

**Submission by the United Nations High Commissioner for Refugees**

**For the Office of the High Commissioner for Human Rights' Compilation Report**

**Universal Periodic Review:**

*2nd Cycle, 25th Session*

**IRELAND**

**I. BACKGROUND INFORMATION**

Ireland acceded to the *1951 Convention relating to the Status of Refugees* in 1956 and to its *1967 Protocol* in 1968 (hereinafter jointly referred to as the *1951 Convention*). Ireland also acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1962 and to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) in 1973.

The Irish international protection determination procedures are set out in domestic law and are contained primarily in: the *Refugee Act, 1996* (as amended), the *European Communities (Eligibility for Protection) Regulations 2006 (Statutory Instrument 518 of 2006)* (as amended), and the *European Union (Subsidiary Protection) Regulations 2013 (Statutory Instrument 426 of 2013)*. Ireland has been a member of the European Union (EU) since 1973. A number of protocols to the Maastricht, Amsterdam and Lisbon treaties concern Ireland's participation in relation to legislation in this area; as a consequence Ireland is not bound by European instruments adopted in the area of asylum that it has not specifically "opted into."

In relation to the Common European Asylum System recast package, Ireland did not opt into the recast *Asylum Qualification Directive (2011/95/EU)*, the recast *Asylum Procedures Directive (2013/32/EU)*, or the recast *Reception Conditions Directive (2013/33/EU)*. The recast instruments that Ireland has opted into are the *Dublin III Regulation (604/2013/EU)* and the recast *Eurodac Regulation (603/2013/EU)*.<sup>1</sup> It continues to participate in the *Qualification Directive (2004/83/EC)* and the *Procedures Directive (2005/85/EC)* but did not opt into the *Reception Conditions Directive (2003/9/EC)*.

As of 31 December 2014, Ireland hosted 5,853<sup>2</sup> recognized refugees and beneficiaries of subsidiary protection, and 3,701 asylum-seekers, of whom 1,770 people were awaiting a final

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<sup>1</sup> In addition to the related *Regulations* establishing the European Asylum Support Office (*439/2010/EU*) and providing for the establishment of the Asylum, Migration and Integration Fund (*516/2014/EU*).

<sup>2</sup> Source: UNHCR ASR 2014.

decision on an application for refugee status while 1,931<sup>3</sup> were awaiting a final decision on a subsidiary protection application. An additional 925 people were awaiting a judicial review of their asylum decision at the High Court.

In 2014, the number of asylum applications in Ireland rose to 1,448, which was an increase of 53 per cent compared to 2013. Applications in 2015 continue to rise, with 1,481 applications received from 1 January to 30 June, representing a 148 per cent increase on the same period in 2014. The increase in asylum applications in 2014 and 2015 to date follows a 10 year period during which the number of new asylum applications in Ireland was in steady decline, from over 11,500 applications in 2002 to 956 in 2013.

There are no official figures on the number of stateless persons in Ireland but UNHCR estimated there to be 99 stateless persons in Ireland, based on a mapping exercise completed in 2014.<sup>4</sup>

## II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

### **Positive developments linked to 1st cycle UPR recommendations**

**Linked to 1st cycle UPR recommendation no. 106.60: “Establish a consolidated framework relating to immigration and asylum issues, including an independent Appeals body (United Kingdom).”**<sup>5</sup>

UNHCR welcomes the publication by the Minister for Justice and Equality in March 2015 of the *General Scheme of the International Protection Bill*, as well as her public pronouncement on 15 September 2015 that the Bill would be published by the end of that month.<sup>6</sup> The *International Protection Bill* is intended to introduce reforms to the international protection determination system in Ireland. In particular, UNHCR welcomes the fact that the proposed primary legislation aims to introduce a long-awaited single protection determination procedure for the processing of refugee status and subsidiary protection applications and to abolish the dual status determination system that has been in place since 2006. The single procedure is essential to ensure greater protection of the human rights and dignity of asylum-seekers in Ireland, as the current dual system is the primary source of delays in the processing of international protection applications. UNHCR encourages the urgent introduction of the new legislation.

