right of access to justice and due process, as well as of children's participation rights. It is critical for children to know and understand their immigration-related duties and to taking appropriate action. Children in Ireland face significant challenges in accessing clear, accurate and child-friendly

²⁸ See for e.g. Immigrant Council of Ireland, Comment on Publication of IP Bill 2015; Children's Rights Alliance, Initial Submission on the General Scheme of the International Protection Bill, May 2015, available at http://www.childrensrights.ie/sites/default/files/submissions_reports/files/SubmissionInternational%20ProtectionBill2015%20_0514.pdf; Irish Refugee Council, Recommendations on the International Protection Bill 2015, November 2015, available at <http://www.irishrefugeecouncil.ie/wp-content/uploads/2015/11/IRC-Recommendations-on-International-Protection-Bill-2015-Final.pdf>

information about their immigration status, routes to regular immigration status and their duties under immigration law. The absence of clear information is a significant barrier to maintaining regular immigration status.

The INIS website provides information on immigration and citizenship.²⁹ However, both young people and social workers reported that they found the site difficult to navigate and could not find clear information regarding obligations or the practical implications of different immigration permissions. They also found it frustrating that they could not speak to a member of the Department of Justice.

Where someone does not have permission to reside in the State, the Minister may require that they reside or remain in a particular place,³⁰ or report to an immigration officer or member of An Garda Síochána at specified intervals. A non-Irish national who does not comply with these requirements “shall be guilty of an offence”. They could ultimately be removed.

It is therefore essential that migrant young people are aware of the requirements to register their presence in the State when they turn 16 and have the necessary documentation to do so. However, our research found that many of the young people interviewed, particularly those in the care of the State and the young people who were trafficked as children, did not receive any advice or information about this duty. It was only when they had difficulties accessing a service that they realised that they needed, and did not have, immigration status. Many social workers and aftercare workers said they had little knowledge of immigration requirements and, therefore, did not know that they needed to assist the children and young people in their care with such matters. Where children are in voluntary care or have not been appointed a social worker, it is likely that they experience even more pronounced difficulties in accessing relevant information about their immigration status.

²⁹ <http://www.inis.gov.ie>

³⁰ Section 14 Immigration Act 2004.

Although Aoife, Amanda, Ruth and Paul were in the care of the State, they were not provided with information about securing their immigration status at the appropriate time. To address this information gap, child-friendly, accessible information booklets and online materials on national identity and immigration matters should be made available. Social workers should receive training on immigration issues and there should be a contact point tasked with the provision of information to children in care and their social workers.

Access to legal representation

For some migrants, the complexity of both their individual situation and the law means that they need the services of specialist immigration lawyers. In those situations, access to legal assistance and legal aid is an essential aspect of the right to an effective remedy and to a fair hearing.

Young people typically do not receive legal advice or representation about their immigration status. Children's access to legal representation is inconsistent. 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. Some children in care gain access to legal representation either directly or indirectly, usually where their social workers are aware of the need to act and have personal contacts to rely on. Social workers described struggling to find solicitors with specific expertise on the relevant issues. They pointed to the valuable time lost in young people's lives when specialised legal advice was not available. Some judges order that immigration advice is sought in relation to young people in care.

The experiences of many of the young people featured in the case studies draw attention to the missed opportunities and increased vulnerabilities resulting from the lack of timely legal interventions relating to their immigration status. In the case of victims of trafficking, a lack of timely access to specialised legal representation can further increase their vulnerability and leave them at risk of being re-trafficked or further exploitation. Young people who had been in the care of the State could not rely on their parents' reckonable residence or, in many cases, could not access their parents' documentation

or files. Most of them were not offered legal advice or representation in relation to their immigration status or citizenship while they were aged under 18. The Committee on the Rights of the Child recommended that Ireland “take measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status”.

