Immigrant Council of Ireland

NGO Report to the UN Committee on the Rights of the Child

The Republic of Ireland's Implementation of the UNCRC

August 2022

I. Introduction

The Immigrant Council of Ireland (ICI) and Irish Refugee Council (IRC) have prepared this Alternative Report in response to issues raised in Ireland's Fifth and Sixth Periodic Report to the UN Committee on the Rights of the Child (the Committee).

Both organisations are NGO-Independent Law Centres working with and for migrants, including asylum seekers and refugees, and their families in Ireland. We provide frontline information, support and specialised legal services, prioritising vulnerable communities to include victims of gender-based violence, refugees/stateless persons and migrant children.

This report focuses on matters raised by the Committee in its recommendations arising from the Third and Fourth Country Report relating to children in migrant situations, specifically its recommendations at paragraphs 20 and 68 and engages with areas of concern pertinent to Arts. 7, 8, 10, 13-17, 19, 20, 22, 30, 32-36, 37(a)-(d), 39 and 40 UNCRC. Recommendations are made to inform the Committee's proposals to Ireland at the conclusion of this Reporting Cycle.

II. Areas of Concern and Recommendations

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d) and 38-40) and General measures of implementation (arts. 4, 42 and 44 (6))

In its previous Concluding Observations on Ireland[1], the Committee recommended (paragraph 68) that Ireland "*[e]xpeditiously adopt a comprehensive legal framework that is in accordance with international human rights standards to address the needs of migrant children […]".* Notwithstanding, Ireland's immigration legal framework remains patchwork and fragmented. While welcome that Irish law relating to international protection was codified in the International Protection Act 2015 (2015 Act), general immigration law remains largely on an administrative footing with much reliance placed on ministerial discretion. In its June 2015 NGO Report to the Committee in relation to Ireland's implementation of the UNCRC, the ICI noted the *ad hoc* nature of Ireland's immigration rules, which becomes particularly apparent when the experiences of children from a migrant background are examined. Unfortunately, there has been limited progress on the part of the State since our previous submissions. While the Government has made various commitments to introduce comprehensive immigration reform,[2] little progress has been made. Aside from separated children in the international protection process, to date, migration has been viewed as a voluntary adult phenomenon requiring management and control, with children rarely featuring other than as appendages to adults. In the immigration context, children are not engaged with as individual rights holders.

The failure to consider the situations and needs of migrant children within a consolidated legal and policy framework detrimentally impacts the best interests of the child, in contravention of Article 3 UNCRC. Article 42A of the Irish Constitution explicitly recognises the legal personality of children,

[1] UNCRC, Concluding observations on the combined third and fourth periodic reports of Ireland (January 2016)

[2] Programme for Government, 2011-2016, http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf; Seanad adjournment speech by Minister of State, John Perry, TD, on behalf of Alan Shatter, TD, Minister for Justice, Equality and Defence – Status of the Immigration, Residence and Protection Bill 2010, 3rd October 2013. See more at: http://merrionstreet.ie/en/News-Room/Speeches/seanad-adjournment-speech-by-minister-of-state-john-perry-td-on-behalf-ofalan-shatter-td-minister-for-justice-equality-and-defence-status-of-the-immigration-residence-and-protection-bill-201.html; Better Outcomes Brighter Futures – The national policy framework for children and young people 2014-2020.

acknowledging that they are rights-holders, aligning Irish law, in part, with the provisions of the UNCRC, providing that the "*best interests of the child shall be the paramount consideration"* in certain circumstances. However, the extremely limited nature of these circumstances diverges significantly from the standard enunciated in the UNCRC, which requires that the best interests of the child be the primary consideration in "*all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies*". While it is acknowledged that the 2015 Act provides that the "*best interests of the child shall be a primary consideration"*, this approach is not reflected in wider Irish immigration law.

Specific matters of concern are identified and addressed below.

(A) Statelessness

Nationality plays an important role in a child's development, being central to a child's identity and to ensure a child is not rendered stateless for extended periods.[3] We are concerned that the State is in breach of Articles 7 and 8 of the UNCRC in the continued absence of a formal stateless determination procedure (SDP).