**Linked to 1st cycle UPR recommendation no. 106.61: “Ensure that all asylum-seekers in Ireland can effectively accede to the process of determination of their refugee condition and that decisions on the necessity for international protection can be reviewed and are subject to independent judicial supervision (Mexico).”**

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<sup>3</sup> Further to a verification exercise, it was clarified by the first instance body that 695 of these cases were to be deemed withdrawn, giving a figure of 1,236 subsidiary protection (SP) cases on hand at first and second instance combined.

<sup>4</sup> UNHCR, *Scoping Paper: Statelessness in Ireland*, October 2014, available at: <http://www.refworld.org/docid/5448b6344.html>.

<sup>5</sup> “Report of the Working Group on the Universal Periodic Review: Ireland,” A/HRC/19/9, 21 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IESession12.aspx>.

<sup>6</sup> The Minister for Justice and Equality made this statement during a current affairs programme aired by the national broadcaster RTE.

UNHCR welcomes the introduction in November 2013 by the Minister for Justice and Equality of a new Subsidiary Protection procedure by way of *Statutory Instrument*,<sup>7</sup> to deal with a backlog of subsidiary protection applications and future applications in the absence of a single procedure. The new procedure is operated by the Office of the Refugee Applications Commissioner, which is the first instance international protection status determination body (ORAC). As of the end of June 2015, under the new subsidiary protection procedure, a backlog of over 3,700 cases was reduced to 510 active cases awaiting determination and 400 people had been declared eligible for subsidiary protection.<sup>8</sup>

UNHCR also welcomes measures undertaken by the State to reduce court waiting times for 925 persons awaiting judicial review proceedings related to protection decisions before the High Court at the end of 2014.

In 2014, the combined protection recognition rate for both refugee status and subsidiary protection in Ireland was 30 per cent. UNHCR welcomes that the refugee status recognition rate is now around the EU average, with a rate of 18 per cent in 2013 and 17 per cent in 2014. Recognition rates in Ireland have been on an upward trend in the years following 2010, when Ireland had the lowest recognition rate in the EU at 1.8 per cent for refugee status. There are numerous factors underlying the changes in international protection recognition rates in recent years.

UNHCR commends the establishment by the Irish Government of an independent Working Group on the Protection Process<sup>9</sup> in October 2014. The purpose of the Working Group has been to make recommendations to the Government on what improvements should be made to the State's existing system of processing asylum applications, reception system and other asylum-seeker supports. UNHCR encourages the State to implement the recommendations of the Working Group (see Issue 1 below for further information).

**Linked to 1st cycle UPR recommendation no. 106.17:** “Enact laws that protect adequately the rights and the well-being of separated and unaccompanied minors seeking asylum, in conformity with standards established under international laws (Uruguay).”

UNHCR welcomes the fact that the *General Scheme of the International Protection Bill*, published in March 2015, includes provisions to ensure that the best interests of the child will be a primary consideration in the process of international protection determination and related processes. UNHCR also considers it a positive development that the Working Group on the Protection Process included within its work programme issues concerning both accompanied and unaccompanied minors and separated children, such as child safety and protection issues. The Working Group ensured a focus on the best interests of the child throughout its considerations of the protection process. UNHCR encourages the early implementation by the State of related recommendations made by the Working Group.

**Linked to 1st cycle UPR recommendation no. 107.11:** “Consider alternative (legislative) measures that will enhance the position of children in the short term (i.e. extending the remit of the Ombudsman to children in prisons and asylum-seeking children) (Netherlands).”

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<sup>7</sup> *European Union (Subsidiary Protection) Regulations 2013 (Statutory Instrument 426 of 2013)*.

<sup>8</sup> Source: UNHCR MYSR 2015.

<sup>9</sup> See: [http://www.justice.ie/en/JELR/Pages/Working\\_Group\\_on\\_Improvements\\_to\\_the\\_Protection\\_Process](http://www.justice.ie/en/JELR/Pages/Working_Group_on_Improvements_to_the_Protection_Process).

UNHCR welcomes the fact that the remits of the Ombudsman and the Ombudsman for Children, and limitations on their respective remits with regard to asylum-seekers, were included within the work programme of the Working Group on the Protection Process. The Working Group recommended that:

- The remit of the Office of the Ombudsman and the Office of the Ombudsman for Children should be extended to include:
  - services provided to residents of Direct Provision centres, in which asylum-seekers are accommodated; and
  - decisions relating to the transfer of persons accommodated in Direct Provision centres.
- Recourse to the two Offices should be available to a complainant who is dissatisfied with the final outcome of the complaints procedure of the Reception and Integration Agency (RIA), which is responsible for the Direct Provision accommodation system.<sup>10</sup>

UNHCR encourages the early implementation of such recommendations by the State.