Access to citizenship

Citizenship is essential to integration and is a key element in achieving social cohesion.³² Access to citizenship should be considered within a human rights framework and reflect the principles of respect for the rule of law, dignity, equality and proportionality.³³ As well as the positive feelings of belonging and stability inherent in the conferring of citizenship, it enables access to certain rights which are confined to citizens.³¹

Citizenship and naturalisation

Irish citizenship can be acquired through birth, descent or naturalisation. A child born in Ireland whose parent is Irish or British, or had permission to reside in Ireland for three of the previous four years, is entitled to citizenship at birth.³⁴ A child born abroad who had a grandparent born on the island of Ireland or a parent who had claimed their Irish citizenship before the child’s birth is automatically entitled to claim Irish citizenship by applying for a foreign birth registration.³⁵

Children born in Ireland without an automatic right to citizenship and children who moved to Ireland can apply for naturalisation as Irish nationals when they have

³¹ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland, 1 March 2016, CRC/C/IRL/CO 3-4.

³² Immigrant Council of Ireland, *Living in Limbo: Migrant’s Experiences of Applying for Naturalisation in Ireland*, 2011.

³³ Pilgrim, L, *International Law and European Nationality Laws* EUDO Citizenship Observatory (2011). See also, Faist, T, ed, chapter 7, *Dual Citizenship in Europe: From Nationhood to Societal Integration* Aldershot: Ashgate (2007) This is reflected by the Council of Europe Convention on Nationality 1997, which Ireland has not signed.

³⁴ S 6 of the Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Acts 2001 and 2004.

³⁵ For practical details, <https://www.dfa.ie/passports-citizenship/citizenship/born-abroad/registering-a-foreign-birth/>

completed a specified period of lawful residence in Ireland, in line with certain conditions.³⁶ Naturalisation is granted at the absolute discretion of the Minister for Justice and Equality.

Children cannot apply for naturalisation independently. The application must be made by a parent or guardian. This does not respect children's evolving autonomy. It can also prevent access to citizenship where the parent or guardian is not available or willing to submit an application for the child.

An application for naturalisation can be made by a parent or guardian for children born in Ireland when the child has completed five years reckonable residence.³⁷ An application also can be made for children on the basis of Irish associations, meaning "related by blood, affinity or adoption to a person who is an Irish citizen". The situations in which successful applications are made on the basis of associations are unclear, as Irish siblings have been refused while promising sports stars have been successful.

Children who do not fall under either of these categories cannot apply for naturalisation until a parent naturalises first.³⁸ Children's applications cannot be considered concurrently with their parents'. The provisions delay children's access to citizenship.³⁹ If a parent decides not to apply for naturalisation, or their application is refused, their child is penalised.⁴⁰

³⁶ Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Acts 2001 and 2004, part III Conditions: 15 (a)(i) is of full age or (ii) is a minor born in the State; (b) is of good character; has had a period of one year's continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, has had a total residence in the State amounting to four years; (d) intends in good faith to continue to reside in the State after naturalisation; and (e) has... made a declaration of fidelity to the nation and loyalty to the State, and (ii) undertaken to faithfully observe the laws of the State and to respect its democratic values.

³⁷ Form II.

³⁸ Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Acts 2001 and 2004, section 16. <http://www.inis.gov.ie/en/INIS/Pages/Frequently%20asked%20Questions%20about%20Irish%20Citizenship%20and%20Naturalisation>.

³⁹ For example, see case study of Farah.

⁴⁰ For example, see case study of Faith

The particular situation of children in the care of the State has not been given adequate consideration in the legal and policy provisions on applying for naturalisation. It is unclear whether applications for naturalisation can be made by social workers acting as the child's guardian,⁴¹ or whether time spent in the care of the State can be considered reckonable for the purpose of naturalisation regardless of a parent's residence status. The failure to clarify these matters delays children's access to citizenship, in many cases until they have reached adulthood.

Many other jurisdictions make specific provisions allowing children to apply for naturalisation independently of their parents' naturalisation process.⁴² Some also have reduced residency requirements for children.⁴³ Sweden, the UK, Norway and Finland have provisions specifying persons other than parents who can make applications for naturalisation on behalf of children. For example, in the UK, "anyone who has assumed responsibility for a minor may apply".⁴⁴ The UK, Australia, Greece and Austria make specific reference to applications for children in care. Generally applications can be made by those who have assumed or been allocated parental responsibility.