There are practical obstacles faced by stateless children in accessing the discretionary mechanism under Section 16(g) of the Irish Nationality and Citizenship Act 1956 (as amended) (1956 Act) to dispense with the conditions for naturalisation in the absence of an established SDP. An effective SDP must be accessible to all stateless migrants and refugees in a country's territory, must involve a fair and non-discriminatory assessment with procedural safeguards and rights of appeal, applicants must be granted protection during the procedure, and must result in protection status for those determined to be stateless. Further, a child rights-based SDP is essential to identify stateless children and ensure that their rights are upheld. Good practice indicates that procedures applied to children should be adapted from the general SDP and the burden of proof should not rest solely with the child.[4]

Further, whilst Irish legislation contains various references to stateless persons, there is no definition provided for in Irish law, including neither the 2015 Act nor 1956 Act. This means that statelessness is only considered in an *ad hoc* way by the competent authorities and there is no official guidance on how statelessness is claimed or determined. There is no published information by Ireland's responsible state authority for immigration law matters, the Immigration Service Delivery (ISD) regarding how to make a claim of statelessness or how to address issues related to statelessness when making a citizenship or other immigration-related residence application despite the fact that it is a basic requirement to provide evidence of identity, including a passport, in support of an application and at the time of registration, when required. While such requirements may be waived in practice, there is no published guidance regarding when this will be done or the nature of submissions/evidentiary requirements to be provided by applicants.

We are also concerned about the lack of disaggregated data on stateless children and note the Minister stated on 7th December 2021 that "*the Domestic Residence and Permissions Unit of my Department has no record of any residence applications being received from Tusla [the Child and*

[3] European Network on Statelessness, "*Preventing Childhood Statelessness in Europe, Issues, Gaps and Good Practice*", p 7.

[4] UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, para 11.

Family Agency] in the past five years, in relation to children where the child was categorised as stateless".[5]

Recommendations:

- Establish a formal stateless determination procedure in accordance with best practice.
- Improve data collection, monitoring and reporting on statelessness and nationality problems to facilitate analysis about stateless children. This data and indicators should be shared collaboratively between ministerial departments and used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of Ireland's obligations under international law.
- Ireland does not have adequate safeguards to prevent child statelessness from occurring. The provision of clear and accessible information for stateless individuals, those assisting them and decision-makers is urgently needed, as well as capacity building amongst state actors to facilitate an improved response to statelessness and nationality problems amongst children in Ireland, prevent new cases of statelessness arising and ensure that statelessness is accurately identified, recorded and the rights of individual children respected.

(B) Citizenship

There is no engagement in the State's report regarding citizenship reform to ensure efficient and effective access to citizenship for migrant children. While the improvements made to the Irish citizenship process brought about by the Department of Justice in recent years are welcome, we remain concerned that the State is in contravention of Article 7 of the UNCRC. In 2021, in response to opposition parties proposing reforms, the Government committed to bring forward legislative reforms[6] and indicated it would take the opportunity to address the critical issue of guardianship rights of social workers to enable applications for citizenship by naturalisation to be made for migrant children received into care. However, proposed legislation has not been progressed.

(B.1) Relaxation of Residence Criteria

- The 1956 Act currently makes provision to allow minor children apply for citizenship if one of the minor's parents has already been naturalised; if the minor is of Irish descent or has Irish associations; and if the minor was born in the State after 1st January 2005 and was not entitled to Irish citizenship at the time of birth but has since accumulated 5 years' 'reckonable residence'.

  Under Head 44 of the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021 it is proposed to reduce the 'reckonable residence' required in the case of minors applying for naturalisation from five to three years by amending Section 15 of the 1956 Act alongside the requirement that an application for citizenship be made only on behalf of a minor by an individual where that individual has had a period of one year's continuous residence in the State immediately before the date of application and, during the eight years immediately preceding that period, has had a total residence in Ireland amounting to two years.

[5] https://www.justice.ie/en/JELR/Pages/PQ-07-12-2021-444

[6] See General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021 and Department of Justice, Press Release: Minister McEntee to make it easier for children to secure Irish citizenship (23rd March 2021) available at: https://www.justice.ie/en/JELR/Pages/PR21000057

Our concerns are twofold: Firstly, the reduction of reckonable residence criterion from five to three years, whilst welcome, does not go far enough to expand and expedite access to citizenship for minor children. Some jurisdictions require shorter lengths of residence for children which is a welcome approach.[7]

Secondly, we are concerned about the proposed imposition of reckonable residence criteria on an eligible sponsor through substituting Section 13(a) and (b). The proposed amendment under Head 44 of the Bill confines the categories of children who are entitled to Irish citizenship to those whose parents are legally resident in the State. As a result, the children of undocumented parents or those who did not have the requisite reckonable residence prior to their birth are ineligible. This has the effect of meaning that a significant number of children born in Ireland will be vulnerable to deportation from the State, as well as meaning that differential entitlements will apply to siblings under the Act depending on their residency status and period of residence of their parents at birth.

