



Comhlámh

***Proposed Amendments to the
IMMIGRATION, RESIDENCE & PROTECTION BILL 2008***

***Presented to the Joint Committee on Justice,
Equality, Defence and Women's Rights***

***to contribute to committee stage proceedings in relation
to the Bill***

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on behalf of

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Comhlámh is a dynamic, independent membership organisation committed to critical engagement on worldwide development. Through awareness raising, research, education and training we empower individuals to take effective action for addressing global injustice. Ours is the belief that people acting in solidarity can change the structures of global injustice and poverty.

This submission outlines Comhlámh's key observations as an organisation comprised of returned development workers and working to challenge the root causes of poverty and inequality. As a member of the NGO Alliance against Racism and the European Network Against Racism, we support the concerns raised and submissions made by other NGOs such as Integrating Ireland, the Migrant Rights Centre of Ireland, Immigrant Council of Ireland, the Irish Refugee Council and Refugee Information Centre and other bodies such as the UNHCR

Comhlámh welcomes the opportunity presented by the publication of the Immigration, Residence and Protection Bill to engage in this important consultation. We welcome the government initiative to review migration policy and immigration legislation in Ireland by the publication of this Bill. However, Comhlámh is concerned that the Bill, if enacted in its current form without significant amendment, will erode migrant rights and fail to address serious flaws in the system.

Comhlámh is concerned that sections of the Bill may be unconstitutional, are in breach of Ireland's international human rights obligations and fail to maintain international best practice. This submission outlines some of the key areas of concern to Comhlámh and its networks and members.

1. Migrant Rights

Comhlámh, as an organisation that works to challenge the root causes of poverty and inequality is concerned that the Bill fails to set out clear rules about migrants' rights, entitlements, and obligations, providing for elaboration by regulations (section 127) which remain unspecified, void of timelines and areas to be covered by the regulations. We call for the publication of these regulations in order to allow for a meaningful and holistic debate on Ireland's migration policy.

2. Immigration and Asylum

Comhlámh supports the view of the Immigrant Council of Ireland that the combination of general immigration and asylum/protection issues in the same piece of legislation is undesirable. As a leading organisation in the provision of development education and anti-racism training, Comhlámh has repeatedly noted the confusion that exists amongst the Irish public about the different categories within the term "immigrant". There is a strong tendency to call all migrants from particular countries "asylum seekers" and, unfortunately, to negatively stereotype them as such. Combining broader immigration issues and the specific sub-section of asylum in one piece of legislation will only succeed in reinforcing this misconception. This threatens to undermine the extensive work that is

being funded by the government through Irish Aid in the area of development education and encouraging deeper, more nuanced perspectives about developing countries and people from developing countries.

3. Access to Fair Determination Procedures

Comhlámh echoes the concerns of the Migrant Rights Centre that the Bill does not adequately provide for fair procedures and is lacking in transparency relating to decision making. As an organisation working to challenge the root causes of inequality, we believe the immigration decision making process should be transparent at all stages and allow for an independent appeals mechanism.

Comhlámh is disappointed that the Bill does not provide for an independent appeals mechanism for immigration decisions as promised in the Programme for Government. Instead, it continues to rely on courts to resolve challenges at significant cost to taxpayers and at great personal cost to migrants. Comhlámh calls for the legislation to be amended as this significant omission denies migrants the opportunity to challenge decisions affecting their and their families' human rights as protected under the European Convention on Human Rights and Fundamental Freedoms¹ leading to breaches of the Convention².

Comhlámh is concerned that the independence and impartiality of the proposed Protection Review Tribunal may be compromised by the ability of the Minister to appoint part time members of the tribunal and to prioritise certain applications. Members of a tribunal must be independent and have the appropriate legal and immigration expertise to decide on an array of immigration matters.

Comhlámh calls for legislation to provide for guidelines on the operation of the tribunal, including decisions which have been made anonymous, to be made public, ensuring transparency. We urge that the legislation be amended to remove s.95 (7) (a) which undermines the lawyer's role and duty in representing their client.

Migrant access to Justice is severely restricted by the curtailing of judicial oversight by s.118. Comhlámh is concerned that the Bill lacks the necessary checks and balances to ensure the asylum process meets the standards that legislation and policy seek to achieve. We call for s.118 to be reviewed to ensure judicial review continues to safeguard compliance with the Irish Constitution and to ensure that Article 40.1 of the Constitution and Article 6 of the European Convention on Human rights and Fundamental Freedoms will not be breached by way of the High Court awarding costs against migrants' legal representatives but not against the State's legal representatives.