Another practical barrier to applying for Irish citizenship is the challenge of obtaining original birth registration documentation from children's countries of origin where,

⁴¹ In 2015, the District Court directed the Department of Justice to allow a social worker to sign an application for naturalisation in a child care case. It is understood that the Attorney General's advice was sought on this matter and is awaited. There has, thus, been no clear change in legislation, policy or guidance to expressly allow for social workers to sign applications for naturalisation. Child Law Reporting Project, 'Social worker can apply for naturalisation for non-national girl', Case Histories 2015 Volume 1 <http://www.childlawproject.ie/publications/social-worker-can-apply-for-naturalisation-for-non-national-girl/>

⁴² Sweden, Finland, Italy, Austria, Norway, New Zealand, Spain, France, Switzerland, the United Kingdom, Australia, Greece and Slovakia.

⁴³ In Slovakia, applicants over 18 years must have eight years of residence to apply for citizenship, but children can apply if they have three years uninterrupted permanent residence. If their legal representative or guardian is a citizen of the Slovak Republic or a legal entity appointed by a court of the Slovak Republic, only two years' residence is required. Children in care are not required to have a minimum period of residency to make an application for naturalisation. In Spain, children in care can apply for naturalisation after a reduced period of residence of one year when they have been legally placed for two consecutive years under the tutelage, guardianship or in the care of a Spanish citizen or institution.

⁴⁴ UK Home Office, chapter 9, Registration of Minors at Discretion section 3(1) British Nationality Act 1981.

parents are not available to assist and, individuals have been living out of their country of origin since childhood. Sworn affidavits of birth are accepted by the INIS Citizenship Division “in exceptional circumstances”.⁴⁵ These circumstances are not defined and appear to be applied inconsistently.

Stateless children and access to citizenship

Ireland does not have a formal statelessness determination procedure and does not have any legislation or policy documents on statelessness. The Irish Nationality and Citizenship Act 1956 gives the Minister for Justice and Equality the power to dispense with the conditions for naturalisation in cases involving stateless persons. While the 1956 Act provides a safeguard for stateless children born in Ireland, there are significant practical obstacles to accessing that discretionary mechanism in the absence of a specific regime governing statelessness. The provision is of no assistance to stateless children who migrate to Ireland.

One of the young people interviewed, Boris, was stateless on arrival but he and his legal representatives engaged with the Department of Justice for six years and initiated High Court proceedings before he was granted permission to reside on the basis of being stateless. He encountered further difficulties and delays before he was granted citizenship because he had not been issued with a Certificate of Statelessness.

Issues specific to migrant children in the care of the State

Migrant children in the care of the State face additional barriers to realising their rights. Living away from parents from whom they can derive their immigration status, and in the absence of a specific tailored permission, they lack clarity and certainty about their immigration status and rights.

⁴⁵ The INIS has set out in the Form 8 naturalisation application form (p 2), that “in certain limited and exceptional circumstances a birth affidavit may be accepted in lieu of a Birth Certificate where you can show satisfactory evidence that the certificate is not available and cannot be obtained. If you are not in possession of, or have lost, your birth certificate, an affidavit will NOT be accepted. You must obtain it from the relevant authorities before applying.”

<http://www.inis.gov.ie/en/INIS/Form%208%20Ver%205.5%20Aug%2016.pdf/Files/Form%208%20Ver%205.5%20Aug%2016.pdf>

Although child care legislation does not explicitly require that a child's immigration status should be addressed, Tusla has a duty to "do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's health, development or welfare".⁴⁶ This duty should be considered to extend to the resolution of a child's immigration status in the State, given the importance of immigration status for children.

Immigration status – duty to act

Participants at the Immigrant Council's outreach sessions said that young people's immigration status was dealt with on an ad-hoc basis, usually when they encountered barriers to accessing services and often when young people had already aged out of care. They said that questions about immigration status were not being asked early enough in children's lives. Social workers and other practitioners also said that children often raised their immigration status themselves when they were faced with related problems from the age of 16.

Practitioners also noted that young people would not have the support of social workers or aftercare workers later in life and would experience much greater difficulties in securing their immigration status later on.

Social workers said that immigration status did not generally form part of children's and young people's care plans or aftercare plans. A Guardian ad litem stated that its inclusion depended on the team in which a social worker was based and that "offices with a high proportion of migrant children are better at understanding the issues". Immigration status should be included in care plans and aftercare plans from the earliest possible opportunity so that all necessary steps are taken to secure a child's immigration status or apply for citizenship as early as possible.