Recommendations:

- Reduce the prescribed length of residence for children.
- Remove the residency requirement for eligible sponsor and enable children to apply independently where specified criteria are met and prescribed period of residence completed.

(B.2) Children in Care

- Currently under Irish law, there is no specific process for naturalisation of children in State care. Country expert knowledge from advocacy and legal case work has demonstrated that difficulties arise for children in State care where their parents are not available, qualified or willing to apply for naturalisation on behalf of their children and because social workers are not permitted to make an application, even for children subject to full care orders. In this regard, Irish law appears out of line internationally. For example, France, Spain and Slovakia have specific provisions relating to the acquisition of citizenship for children in care independently of their parents.[8] Other countries including the UK, Australia, Greece and Austria make specific provisions in their laws as to who can consent to the making of an application for naturalisation of a child in care.[9]

[7] Slovakia: Art. 7, section 2(d) Slovakian Nationality Act;
Spain: Article 22 of Book 1 Spanish Civil Code.

[8] France: Article 21.12 of the French Civil Code, section 1; Act no 2003-1119 of 26 Nov 2003;
Switzerland : Secrétariat d'Etat aux migrations SEM, Manuel sur la nationalité - Chapitre 4: Conditions générales et critères de naturalisation, (Département fédéral de justice et police DFJP, 2013), https://www.sem.admin.ch/dam/data/sem/rechtsgrundlagen/weisungen/buergerrecht/hb-bueg-kap4-f.pdf (in French only).

[9] Australia: Australian Citizenship Act 2007, sections 21-22: "(a) is aged under 18 at the time the person made the application; and (b) is a permanent resident: (i) at the time the person made the application; and (ii) at the time of the Minister's decision on the application" and Department of Immigration and Border Protection, Children aged 15 years and under or unaccompanied minors (Australian Government,) https://www.border.gov.au/Trav/Citi/pathways-processes/application-options/Children-aged-15-years-and-under-orunaccompanied-minors and Section 6 the Australian Citizenship Act 2007;
Greece: Article 1A.2 of the Greek Citizenship Code 2004.

[9] Article 30, section 1 of the Greek Presidential Decree 906/2008 (Government Gazette 152 A).

In the State's report at paragraph 121 they note that "*an applicant under this legislation is defined as a parent, guardian or person in loco parentis to the child. Children cannot apply for citizenship on their own behalf*". Currently, this excludes the allocated social worker of a migrant child in care, and this should be provided for either by way of amendment of the 1956 Act or the Childcare Act 1991.

Recommendations:

- Amend Irish statute law to make specific provision that social workers can sign applications for children in State care.
- Empower children to make applications for citizenship independently.

(B.3) Independent Application

- Currently, a child cannot make the application for citizenship by themselves. The application must be made by their parent, legal guardian or a person in loco parentis to the child.

  We remain concerned that children cannot apply for naturalisation independently and, under current proposals, remain reliant on the application being made by their parent, guardian of person in loco parentis to the child. This approach fails to recognise the evolving capacity and growing autonomy of children and falls short of international law standards.[10]

  Unlike Ireland, many jurisdictions have legal provisions that permit the naturalisation of children independently of their parents' naturalisation process, some of which also have reduced residency requirements for children. They include Sweden, Finland, Italy, Austria, Norway, New Zealand, Spain, France, Switzerland, the United Kingdom, Australia, Greece and Slovakia.

Recommendation:

- Legislate to enable children to apply for citizenship independently where they meet specified criteria and complete the prescribed period of residence.

(B.4) Joint Family Applications

- Currently where a parent applies for naturalisation, separate applications must be submitted in respect of their eligible children and only after a parent has first been granted Irish citizenship. Currently the processing of Irish naturalisation applications takes approximately +2 years. Consequently, this results in extreme delay for migrant children seeking to naturalise, which may have profound negative consequences for school-leavers in terms of access to employment and third level due to very restrictive residence permissions issued to migrant children.