### **Additional achievements and positive developments**

#### **Protection of stateless persons:**

Ireland is a State party to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. However, Ireland currently does not have a stateless determination procedure and accordingly, there is no prescribed procedure for a non-refugee stateless person to seek a solution to their situation. UNHCR welcomes the establishment in recent years of an *ad hoc* referral mechanism between UNHCR and the Department of Justice and Equality, pending the introduction of a formal procedure, whereby if UNHCR identifies an individual who is potentially stateless, it will refer the case to the Department in order to facilitate finding a solution for that individual. UNHCR also welcomes the fact that Ireland issued the first declarations of statelessness to two individuals in 2014, despite the fact that a formal determination procedure has not been established. Furthermore, the fact that individuals can now apply to the Department of Justice and Equality for a *1954 Convention* travel document is a positive development.

#### **Naturalization:**

UNHCR also commends improvements in the processing times of applications for naturalization and the introduction of dedicated citizenship ceremonies. 3,463 refugees and beneficiaries of subsidiary protection were naturalized between 2011 and 2014.

#### **Family reunification:**

UNHCR welcomes improvements in the processing times of family reunification applications for persons declared to be refugees, which have been reduced from 18-24 months to an average of 9 months.

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<sup>10</sup> See: "Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers: Final Report," Working Group on the Protection Process, June 2015, p.181, available at:

<http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf>

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### **Challenges linked to outstanding 1st cycle UPR recommendations**

##### **Issue 1: Fair and efficient asylum procedures**

**Linked to 1st cycle UPR recommendation no. 106.61: “Ensure that all asylum-seekers in Ireland can effectively accede to the process of determination of their refugee condition and that decisions on the necessity for international protection can be reviewed and are subject to independent judicial supervision (Mexico).”**

In 2007, 2008 and 2010, proposed primary legislation that aimed to overhaul the immigration, residence and protection law in Ireland was published but never enacted. In line with previous legislative proposals, the *General Scheme of the International Protection Bill*, which was published in March 2015, aims to introduce a long-awaited single status determination procedure. Since 2006, a dual status determination procedure has been in place in Ireland, under which persons eligible for subsidiary protection must first exhaust the refugee status determination process before their application for subsidiary protection can be determined. Ireland remains the only EU Member State without a single procedure for the determination of applications for refugee status and subsidiary protection status.

The dual system has led to significant delays in processing international protection claims. While awaiting their status determination, asylum-seekers in Ireland are not allowed access to the labour market or to mainstream welfare provisions and cannot apply for family reunification. At the end of 2014, 3,701 asylum-seekers were awaiting a decision on their refugee or subsidiary protection application.<sup>11</sup> Figures for early 2015 show an increase in numbers, with 3,876 people in the protection process, almost a third of whom (1,189) have been in the protection process for over five years.<sup>12</sup> Approximately 2,140 persons in the protection process are living in State reception centres under the system known as Direct Provision.<sup>13</sup>

UNHCR welcomes the improvements in the processing of subsidiary protection applications since the introduction of the new Subsidiary Protection procedure, by way of *Statutory Instrument*,<sup>14</sup> in November 2013, and commends the backlog clearance and verification exercise undertaken by the first instance asylum body, the Office of the Refugee Applications Commissioner (ORAC) under the new arrangements. A backlog of over 3,700 cases was transferred to ORAC under the Regulations in November 2013 and by the end of June 2015, there were 510 active cases awaiting determination.<sup>15</sup> Nonetheless, the introduction of the proposed *International Protection Bill* and implementation of a single status determination procedure remains essential to ensure the efficient processing of international protection applications. It is likewise essential that adequate resources be allocated to the State determining agencies in order to ensure the efficient processing of applications under the

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<sup>11</sup> Source: UNHCR ASR.

<sup>12</sup> Position as of 16 February 2015; Source: Report of the Working Group on the Protection Process, p.65.

<sup>13</sup> Position as of 16 February 2015; Source: Report of the Working Group on the Protection Process, p.155.