⁴⁶ Section 18(3), the Child Care Act, 1991.

The introduction of statutory guidance on assisting young migrants in care to secure their immigration status⁴⁷, coupled with increased knowledge and supports, could prevent many young people being undocumented when they leave care.

Statutory guidance in England states that care plans for children subject to immigration control must include a section on immigration status, including a description of how a child's needs in relation to their status will be met.⁴⁸ English local authorities have a duty to assist young migrants in their care to regularise their immigration status.⁴⁹ Norway⁵⁰ and the US⁵¹ provide policies and guidance to social workers and other child welfare practitioners on the significance of, and steps necessary to secure, the immigration status of a child in care at the earliest possible stage.

⁴⁷ In England, local authorities in England have a duty to assist young migrants in their care to regularise their immigration status.

⁴⁸ Department of Education (UK), Care of unaccompanied and trafficked children – Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children UK Department of Education (July 2014) p 10, para 34 and 35. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf

⁴⁹ Department of Education (UK), Care of unaccompanied and trafficked children – Statutory guidance for local authorities on the care of unaccompanied asylum seeking and trafficked children, (UK Department of Education, July 2014), p 10, para 34 and 35, accessible at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf

⁵⁰ Royal Norwegian Ministry of Children, Equality and Social Inclusion, GUIDELINES FOR PROCESSING CHILD WELFARE CASES WHERE CHILDREN HAVE TIES TO OTHER COUNTRIES, (2015 – amended March 2016), p. 6, p. 25 and p. 27.

⁵¹ US Department of Health and Human Services Administration on Children, Youth and Families, Information Memorandum: Case Planning and Service Delivery for Families with Parents and Legal Guardians who are Detained or Deported by Immigration Enforcement, (Issued 20 February 2015), <http://www.acf.hhs.gov/sites/default/files/cb/im1502.pdf>

Right to identity

Young people and social workers experienced significant difficulties in accessing original documentation to prove identity, particularly when parents or previous carers had left Ireland, were not contactable or did not cooperate. Other barriers included requirements in certain countries that their nationals present themselves, or reside, in the country of nationality to obtain a national passport.

As well as being essential for international travel, national passports issued from a person's country of citizenship are necessary as proof of identity in many situations in Ireland. Without a birth certificate and passport, it is almost impossible to obtain other forms of identification. There are countless situations requiring proof of identification, which include registering your permission to reside, opening a bank account, instructing a solicitor, applying for a driving licence, seeking a PPS number and accessing many forms of employment. To be granted naturalisation in Ireland, proof of identity in the form of a national passport is required. One social worker described how young people without identity documents are "stuck in limbo"

Children and young people in care need to be assisted to obtain their original birth certificates and passports to preserve their identity. It is vital that information and documentation are gathered from parents or previous caregivers at the earliest possible opportunity, and that any fees arising are discharged.

The Minister for Justice should exercise discretion in processing applications for residency and naturalisation for children who have been in the care of the State; where Tusla records show that there has been no contact with a child's parent(s); and reasonable efforts have been made to establish identity, and contact parents and relevant embassies to acquire documentation.

Allocation of social workers

Social workers have a key role to play in identifying immigration issues for children and in taking steps to secure status, including seeking legal advice and representation. Where no social worker is appointed to a child, they risk leaving the care system without lawful immigration status. Funding needs to be allocated to reduce the waiting lists for social worker allocation.

Equity of care for asylum-seeking children

All children in care should receive aftercare services when they turn 18, including access to or support with suitable accommodation until the age of 21 (or 23 if they are in full-time education). This includes asylum-seeking separated children who are currently placed in direct provision when they turn 18 until their application for asylum is being processed.

Data on migrant children in care

The collection and analysis of accurate data on children with migrant backgrounds is essential if Ireland is to formulate, implement and monitor effective public policy, law and practice relating to both children and migration. Accurate information on children in the care of the State who were born outside of Ireland and who may, or may not, be Irish citizens would assist in policy formulation, service planning and the identification of training needs.