Recommendation:

- Migrant parents should be able to include their own minor children who satisfy the residence criteria in their own application for citizenship. This would alleviate difficulties faced by

[10] Committee on the Rights of the Child, day of general discussion on the rights of "all children in the context of international migration", 2012, Paras 72 and 4.

migrants in applying separately for their children and could also have beneficial implications for the Department of Justice in terms of resources and efficient processing of applications.

(C) Inconsistency in Immigration status granted to young people

In its June 2015 NGO Report to the Committee in relation to Ireland's implementation of the UNCRC, the ICI noted the lack of appropriate, clear regulations in relation to the registration and issuing of appropriate residence permission to children.

The absence of a holistic and codified legal framework and the resulting lack of clarity on the immigration status ("stamp") of young children results in inconsistency in the permissions given to children when they turn 16 years old and are under an obligation to register their immigration permission. This is concerning because different rights and duties attach to different stamps. The lack of statutory or administrative policy guidance has resulted in stamps being issued to young people in an inconsistent manner, e.g., siblings being given different stamps, as well as inappropriate stamps being granted in some cases, e.g., where young people have been granted Stamp 2 for international students where they are resident in the State as dependents of their non-student lawfully resident parents. Registering children as international students does not reflect their primary purpose for being in the State.

Similarly in its 2015 Report, the ICI noted that children in Ireland face significant challenges in accessing clear, accurate and child-friendly information about their immigration status and their duties under immigration law. For example, absence of clear information on the duty to register at the age of 16, which may result in some young people experiencing difficulties establishing residence status. The State has taken no actions to address this significant gap.

Recommendations:

- Implement clear and accessible formal procedures for conferring appropriate immigration permission on children who are required to register their permission.
- The ISD should conduct regular information campaigns to inform children and their families of the duty to register at the age of 16 and how they can do so.
- The ISD should publish clear guidance on residence permission for foreign national children born in Ireland but who are exempt from the requirement to register and to be issued with a residence card.

(D) Independent Residence Permission

Irish immigration law does not treat children as individual rights holders. There is no system of registration or granting of specific immigration permission to children and young people on an individual basis under the age of 16, instead, a child's immigration permission is assumed to be the same as their parents. There are no published guidelines regarding immigration status for children. This practice fails to consider the individual circumstances of children; the impact of children is not considered when decisions are being made about the status of their parents; and the lack of independent status can lead to complications and disadvantageous treatment of young people.

Recommendation:

- Legislate to enable children to be conferred with their own immigration permission.

(E) Barriers to Regularising Immigration Status

In its June 2015 NGO Report to the Committee in relation to Ireland's implementation of the UNCRC, the ICI noted the lack of a clear, accessible formal procedure for conferring an immigration status on undocumented children. The Committee in its Concluding Observations recommended that Ireland ensure that its immigration legal framework include a *"clear and accessible formal procedures for conferring immigration status on children and their families who are in irregular migration situations."* Since this recommendation, the ICI welcomed the State's introduction of the administrative Regularisation of Long Term Undocumented Migrant Scheme (the Scheme) in January 2022, which enabled regularisation of individuals living in Ireland undocumented for at least 4 years when the Scheme opened. Individuals with dependent children could apply after three years of being undocumented.

While the Scheme was welcome, several challenges arose which have inhibited its overall accessibility. Firstly, the high application fees for the scheme for undocumented families, given the vulnerability of many migrants in these groups and the additional immigration registration fees required upon approval for successful applicants, was prohibitive. Many families may have struggled with the cost of fees given the shadow nature of their employment. No provision was made for financial hardship exemptions in the administrative scheme, even for victims of domestic violence.

Secondly, and fundamentally, children were unable to apply under the Scheme in their own right and will be required to apply for residence status outside of Scheme under existing provisions of Irish immigration law, which applications are considered and granted on the basis of Ministerial discretion only.

Recommendation:

- The State should utilise the Scheme as a model for establishing a clear, and accessible formal procedure in law for conferring immigration status on irregular migrants, and in particular, children on an ongoing basis.

(F) Family Reunification

Irish law relating to family reunification is complex, governed by a patchwork of fragmented legislation and discretionary administrative visa procedures. In practice, there are several issues arising in respect of applications for family reunification under both the statutory regime governed by the 2015 Act and the discretionary regime provided for under the Policy Document on Non-EEA Family Reunification. Under the current regime, we are concerned that the State is in contravention of Articles 9 and 10 of the UNCRC. We address the matters of concern below:

(F.1) The Extended Family

The 2015 Act limits family reunification to the immediate or nuclear married family, despite the extended family having a much more robust presence elsewhere in the world. Prevailing social norms elsewhere demonstrate that children often grow up in homes with their extended family. The narrow definition of the family adopted in the Act has detrimental impacts on children, separated by what the law considers to be their family. The ICI-IRC are concerned that the State is in breach of Article 20 UNCRC, given that the 2015 Act only allows unaccompanied minors to apply for siblings if parents are a party to the application and makes no provision for another adult caregiver e.g. adult sibling, uncle, aunt or grandparent, if parents are deceased.