<sup>14</sup> *European Union (Subsidiary Protection) Regulations 2013 (Statutory Instrument 426 of 2013)*.

<sup>15</sup> Source: UNHCR MYSR 2015.

proposed single procedure and to avoid the development of future back-logs, particularly given increased asylum application numbers in 2015.<sup>16</sup>

UNHCR also welcomes the steps taken by the State in establishing the independent Working Group on the Protection Process in October 2014, which reported to the Minister for Justice and Equality in June 2015 with 173 recommendations for suggested improvements to the protection, accommodation and support systems for asylum-seekers. UNHCR encourages the early implementation of the key recommendations put forward by the Working Group, which include comprehensive provisions in relation to the clearance of protection application backlogs, the implementation of a single status determination procedure, and mechanisms to avoid the build-up of backlogs in the protection system in the future.

### **Recommendations:**

UNHCR recommends that the Government of Ireland:

- a. Introduce the *International Protection Bill* and implement provisions contained therein, in particular in relation to a single status determination procedure, at the earliest opportunity;
- b. Provide enhanced resources to all relevant status determination bodies to ensure the continued clearance of protection application backlogs, to avoid the build-up of backlogs in the future and to ensure the maintenance of improved quality of international protection decisions; and
- c. Implement the recommendations of the Working Group on the Protection Process on protection, accommodation and support systems for asylum-seekers in order to ensure timely access to protection determination procedures and the protection of the dignity and human rights of asylum-seekers in Ireland.

### **Additional protection challenges**

#### **Issue 2: Trafficking in human beings**

Ireland has opted into *EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Trafficking Directive)* and the State introduced primary legislation in 2013<sup>17</sup> in order to comply with the directive. UNHCR *Guidelines* in relation to victims and potential victims of trafficking highlight the fact that such persons may fall within the definition of a refugee contained in the *1951 Convention* and may therefore be entitled to international refugee protection.<sup>18</sup>

UNHCR is concerned by the fact that the supports and services provided to victims of trafficking in Ireland differ depending on whether the victim chooses to apply for international protection or not. The rights of suspected victims of trafficking in Ireland are outlined in the *Administrative Immigration Arrangements for the Protection of Victims of*

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<sup>16</sup> See further Chapter 6, Report of the Working Group on the Protection Process, p.244.

<sup>17</sup> *Criminal Law (Human Trafficking) (Amendment) Act 2013*, available at <http://www.irishstatutebook.ie/eli/2013/act/24/enacted/en/pdf>

<sup>18</sup> UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006, HCR/GIP/06/07, para. 12, available at: <http://www.refworld.org/docid/443679fa4.html>.

*Human Trafficking (the Administrative Arrangements)*.<sup>19</sup> Such rights include a ‘recovery and reflection period’ of 60 days in order to allow the person (a) time to recover from the alleged trafficking; and (b) to escape the influence of the alleged perpetrators of the alleged trafficking. Following this period, the Minister for Justice and Equality may grant to the person concerned a temporary residence permission valid for a period of six months, during which they may be given permission to work and to access other social welfare supports. This temporary permission may be further renewed or changed to a more permanent status under the provisions of the *Administrative Arrangements*.

The *UN Joint Commentary*<sup>20</sup> on the *Trafficking Directive* acknowledges the importance of providing a recovery and reflection period for victims of trafficking, which “allows trafficked persons to start recovering and make informed and thoughtful decisions about the options available to them.”<sup>21</sup> However, a victim of trafficking who chooses to enter the asylum process in Ireland will not have access to all the rights foreseen by the system of support for trafficking victims, including the recovery and reflection period, as asylum-seekers are precluded from availing themselves of the full range of supports offered under the *Administrative Arrangements*. Therefore, victims of trafficking who seek asylum in Ireland are not guaranteed the same type of protection and support that is recommended to assist recovery from the alleged trafficking or escape from the influence of the alleged traffickers. The GRETA Country Report of 2013<sup>22</sup> notes: “As the majority of victims of trafficking are either asylum seekers or European Economic Area nationals, the recovery and reflection period is applied very rarely.”<sup>23</sup>

Furthermore, while victims of trafficking who are granted a temporary residence permission under the *Administrative Arrangements* may be given permission to work and access to other social welfare supports after the 60-day period, asylum-seeking victims and suspected victims of trafficking cannot apply for such a temporary permission. This may result in them living in Direct Provision centres for prolonged periods of time while their international protection claim is being finally determined. During that period, they do not have access to the labour market or the same level of social welfare supports as are available under the *Administrative Arrangements*. This disparity in treatment may in turn have a negative impact on their psychological and social recovery as well as their access to employment, educational and training opportunities.