Collecting data related to nationality, immigration status, birth certificates and passports for case files would help social workers to identify when steps need to be taken in relation to seeking identity documents, securing immigration status or seeking legal representation.

Implications of failure to address immigration status

Delays in addressing a child's immigration status can restrict or prevent their access to further education, employment, social welfare and housing as access is dependent on secure immigration status.

The laws and policies that determine access to education, housing and social welfare have a significant impact on the lives of migrant young people. Policy-makers need to adequately consider the wide range of situations in which immigration permission is granted to individuals and how that affects their access to services.

Access to third-level education

Access to third-level education emerged as the top priority for the young migrants and support workers consulted for this research. Under the provisions of the Student Support Act 2011 and Student Support Regulations 2016, children with prescribed immigration permissions are eligible for financial support for third-level education. These include 'persons granted permission to remain following a determination not to make a deportation order'. Many young people in the care of the State are granted permission to reside on exceptional or discretionary grounds without an intention to make a deportation order being issued against them, and therefore do not qualify for a SUSI grant. This is the case even when they have been lawfully resident and settled in Ireland for a number of years and have completed their secondary and, in many instances, primary education in Ireland. This arbitrary policy restricts access to education on the basis of immigration status and is in breach of Ireland's ECHR commitments to respect the right to education without discrimination, including discrimination on the grounds of immigration status.⁵² Several of the participants who were care-leavers could not afford to attend third-level education because their immigration status restricted their access to financial support.

The barriers that restrict the access of young people with Stamp 4 on a discretionary basis to further education must be removed. Restricting access to further education also restricts job opportunities for young care leavers, which could stimulate a cycle of vulnerability and disadvantage. It also has a negative impact on the emotional and mental wellbeing of young migrant care leavers, as they feel unequal to their peers and have to cope with the stress and psychological effects of being prevented from achieving their goals and dreams.

⁵² Bah v the United Kingdom 56328/07 [2011] ECHR 1448.

Access to social welfare

Access to social welfare requires demonstration of a “right to reside”. Failure to secure immigration status and becoming undocumented means that a person does not have a ‘right to reside’ and cannot access social welfare. Two of the young people, Paul and Amanda, described how they were left destitute as young adults because they could not access either employment or social welfare despite living in the State from the ages of 10 and 6 respectively. Both had been in the care of the State for a number of years but their immigration status had not been secured during that time.

Access to housing

Access to housing is another area where it appears that immigration decisions have unintended consequences for people’s lives. Young people whose immigration status was not secured as children, or who were granted permission to reside for reasons that are not envisaged by the national housing circular, face barriers to accessing housing. For example, those with a Stamp 4 issued on a discretionary basis are not eligible to apply for social housing and are therefore, also not eligible for the new Housing Assistance Payment (HAP) scheme.

Furthermore, to be eligible to receive rent allowance, migrants must hold a legal residence permission. Therefore, young people who are not assisted to secure their immigration status before reaching adulthood or before aging out of the care system can face serious difficulties in finding affordable housing.

Journeys, expectations and integration

The young people described their journeys, the extent to which they were involved in decisions to migrate and their integration in Ireland. Reasons for moving included seeking an improved quality of life and opportunities, to join family and friends and forced migration. Their feelings about moving were mixed. Many recalled the cold on arrival in Ireland. Issues of language acquisition were an important factor for children. Only two of the young people interviewed could speak English on arrival, and many

of the others experienced difficulties communicating. This was particularly difficult for young people whose younger siblings spoke English in the home. Additional English language support was vital to children achieving in school. It was regrettable to hear that some of the children lost their mother tongue over time, and supports for mother tongue education did not exist, apart from where the child's mother tongue was French.

The young people also discussed the role of advocates and guardians in their lives, their experiences of education, access to young and community services, experiences of equality or discrimination, culture, identity and integration.

Conclusion

A person's immigration status can define and determine their path in life. It is central to their ability to access employment, education and social services. Yet, the wide range of situations in which children and young people migrate to Ireland is not addressed by the Irish immigration system.

The immigration status of a child lacks clarity, consistency and transparency, which can result in practical difficulties for children. Children in the care of the State, who may not have parents on whose status they can rely, are not formally catered for under Irish immigration law or administrative arrangements.