A further difficulty is the impact that delays in the international protection process on a person's eligibility for family reunification. A parent who is recognised as a refugee is entitled to family reunification only with their children who are under 18 years on the date of their application for family reunification. A person who was a child left behind in a person's country of origin when their parent fled will therefore be excluded from family reunification with their parent, if they turn 18 before a final decision issues in their parent's international protection application.

Recommendations

- The Act should be amended to provide for applications by unaccompanied minors for other caregivers and their siblings, even in situations where it is not possible for their parents to travel.
- The concept of the family under Irish law should be given a broader definition to encompass extended family members for the purpose of family reunification.

(F.2) Lack of Civil Legal Aid

In its June 2015 NGO Report to the Committee in relation to Ireland's implementation of the UNCRC, the ICI noted that "*children rarely receive independent legal advice…this means that children can reach 18 without any clarification round their status*". The Committee in its Concluding Observations recommended that Ireland should introduce measures to ensure that children in irregular migration situations are provided with independent legal advice and timely clarifications on their migration status. Despite this recommendation, the ICI-IRC identifies a lack of tailored legal services for dealing not only with children in irregular migration situations, but also general immigration matters relating to children. Civil legal aid in Ireland is generally limited to family law, child protection and asylum, it currently does not extend to general immigration or other issues that may be relevant to migrant children and their families where decisions are made on an administrative basis.

While it is welcomed that legal aid is available to applicants of international protection and potential or suspected victims of trafficking, despite general immigration related matters not being an excluded class under the Civil Legal Aid Act 1995 (1995 Act), provision is not currently made for such legal support, despite the complexity of immigration related applications, and in particular, family reunification applications.

By way of example, critics have described the process of family reunification as lengthy, 'not applicant friendly' and 'prohibitively costly'.[11] Many migrant children also face language barriers, making it difficult to understand the application process and their entitlements. Even where forms are available in an applicant's own language, complicated legal definitions can be difficult for lay applicants to understand in the absence of legal advice. Given the lack of regulation within the interpretation and translation industry, such services are open to inaccuracies which can result in costs to resolve mistakes. Legal services are also particularly needed at the administrative review stage and/or judicial review if required,[12] particularly given that there is no independent appeals mechanism for family reunification applications.[13]

[11] Gotzelmann, '*The implementation and administration of family reunification rights in Ireland*', (2016) Irish Jurist.

[12] Immigrant Council of Ireland, "*Family Reunification – a barrier or facilitator of integration? Country Report Ireland"* (2012). Available at: https://www.immigrantcouncil.ie/sites/default/files/2017-10/IMM%202012%20Family%20Reunification%20Ireland%20FULL%20REPORT.pdf

[13] Section 56 and 57 of the International Protection Act 2015.

More broadly, young people with uncertain immigration statuses do not have access to State funded legal representation and must either instruct and pay a private solicitor or secure representation from an NGO Law Centre or private solicitor on a *pro bono* basis. The process of seeking legal representation in relation to general immigration law is currently on an *ad hoc* basis. Some children in care, for example, gain access to legal representation either directly or indirectly, usually where their social workers are aware of the need to act. Specialist immigration advice provided in a timely manner can be an essential prerequisite to children accessing their full range of rights.

The ICI and IRC provide free legal assistance with immigration and asylum matters. However, there are notable limitations to *pro bono* legal advice, namely capacity demands, and funding issues. The KIND (Kids In Need of Defence) project, which commenced in September 2019 and built on earlier ICI project work support by the Public Interest Law Alliance (PILA) and the Community Foundation for Ireland (CFI), addresses the gaps in protection for unaccompanied refugee children during family reunification process and in citizenship applications, which are both recognised to profoundly affect the rights of the child and their long-term successful integration. In the absence of any civil legal aid, in the project, the ICI works collaboratively with the IRC and *pro bono* partner firms to provide timely access to effective legal advice for migrant children and capacity building training for legal professionals. Funded exclusively by philanthropy, we have developed a trained network of *pro bono* legal professionals to provide legal assistance on referral to address unmet legal need.