4. Training

¹ Articles 3 (Prohibition of Torture), Article 8 (Right to Respect for private and family life)

² Article 6 (Right to a fair trial) and Article 13 (Right to an effective remedy)

Comhlámh continues to be concerned that the Bill makes no reference to the need for extensive training for any officer undertaking immigration duties and protection assessments. Comhlámh would like to reiterate our call, made in 2005, that intercultural and anti-racism training must be provided to all immigration officials and public service providers in order to ensure that services are accessible, equitable, and non-discriminatory for all immigrants. Training must also address the specific needs of vulnerable persons, including survivors of violence, those at risk of harmful traditional practices, and traumatized asylum seekers. Comhlámh highlights the continued underfunding and inadequate number of trainers in this area and recommend that resources be made available for this purpose.

We advocate for the introduction of strict guidelines, minimum criteria for the recruitment and training of officials, and effective safeguards setting out the requirements of human rights law and standards. Comhlámh notes the continued need for further improvement and resourcing of culturally appropriate translation facilities both within the immigration process and around all public services. Immigrants should be actively encouraged, facilitated, and informed regarding access to services and other entitlements.

5. Right to Marry

Comhlámh believes that Section 123 of the Bill is seriously flawed and is in breach of the Irish Constitution³ and our international human rights obligations⁴. As in other parts of the Bill, there is a worrying dependence on ministerial discretion and a lack of clarity regarding the category of migrants being referred to (e.g. migrants on ‘non-renewable residence permits’). Comhlámh firmly believes that this Bill restricts the rights of migrants, and Irish citizens, to marry and may have serious implications for Irish development workers who wish to marry non EEA citizens.

Comhlámh calls for the removal of Section 123 to ensure an adult’s right to marry and choose their partner is not regulated and the right to marry continues to be enshrined in primary legislation.

6. Family Reunification

Comhlámh is concerned that the Bill does not provide clear entitlement to family reunification. As an organization representing returned development workers, Comhlámh is concerned that this lack of clarity may have particular implications for Irish returned development workers who have married a non EU national and wish to bring their spouse and extended family to Ireland. We call for family reunification rights for all to be enshrined in primary law including measures that would facilitate the return of Irish abroad, with non EU family members, who wish to live in Ireland.

³ Article 41.3.1 (Right to Marry), Article 40.1 (Equality clause) and Article 15.2.1 (which provides that the Oireachtas has the sole and exclusive power to make law)

⁴ Article 12 (Right to Marry) European Convention on Human Rights

We call for the adoption of a broad concept of the family unit to include extended or de facto family members and taking into account cultural differences in the definition of "family"⁵ particularly the concept of the extended family which is central to many cultures and nationalities. We echo the ECRE position on family reunification which extends the definition of nuclear family and should be considered in light of definitions of an extended family.⁶

We advocate for an approach which favours statutory entitlement to family reunification provided for Irish citizens and all legally resident immigrants with discretionary provision to allow for the admission of other family members. Safeguarding family is a priority: it constitutes a universally recognised right of the family to protection by society and the state. The Universal Declaration of Human Rights defines family as "the natural and fundamental group unit of society...entitled to protection by society and the State".⁷

A number of other international⁸ and European legal instruments⁹ similarly uphold family unity and protection. The protection of the family is equally recognised by the European Convention on Human Rights and further emphasised in the jurisprudence of the European Court of Human Rights. The importance of the principle of family reunion is also affirmed in a number of UNHCR Executive Committee Conclusions¹⁰ and in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.¹¹ The Convention on the Rights of the Child specifically provides for a right to enter and remain in a particular country for the purposes of family reunification.^{12,}

Moreover, Comhlámh would remind the Governments of its commitment in the National Action Plan and elsewhere to promoting diversity, interculturalism and the full participation of all in Ireland's social and cultural life. We believe that the reunification

⁵ UNHCR asserts that "pragmatism and flexibility, in addition to cultural sensitivity, be brought to bear in the process of identifying the members of the refugee family", EXCOM Standing Committee Note on Family Protection Issues, EC/49/SC/CRP.14, June 1999. Further, para. 185 of the UNHCR Handbook states that "the principle of family unity operates in favour of dependents and not against them".

⁶ Definition of a nuclear family include : descendants of legally married partners who are less than 21 years of age or dependent on the principal applicant; dependent relatives in the ascending line of legally married partners; partners in a durable form of cohabitation who are not legally married or can not legally marry and the children under the age of 21 descending from them; children who are de facto members of a household through adoption, fostering or other forms of care arrangements, although not descending from a marriage or a relationship pertaining to that household; same-sex partners in a durable form of cohabitation; all dependent relatives in the ascending or descending line of cohabitating partners; dependent siblings when humanitarian reasons are invoked; and relatives on whom the principal applicant is dependent due to health, age, disability or other reasons. ECRE Position on Family Reunification 2000

⁷ Art. 16,(3), Universal Declaration of Human Rights. Further, Art.12 states that "no one shall be subjected to arbitrary interference with his privacy, family, home...".