Ireland's migration-related legislation, policy and practice lack a child-sensitive lens, while the laws and policies relating to children in care do not take into account the specific needs of migrant children and young people.

We hope that our research will be a valuable resource to further the discussion on the needs of migrant children and young people. Ireland needs to introduce clear and equitable processes and policies regarding immigration status. These processes and policies must take into account the specific needs of children and young people, irrespective of their parents' immigration status. Policies must be inclusive and flexible, and assist the most vulnerable. The recommendations for reform below, if acted upon, could improve the lives of migrant children and young people living in Ireland.



RECOMMENDATIONS

Summary of key findings

A person's immigration status can define and determine their life path. It is central to their access to employment, education and social services. Yet, in Ireland, there has been little policy analysis or dissemination of information to ensure that children have a recognised, appropriate immigration status, and that they can apply for naturalisation when they have fulfilled specific criteria.

The wide range of situations in which children and young people migrate to Ireland is not addressed. The Irish immigration system does not allow a child under 16 to hold immigration status on an individual basis – it assumes the immigration permission of such a child to be that of their parent. Therefore, the immigration status of a child lacks clarity, consistency and transparency, which can result in practical difficulties for children. Children in the care of the State, who may not have parents on whose status they can rely, are not formally catered for under Irish immigration law or administrative arrangements.

Children have been silent and invisible in much of the discussions, policy formation and academic literature around migration. The child-specific research that has been carried out has tended to focus on separated or unaccompanied children seeking asylum. The needs and rights of the broader migrant child population have largely been ignored. The absence of children's perspectives or child-rights-based analysis from the discussion has resulted in migration law and policies that are not child-sensitive and do not respond adequately to the needs of migrant children.

Ireland's migration-related legislation, policy and practice lack a child-sensitive lens, while the laws and policies relating to children in care, though equally applicable to migrant children, do not take into account the specific needs of migrant children and children from migrant backgrounds. The need for consolidation of legislation relating to immigration law, and for new legislation to be child-proofed, is apparent from an overview of the multiple pieces of legislation relevant to the lives of migrant children.

Recommendations

Recommendations for key stakeholders

Recommendations for the Department of Justice

Recommendations:

Adopt a comprehensive, child-sensitive, human rights compliant, transparent legal framework for immigration that includes:

- The “best interests of the child” principle as a guiding principle in all immigration matters including applications for visas and residence permissions;
- Statutory, rights-based procedures for family reunification in respect of Irish nationals and non-EEA nationals, with expanded categories of migrants eligible for immediate family reunification;
- Clear and accessible formal procedures for conferring immigration status on children and their families, including those who are in irregular migration situations;
- An independent appeals mechanism to review negative decisions in applications;
- Appropriate, tailored immigration permissions for children who are required to register;
- A statelessness procedure – access to a formal statelessness determination procedure for people who cannot establish citizenship of any nation.

Recommendation:

In respect of children in the care of the State, the legislation should:

- Grant children who are subject to Care Orders permission to reside that enables access to employment (from when they are of legal age to work) and access to social welfare, housing and financial support for education on the same basis as Irish citizens.

Recommendation: Provide accurate, accessible information on the immigration status of children under 16 years of age, the duty to register when a child turns 16, and on the rights of young people in Ireland.

Recommendation: Provide publicly available guidelines to the GNIB and the INIS on registering children and young people in different scenarios with appropriate permissions.

Recommendation: Provide guidelines on the registration of individuals without a passport, in situations where they are delayed or prevented from obtaining or renewing a national passport, to avoid situations of individuals becoming undocumented in such circumstances.

Recommendation: Amend the Nationality and Citizenship Act to clarify that children can make applications for naturalisation independently on meeting specified criteria and on the completion of prescribed lengths of residence. A fee waiver should be granted in cases of hardship.

Recommendation: Confirm that social workers have the authority to sign applications for the naturalisation of children in the care of the State including, if necessary, amending the relevant provisions of the Irish Nationality and Citizenship Act 1956.

Recommendation: Confirm that time spent in the care of the State is counted as “reckonable residence” for citizenship regardless of a parent’s residence.