Recommendations:

- Provide civil legal aid for all immigration matters for children, especially family reunification applications.
- Train professionals to provide legal advice in a child-centred manner to ensure optimal outcomes for children.

(F.3) Delay

In practice, family reunification applications have significantly long processing times and applications can take from 2-4 years to be processed, which is arguably a breach of Article 10 UNCRC. Delay results in many minor children and their families being separated for extended periods and the negative implication of prolonged separation is well documented in the literature.

Recommendation:

- ISD should expedite family reunification applications for minor children.

(F.5) Age assessment

Age assessment mechanisms are utilised to establish the age or age range of an individual to ascertain whether they are a child or an adult and is provided for in the 2015 Act. We are concerned that the practice of age assessment does not meet the standards set out in Irish or international law, and that there is a risk that children seeking international protection and refugee children are being incorrectly assessed as adults and are therefore not benefiting from the child-sensitive procedural and legal guarantees. They are excluded from their rights as children, placed in adult accommodation, denied access to child support services and are excluded from their statutory right to family reunification with their parents and siblings.

While the 2015 Act contains several procedural safeguards that reflect obligations in the Procedures Directive (2005/85/EC) and general good practice, ss. 24 and 25 of the 2015 Act do not require the decision to be recorded in writing, nor is the decision open to independent appeal given the lack of a

formalised and accessible mechanism. Further, the age assessment practice does not meet the standards set in the Act nor the principles as established in the seminal case of *Moke v Refugee Applications Commissioner*[14], the Asylum Procedures Directive, the Reception Conditions Directive and Regulations, the recommendations of the EU Agency for Asylum nor Separated Children in Europe Programme (SCEP).

In practice, an initial opinion as to a young person's eligibility for childcare services under the Childcare Act 1991 (as amended), which is not intended as a comprehensive age determination, is relied upon by other agencies as such. The opinion is based on available identity documents and a short interview. A person considered ineligible for those services is deemed an adult. There is typically no guardian or legal representative present for that assessment, or access to legal representation in advance, and the determination is not always issued in writing. While it may be possible for an age disputed child to seek a review after they have been assigned a solicitor, members of the same team conduct any such review, and there is no clear, statutory based independent appeal process. There are also significant delays during which the disputed person is treated as an adult and does not receive any supports. Age assessments should be conducted by a multi-disciplinary independent expert panel that involve both social workers and professionals with the required expertise in child and adolescent behaviour and the necessary training.[15]

It is also noted that the current regime under the 2015 Act does not invoke two key principles recommended by the SCEP including the use of age assessments as a "last resort" and only where there are grounds for "serious doubt". It is, however, noted that Procedures Directive does provide for the application of the benefit of the doubt where an examination does not remove doubt as to the person's age.

Recommendation:

- Establish a formal age assessment process and an independent appeals mechanism that meet the requirements of Irish and international law, with a multidisciplinary panel of independent experts with relevant experience and training, and decisions issued in writing.
- Amend the 2015 Act to provide for social age assessment that includes psychosocial development and available documentation, undertaken by an independent interdisciplinary body who are not involved in the child's care or protection needs.
- The benefit of the doubt should be applied, and the applicant should be considered and treated as a child on presentation as a child or concerns raised that person is a child until conclusive results are obtained.

(F.6) Restrictive exercise of discretion and inconsistency

The discretionary nature of decisions on family reunification are of concern in the context of discretionary family reunification visa applications.

Differential standards have been noted to apply in the cases of discretionary visa applications between Embassy to Embassy[16] and the lack of clarity, guidelines or a consolidated system has been criticised. Despite the identification of decisive criteria their evaluation on the part of the ISD lacks clarity and,

[14] *Moke v Refugee Applications Commissioner* Unrep. HCt. Finlay Geoghegan J., 6 October 2005.

[15] *Crawley, H., "When is a child not a child? Asylum, age disputes, and the process of age assessment", (London: Immigration Law Practitioners' Association (ILPA), 2007).*

[16] Gotzelmann, '*The implementation and administration of family reunification rights in Ireland*', (2016) Irish Jurist.

arguably, consistency. It remains unclear whether the criteria set out in the Policy Document comprise a complete list of factors that are taken into consideration or merely provide a degree of guidance to some of the factors that are taken into consideration. It also remains unclear how the factors are evaluated and weighed against each other when a decision is reached.