⁸ Arts. 17 and 23,(1), International Covenant on Civil and Political Rights, Article 10,(1), of the International Covenant on Economic, Social and Cultural Rights, Arts. 9-10, UN Convention on the Rights of the Child.

⁹ Art. 8, European Convention for the Protection of Human Rights and Fundamental Freedoms. Also, Art. 16, European Social Charter (the right of the family to social, legal and economic protection).

¹¹ Chapter VI, para 181-188.

¹² Art. 10, (1), states that "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".

of families with immigrants is absolutely key in enabling immigrants to fully participate in social and cultural life and to integrate successfully into their new communities. Given these International conventions, National commitments and the provisions of the Constitution in relation to the family, the government must clearly strive to ensure conformity with state obligations and international best practice.

Comhlámh advocates for family reunification to take place with the least possible delay and within a period of six months from the time an application is made. The length of time that people may have to wait can create doubt around the intention to protect the right to family life for third country nationals and lead to unnecessary psychological stress for those involved.¹³

Applications from or regarding separated children must be prioritised in view of the potential harm caused by long periods of separation from their parents and all decisions should be taken in the best interests of the child.

In the light of Ireland's NAPAR and other commitments to non-discrimination, equality and participation, Comhlámh asserts that immigrants admitted under family reunification must have access to the same socio-economic rights and other rights as the principal applicant, such as access to the labour market and access to education and training. This is essential to integration, to economic and social cultural equality, and to the ability to live fully within a new community. Comhlámh therefore proposes that this is provided for in the legislation in a similar manner as provided in Section 36 for long term residents.

Comhlámh also calls for clarity regarding the rights of spouse dependents in the event of separation or divorce and of minor dependents when they reach the age of majority. We call for provisions such as the granting of autonomous residence permits as an essential tool to deal with situations such as familial breakdown or domestic violence.

7. Long Term Residence

Comhlámh joins other NGOs in welcoming the provision of a statutory footing for the status of long-term residence. However, we call for improved clarity regarding the criteria an applicant must satisfy as outlined in the Bill in Section 36(b) and 36 (c) (iii). We believe that where criteria for eligibility are noted, they must be clearly defined in order to ensure fair and consistent interpretation and decision making. In addition, the conditions for granting this status are not in line with those applied in other EU Member States and we believe that conditions should be in line with the application processes in

¹³ Psychologically, the toll of such long separations is heavy. The prolonged separation combined with the sense of powerlessness, causes acute emotional distress. Most family members are left behind in situations of varying degrees of risk, from threat of war and persecution, to poverty and insecurity. Long months and years of anxious waiting have serious psychological and physical impacts. Many refugees say that their family members suspect them of not wanting them to come, because they cannot believe that a country could be so inefficient in its processing. Families that finally reunite after years of separation face the stress of trying to live together after having grown apart.

other member states. The Bill again allows for ministerial discretion and takes an impermanent view of 'long term' residency, unlike most other EU countries.

As an organisation providing training on anti racism and interculturalism , we would particularly like to note that integration is a two-way process and that if the state is not being obliged to show that it is making "reasonable efforts" to promote integration, it is unfair to expect migrants to show this, especially when the term itself has not been defined.

8. Visa Fees

Comhlámh is concerned that the Bill allows for creeping charges at every stage of the immigration process, for example, to enter the State, to register and renew residence permits, and for work permits and Green cards. We are disappointed that the fees may be charged in excess of the administrative costs underpinning the system, which would entail hardship to vulnerable groups and may have a discriminatory impact. This charging regime is reflective of a philosophy that immigrants should pay for the benefits of being allowed to enter and reside in Ireland, while taking little account of the immense benefit the Irish economy and society accrues.

As an organisation working in the area of international development and development education, Comhlámh and the Irish public, benefit from the many highly skilled workers from developing countries working in Ireland and contributing to the international development debate. We reiterate the call in our 2005 submission, echoing that of Integrating Ireland's, that the system should recognize the contribution of migrants to the Irish economy and society. Excessive fees promote the idea that entry to Ireland for work, study purposes, and so on, is a privilege and not a right. In a modern global society in which migration is a fact of life, this is an outdated and insulting attitude towards all those who come to Ireland and contribute so much to our economy, culture and way of life.