The Human Rights Committee, in its *Concluding Observations* of 19 August 2014, noted that victims of trafficking who exercise their right to apply for asylum in Ireland are not granted a “recovery and reflection period” or temporary residence permission, as provided to suspected

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<sup>19</sup> *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (the Administrative Arrangements)*, available at:

<http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf>.

<sup>20</sup> *Joint UN Commentary on the EU Directive – A Human Rights-Based Approach*, November 2011, available at: [http://www.unodc.org/documents/human-trafficking/2011/UN\\_Commentary\\_EU\\_Trafficking\\_Directive\\_2011.pdf](http://www.unodc.org/documents/human-trafficking/2011/UN_Commentary_EU_Trafficking_Directive_2011.pdf)

<sup>21</sup> *Ibid*, at p.43.

<sup>22</sup> Council of Europe – Group of Experts on Action against Trafficking in Human Beings (GRETA), “Report concerning the implementation of the *Council of Europe Convention on Action against Trafficking in Human Beings* by Ireland,” 26 September 2013, p.36, available at:

[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2013\\_15\\_FGR\\_IRL\\_public\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf).

<sup>23</sup> *Ibid*, at p.8.

victims of trafficking under the *Administrative Arrangements*, and are instead accommodated in State reception centres. The Committee recommended that Ireland should: “ensure that effective and appropriate assistance and protection is afforded to potential victims of trafficking, including by adopting without further delay the necessary acts of legislation which are compatible with international legal standards.”<sup>24</sup>

UNHCR supports recommendations by the Council of Europe following the GRETA Country Report of 2013<sup>25</sup> and the recommendations of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings of February 2013.<sup>26</sup> These include recommendations that the Irish authorities should ensure consistency between anti-trafficking legislation and regulations of related policy areas and to integrate the prevention of human trafficking in its policies for asylum-seekers.

### **Recommendation:**

UNHCR recommends that the Government of Ireland:

- a. Amend the existing *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* to enable victims of trafficking who are in the asylum process to access the same rights and entitlements as other suspected victims of trafficking.

### **Issue 3: Statelessness**

At present, there is no formal statelessness determination procedure in Ireland. Accordingly, there is no prescribed procedure for a stateless person, who is not entitled to refugee status or subsidiary protection, to seek a solution to their situation. While official figures on the number of stateless persons in Ireland are not available, in 2014 UNHCR estimated there to be 99 stateless persons in Ireland.<sup>27</sup>

Ireland is a State party to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. The Irish *Nationality and Citizenship Act 1956* (as amended) provides safeguards against statelessness at birth and upon loss, deprivation or renunciation of nationality, in line with the *1961 Convention*. The *1954 Convention* has not been implemented by way of domestic legislation in the same way, and while stateless persons may potentially access their rights under the *1954 Convention* through existing legislative and administrative procedures, they may experience difficulties in realizing their rights under the *Statelessness Conventions* due to a lack of formal statelessness determination procedure. Such difficulties arise in particular in relation to three key areas:

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<sup>24</sup> Human Rights Committee, *Concluding Observations on Ireland*, 111th Session, (19 August 2014), CCPR/C/IRL/CO/4, para. 20, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=626&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=626&Lang=en).

<sup>25</sup> Council of Europe – Group of Experts on Action against Trafficking in Human Beings (GRETA), “Report concerning the implementation of the *Council of Europe Convention on Action against Trafficking in Human Beings* by Ireland,” 26 September 2013, p.36, available at:

[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2013\\_15\\_FGR\\_IRL\\_public\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf).

<sup>26</sup> Organization for Security and Co-operation in Europe, “Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Ireland from 30 January to 02 February 2012,” 21 February 2013, pp.4-5, available at:

[www.osce.org/secretariat/99775?download=true](http://www.osce.org/secretariat/99775?download=true).

<sup>27</sup> UNHCR, *Scoping Paper: Statelessness in Ireland*, October 2014, available at:

<http://www.refworld.org/docid/5448b6344.html>.

permission to remain in the State and registration of that permission; access to a travel documents; and naturalization procedures.