Recommendations:

- Provide for clear entitlements and associated application processes, as well as an independent appeals mechanism in Irish immigration law.

(G) Independent Appeals Mechanism

We are concerned that while an established appeals mechanism exists in respect of applications for international protection,[17] no consolidated appeals process has been established in respect of general immigration matters, and in particular, matters affecting children. While in virtually all matters an "appeal" may be sought, such appeals are essentially internal reviews conducted by agents of the Minister for Justice. This could be in breach of the requirements of natural and constitutional justice.

While judicial review may be sought, it is a limited legal mechanism, given that it does not afford an appeal on the merits of an individual case. Remedies, for example, that can be sought include *certiorari* – to quash a decision – or *mandamus* – to compel a decision to be taken.

Further, it remains the position that neither the Ombudsman nor Ombudsman for Children have the authority to investigate complaints involving the administration of the law regarding asylum, immigration, naturalisation and citizenship. In its Concluding Observations, the Committee recommended that Ireland consider amending the provisions of the Ombudsman for Children Act, 2002, which preclude the Ombudsman for Children's Office from investigating complaints from children in a refugee, asylum-seeking and/or irregular migration situation. Since this recommendation, no proposals for reform have been tendered by Government. This directly limits the capacity of the Ombudsman to act as an independent monitoring mechanism over the activities of the ISD which impact on children.

Recommendations:

- Introduce an independent appeals mechanism alongside a consolidated legal immigration framework.
- Legislate to enable the Ombudsman for Children and Ombudsman to review complaints regarding asylum, immigration, naturalisation and citizenship.

Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

(A) Child Victims of Trafficking

Child trafficking remains a hidden and unknown phenomenon in Ireland. The most recent US TIP report placed Ireland on Tier 2, identifying that Ireland does not fully meet the minimum standards for the elimination of trafficking. Available national statistics demonstrate that minors represent less than 9% of victims which is significantly lower than the EU average of 22%.[18] In 2020, there were no

[17] Part 6 International Protection Act 2015.

[18] IHREC, Trafficking in Human Beings in Ireland: Evaluation of the Implementation of the EU Anti-Trafficking Directive (2022). Available at: https://www.ihrec.ie/app/uploads/2022/06/Human-Trafficking-report-FINAL-20-06-2022.pdf

identified cases of child trafficking and, although formal figures have not yet been published, in 2021 the Minister for Justice in response to a parliamentary question noted that there was a total of 44 victims identified by An Garda Síochána in 2021, none of whom were children.[19]

In its June 2015 NGO Report to the Committee in relation to Ireland's implementation of the UNCRC, the ICI noted the protection of child victims remained a matter of policy only. This approach has not changed, and matters relating to the protection of such children are still provided for under the Administrative Immigration Arrangements for the Victims of Trafficking (AIAs). While the recovery and reflection period for child victims has increased to a one-year period, access to same remains difficult due to persisting difficulties with the current National Referral Mechanism ("NRM"). While the State recently published the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 which seeks to place the NRM on a statutory footing, many key recommendations have not been incorporated.[20] For example, there is no child-specific NRM, nor child-specific provisions concerning identification nor application for recognition as a victim, nor are there any provisions relating to residence status and an unlimited recovery and reflection period has not been incorporated for identified child victims of trafficking within the General Scheme.

Ireland participates in the EU Trafficking Directive 2011/36, however, only certain provisions are transposed into national law. Unlike adult victims, the Directive provides unconditional access to assistance for child victims of trafficking and that the best interests of the child be the primary consideration, and, in principle, this applies in Ireland. However, this remains contingent on whether a child is identified. Identification of child victims has been complicated by the fact that there is no separate child trafficking identification mechanism.

<u>Recommendations:</u>

- Implement a new statutory NRM, which adopts a child-specific identification procedure that addresses the particulars of a child's situation.
- Implement an unlimited recovery and reflection period for children.
- Decouple residence permissions from the requirement to engage with the competent authority.
- Clarify on a statutory footing the procedures that TUSLA, the Child and Family Agency, must follow to identify child victims of trafficking and the provision of specialised supports and care to children identified.

Immigrant Council of Ireland
Independent Law Centre
7 Red Cow Lane
Dublin 7

Irish Refugee Council
Independent Law Centre
37 Killarney Street
Dublin 1

[19] *Ibid.*
[20] *Ibid.*