Recommendation: Provide for the acceptance of sworn affidavits of birth in respect of children who cannot acquire identity documentation from the authorities in their countries of origin despite making reasonable efforts to do so, where it is not reasonable to expect that they return to their country of origin to obtain documentation and where their identity is accepted by other State authorities.

Recommendation to the INIS: Provide a letter to all parents or guardians of non-EEA national children stating that children under the age of 16 are not currently required to hold independent residency permission and that they are legally resident in the State. This position should also be set out on the INIS website.

Recommendation: Amend policy to ensure that asylum-seeking care leavers are granted equal access to full aftercare supports, including assistance with accommodation, and are not moved from their care placement to direct provision.

Recommendation: The GNIB should put in place a registration fee waiver system for young people aged 18+ who are in aftercare services and for other young people aged 18+ in exceptional circumstances.

Recommendations regarding asylum-seeking children

Amend the International Protection Act 2015 to:

- Include the definition of separated and unaccompanied children as outlined by the UNHCR, UNCRC and SCEP;
- Provide for a social age assessment procedure that includes psychosocial development and available documentation, and is undertaken by an independent interdisciplinary body consisting of people who are not involved with the child's care or protection needs.

Research already exists on the issues facing asylum-seeking children in Ireland. These recommendations are not intended as duplication but rather to focus on issues, that haven't already been raised in other research and, which have been discussed in this report.

Recommendations regarding victims of trafficking

In relation to victims of trafficking, the legal framework should:

- Place the formal identification of victims of trafficking on a statutory footing, with specific provisions and a protective process for the identification of child victims of trafficking;
- Provide that asylum-seeking victims of trafficking can be formally identified and granted relevant permissions to reside while awaiting a determination of their application for international protection;
- Provide for the rights of victims of trafficking, as set out in the directive;
- Clarify that 'historic' victims of trafficking can be formally identified as victims of trafficking, provided with assistance and issued with appropriate residence permissions.

Multi-disciplinary Recommendations

Recommendation: Adopt a joint protocol between Tusla, An Garda Síochána and the Department of Justice in relation to the accommodation, care and protection of victims, or suspected victims, of child trafficking.

Recommendations for Tusla

Recommendation: Include nationality and immigration status as items / part of assessment of need in statutory care plans and aftercare plans to identify and record a child's nationality and immigration status and ensure that any necessary steps are taken to gather relevant identity documentation, secure a child's immigration status and, where appropriate, apply for Irish citizenship at the earliest possible opportunity.

Recommendation: Develop a standard framework of action to establish a child's nationality and immigration permission, to include:

1. Questions to ask of children and their families about immigration status
2. Steps to take to establish and resolve status
3. Avenue for legal advice from competent person
4. Referral process for legal representation.

Recommendation: Introduce policy guidelines specifying the person responsible for informing and supporting a child in the care of the State in relation to securing their immigration status, setting out how that information is provided including timing, content and the use of a child-friendly manner.

Recommendation: Provide continuous professional development training to all social workers and aftercare workers on immigration matters and cultural competency as well as on indicators of trafficking, the importance of early legal

intervention for victims of trafficking, and the steps to take to support victims of trafficking. This training could be carried out by specialist organisations, such as the Immigrant Council of Ireland.

Recommendation: Ensure timely access to specialised independent legal advice and representation for children in care regarding their immigration matters, in line with their rights under the United Nations Convention on the Rights of the Child. Legal advice should be provided in a child-centred manner to ensure optimal outcomes for children in care. This could be provided in conjunction with organisations such as the Immigrant Council of Ireland.

Recommendation: Provide regularly updated immigration-related legal information to social workers and aftercare workers through Tusla's internal information portal.

Recommendation: Provide access to legal advice to social workers and aftercare workers through creating a formal alliance or service agreement with a specialised organisation or designated contact point.

Recommendation: Record data on children's nationality and immigration status and regularly publish disaggregated data reports to enable effective service planning.

Recommendation: Provide for the funding of fees to acquire birth certificates and national passports, where required, in both care packages and aftercare packages, and for GNIB registration fees in aftercare packages.

Recommendation: Standardise practices so that all separated children receive follow-up support following family reunification.