Stateless persons without an immigration permission but who do not meet the qualifying criteria for refugee or subsidiary protection status, frequently apply to the Minister for Justice and Equality for leave to remain in the State pursuant the *Immigration Act, 1999*.<sup>28</sup> Outside of the protection system in Ireland, there is also a general discretion under immigration legislation to grant permission to persons to be in the State under the *Immigration Act, 2004*.<sup>29</sup> While issues of statelessness may be raised by applicants in seeking an immigration permission under these mechanisms, the relevant legislation makes no specific reference to stateless persons.

Where an immigration permission is granted to stateless persons, they are required under law to register with the Garda National Immigration Bureau (GNIB). A grant of leave to remain may also state that the permission granted is conditional upon such registration. When registering, a person must produce to the registration officer a valid passport or other equivalent document. However, stateless persons without a passport or equivalent document may experience difficulty registering with the GNIB in the absence of a statelessness determination procedure to clarify their situation, causing delays for them in regularizing their status and therefore in accessing employment and numerous State supports.

The *Nationality and Citizenship Act 1956* (as amended) provides that a discretionary waiver may be applied in the case of refugees and stateless persons in relation to the 5-year period of legal residency, which is normally required before an application for naturalization can be considered. The application of the waiver would allow stateless persons to apply for naturalization after only 3 years of legal residency in the State. However, without a formal procedure for determining statelessness, such persons cannot in practice avail of this waiver and must generally wait 5 years to make an application for naturalization.

UNHCR welcomes the fact that as of November 2011, the Irish Naturalisation & Immigration Service (INIS) has begun accepting applications for a new format travel document issued in accordance with Article 28 of the *1954 Convention*. This was introduced by way of an administrative rather than a statutory procedure. However, stateless persons face obstacles in obtaining a *1954 Convention* travel document as they generally cannot provide proof of their status as a stateless person due to the lack of a formal determination procedure in Ireland.

In the context of the issues outlined, UNHCR welcomed Ireland's statement in December 2011 to the intergovernmental United Nations event on the occasion of the 60th and 50th anniversaries of the *1951* and *1961 Conventions* respectively that "Ireland is fully committed to the implementation of its obligations as a party to both the 1954 and 1961 statelessness conventions." UNHCR equally welcomes engagement with the Department of Justice and Equality in recent years on an *ad hoc* referral mechanism in order to seek solutions for potentially stateless persons who have come to the attention of UNHCR pending the introduction of a determination procedure.

In March 2014, the Irish authorities issued two declarations of statelessness to stateless persons in Ireland. UNHCR welcomes this as a very positive development. UNHCR also

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<sup>28</sup> *Immigration Act, 1999*, available at: <http://www.irishstatutebook.ie/eli/1999/act/22/enacted/en/pdf>.

<sup>29</sup> *Immigration Act, 2004*, available at: <http://www.irishstatutebook.ie/eli/2004/act/1/enacted/en/pdf>.

welcomes the State's on-going commitment to address issues pertaining to stateless persons and to continue to collaborate to find solutions in individual cases. However considerable challenges are likely to remain in this respect in the absence of a statelessness determination procedure.

**Recommendations:**

UNHCR recommends that the Government of Ireland:

- a. Establish a statelessness determination procedure to ensure consistency in processing applications by stateless persons who are not eligible for international protection and to ensure that they can effectively enjoy the rights set out in the *1954 Convention relating to the Status of Stateless Persons*; and
- b. Facilitate solutions for stateless persons in the interim before the introduction of a statelessness determination procedure in order to ensure that they can enjoy certain rights, such as a travel document or a right of residency in some instances.

**Human Rights Liaison Unit**  
**Division of International Protection**  
**UNHCR**  
**September 2015**

## ANNEX

### Excerpts of Recommendations from the 1st cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedure mandate holders

#### IRELAND

We would like to bring your attention to the following excerpts from the 1st cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Ireland.

#### I. Universal Periodic Review

Recommendation <sup>30</sup>	Recommending State	Position <sup>31</sup>
<b>Asylum-seekers and refugees</b>		
106.17. Enact laws that protect adequately the rights and the well-being of separated and unaccompanied minors seeking asylum, in conformity with standards established under international laws.	Uruguay	Supported
106.60. Establish a consolidated framework relating to immigration and asylum issues, including an independent Appeals body.	United Kingdom	Supported
106.61. Ensure that all asylum-seekers in Ireland can effectively accede to the process of determination of their refugee condition and that decisions on the necessity for international protection can be reviewed and are subject to independent judicial supervision.	Mexico	Supported
107.11. Consider alternative (legislative) measures that will enhance the position of children in the short term (i.e. extending the remit of the Ombudsman to children in prisons and asylum-seeking children).	Netherlands	Partially Supported <sup>32</sup>
107.35. Take the necessary measures to avoid detention of asylum-seekers and to avoid situations which may equate the condition of immigrants to that of felons.	Brazil	Supported <sup>33</sup>

<sup>30</sup> All recommendations made to Ireland during its 1<sup>st</sup> cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review: Ireland," A/HRC/19/9, 21 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IESession12.aspx>.

<sup>31</sup> Ireland's views and replies can be found in the Addendum, A/HRC/19/3/Add.1, 6 March 2012, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/IESession12.aspx>.

<sup>32</sup> Addendum: "A number of measures are currently being implemented to enhance the position and protection of children in Irish society."

<sup>33</sup> Addendum: "Ireland continually takes measures to safeguard against the detention of asylum seekers and to avoid situations where asylum seekers may be held in the general prison population. Persons served with a Deportation Order who comply with the reporting requirements placed on them by the Garda National Immigration Bureau are not detained. Detention is only used in circumstances where failed asylum seekers seek to evade deportation."

## II. Treaty Bodies

### Human Rights Committee

Concluding Observations, 111th Session, (19 August 2014) [CCPR/C/IRL/CO/4](#)

#### **Violence against women**

8. While noting the measures taken by the State party to enhance the protection of women from perpetrators of violence, the Committee is concerned that domestic and sexual violence against women remains a serious problem in the State party. It also expresses concern at the lack of a comprehensive data collection system on violence against women, and at the existence of administrative and financial obstacles for marginalized women to access essential support services, particularly women whose immigration status is dependent on their spouse or partner or who do not meet the habitual residence condition (arts. 3, 7, 23 and 26).

**The State party should take further legislative as well as policy measures to ensure that all women, particularly women from vulnerable and marginalized groups, have equal access to protection against perpetrators of violence. It should also establish a systematic data collection system to inform current and future policies and priorities, and provide, in its next periodic report, disaggregated statistics on complaints, prosecutions and sentences regarding violence against women.**

#### **Conditions of detention**

15. While welcoming the measures taken by the State party to improve conditions of detention and to increase the use of community sanctions as an alternative to imprisonment, as well as the progress achieved, the Committee is concerned at the lack of progress in eliminating adverse conditions in a number of prisons in the State party, such as: (a) overcrowding; (b) lack of in-cell sanitation facilities; (c) lack of segregation of remand and convicted prisoners, and between detained immigrants and sentenced prisoners; and (d) the high level of inter-prisoner violence. While noting the introduction of a new complaints model in the Irish Prison Service, the Committee is concerned that it does not provide for a fully independent system for dealing with every serious prisoner complaint (arts. 9–10).

**The State party should step up its efforts to improve the living conditions and treatment of detainees and address overcrowding and the practice of “slopping out” as a matter of urgency in line with the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. It should establish a concrete timeline for the achievement of complete separation of remand and sentenced prisoners, juvenile and adult prisoners and detained immigrants and sentenced prisoners. It should also implement the new complaints model for all categories of complaints without further delay and ensure its independent functioning.**

#### **Asylum-seekers and refugees**

19. The Committee is concerned at the lack of a single application procedure for the consideration of all grounds for international protection, leading to delays in the processing of asylum claims and prolonged accommodation of asylum seekers in Direct Provision centres which is not conducive to family life. It also regrets the lack of an accessible and independent complaints mechanism in these centres (arts. 2, 17 and 24).

**The Committee recommends that the State party take appropriate legislative and policy measures to establish a single application procedure with a right of appeal to an independent appeals body without further delay, including the adoption of the Immigration, Residence and Protection Bill. It should also ensure that the duration of stay in Direct Provision centres is as short as possible and introduce an accessible and independent complaints procedure in the centres.**

### **Trafficking**

20. The Committee is concerned that victims of trafficking who exercise their right to apply for asylum are not granted a “recovery and reflection period” or temporary residence permission and are kept in Direct Provision centres. It is also concerned at inadequacies in the legal support provided to victims of trafficking and the absence of legislation protecting their rights (arts. 2 and 8).