Recommendation: Appoint an independent guardian to separated and unaccompanied children in the care of the State.

Recommendation: Ensure that asylum-seeking young people who were in care as children receive equity of care in the provision of aftercare services.

Recommendation to chairs of case review teams: Monitor the implementation of inclusion of immigration status in care plans as part of the review process and disseminate relevant information to social work teams.

Recommendation: Disseminate child-friendly, accessible information booklets and online materials on national identity and immigration matters to all migrant children. Emphasise, in particular, the distribution of materials to children and young people in voluntary care.

Recommendations for the Department of Education

Recommendation: Amend the Student Support Act 2011 and the Student Support Regulations 2016 to provide for the eligibility of migrant care leavers with discretionary leave to remain for 'home' tuition fees and a full student grant under the same conditions as Irish students (i.e. provided that they have been continuously resident in the State for three out of the previous five years).

Recommendation: Amend the Student Support Act 2011 and the Student Support Regulations 2016 to provide that young people with leave to remain on the basis of their Irish-citizen siblings should be eligible for a SUSI grant (provided that they have been continuously resident in the State for three out of the previous five years).

Recommendation: Amend the Free Fees Initiative to broaden the categories of eligible immigration permissions. Provide specifically for care-leavers and children granted Stamp 4 “in exceptional circumstances” to have access to the Free Fees Initiative.

Recommendation: Put specific supports in place for mother-tongue education, such as mother-tongue and bilingual textbooks, and other appropriate language supports.

Recommendations for third-level institutions

Recommendation: Incorporate information on working with migrants, migrant children and the immigration system into social work education courses at third level so that social workers are aware of the issues and how to resolve them before they enter practice.

Recommendation: Provide scholarships and fee waivers to migrant children and young people who are ineligible for SUSI and free fees to facilitate equal access to education and thereby fostering inclusion.

Recommendation for the Irish Foster Care Association

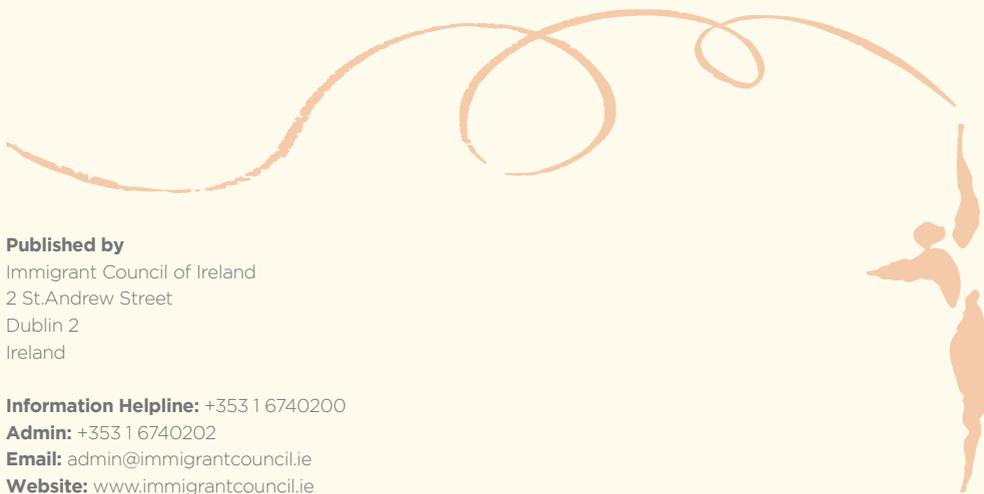
Recommendation: Distribute information on immigration status and trafficking to foster parents to raise national awareness of immigration and trafficking matters.

Recommendation for the Department of Housing, Planning, Community and Local Government

Recommendation: Amend and update the housing circular to ensure that young care leavers with discretionary leave to remain on Stamp 4 conditions and other young migrants with leave to remain on Stamp 4 conditions are eligible to be placed on the housing list.

Recommendation for Department of Children and Youth Affairs

Allocate adequate funding to Tusla to enable the appointment of social workers to all children in a timely manner. Where a child unavoidably does not have an allocated social worker or aftercare worker for a period, they should be informed about, and linked in with, alternative supports and services, including legal advice.



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