**The State party should ensure that effective and appropriate assistance and protection is afforded to potential victims of trafficking, including by adopting without further delay the necessary acts of legislation which are compatible with international legal standards.**

### **Committee on the Elimination of Racial Discrimination**

Concluding Observations, 78th Session (6 March 2012) [A/HRC/19/9/Add.1](#)

20. The Committee is concerned at the negative impact that the policy of ‘direct provision’ has had on the welfare of asylum-seekers who, due to the inordinate delay in the processing of their applications, and the final outcomes of their appeals and reviews, as well as poor living conditions, can suffer health and psychological problems that in certain cases lead to serious mental illness. The Committee is further concerned at the failure by the State party to provide for an independent appeals tribunal considering that the remit of the Office of the Ombudsman does not extend to asylum and immigration matters. (arts. 2, 5 and 6)

**The Committee encourages the State party to take all necessary steps with a view to expediting the processing of asylum applications so that asylum-seekers do not spend unreasonable periods of time in asylum centres which might have negative consequences on their health and general welfare. The State party should take all necessary measures to improve the living conditions of asylum-seekers by providing them with adequate food, medical care and other social amenities including also a review of the direct provision system.**

22. While noting the various efforts that have been made by the State party through the Health Service Executive (HSE) to protect the rights of separated and unaccompanied children seeking asylum, the Committee regrets that legislation in this area does not provide

adequate protection as required by the standards set by the Office of the United Nations High Commissioner for Refugees (UNHCR). In this context, the Committee notes with concern the lapsing of the Immigration, Residence and Protection Bill 2010, which presented the opportunity to amend the Child Care Act 1991 in order to outline the legal obligations of the HSE towards these children.(arts.2 and 5)

**The Committee recommends that the State party enact legislation that adequately protects the rights and welfare of separated and unaccompanied children seeking asylum in line with the standards set by international law. The Committee, therefore, invites the State party to adopt immediate measures to ensure that a guardian *ad litem* or advisor be appointed for all separated and unaccompanied children irrespective of whether they have made a protection application or not.**

25. The Committee regrets that notwithstanding the existence of the Refugee Act of 1996, there is no legal framework for family reunification, which is currently handled on a non-statutory basis. The Committee also regrets the current narrow meaning ascribed to the word ‘family’ for purposes of family reunification. The Committee further regrets the lapsing of the Immigration Residence and Protection Bill which provided that family reunification would be provided for in a statutory instrument. (arts. 2, para. (2) and 5 (d)(iv), 6)

**The Committee recommends that the State party adopt legislation that would elaborate the principles, rights and obligations governing family reunification. In this regard, the State party is encouraged to assign the responsibility of dealing with applications for family reunification to an independent authority that would follow due process, and develop a system that would provide an appellate procedure to challenge its decisions.**

### **III. Special Procedures**

#### **Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, 21 February 2013, [A/HRC/22/47/Add.3](#)**

##### **E. Asylum seekers and refugees working for the rights of their community**

96. Ireland has traditionally been an open and welcoming country for those at risk in other parts of the world, and began receiving refugees in the mid-1990s. Asylum seekers in Ireland face significant challenges, some of which affect a number of them who might be regarded as human rights defenders.

97. The absence of a single determination procedure causes excessive delays in granting effective protection for those who need it most. In addition, the rate of recognition is one of the lowest in Europe, and there is room for improving the quality of decision-making in the status determination process. In this connection, the Special Rapporteur was pleased to learn that the Government is working closely with UNCHR through the Quality Initiative to enhance various aspects of the determination process.

98. The Special Rapporteur was, however, concerned to receive reliable information indicating that asylum seekers using direct public provision services, which include reception and accommodation, sometimes fear retaliation, for instance in the form of unannounced

transfers, if they attempt to claim their rights, or those of their fellow asylum seekers, to privacy, an adequate standard of living and adequate standards of physical and mental health. She encourages the authorities to take all the measures necessary to ensure that refugees working for the rights of their community in Ireland are able to claim their rights without facing obstacles of any sort.