



**Issues and Proposals of Crosscare Migrant Project for the Joint Committee on Social and Family Affairs on the Habitual Residence Condition and its implications for returning Irish emigrants
February 2008**

Since the Habitual Residence Condition came into effect in May 2004, 1,684 Irish people have been refused state support because of failure to pass the test. That is more than one person every day on average.

Crosscare Migrant Project has worked with Irish emigrants since the 1950s. We continue to work with people emigrating from Ireland but with changing migration patterns in the last 10 years we began work with Irish people returning and new immigrants to Ireland. Among other publications we produce a folder called 'Returning to Ireland' which is a comprehensive information source for Irish citizens abroad who are thinking about returning home. It is distributed globally through Irish organisations, embassies and consulates. In 2007 we dealt with approximately 350 Irish people abroad who were thinking about returning home. Many more have used our publication via its global distribution points and the internet.

The majority of returning Irish emigrants (19,000 per annum approx estimated by the CSO for 2005 & 2006) will have no immediate need to access the welfare system. Many simply enter the Irish labour force, many have made adequate social insurance contributions in their adopted country and via Bi-Lateral Social Security agreements many people qualify for a pension on their return to Ireland. However there is a group of people who do not fall into these safety nets and if they fail the HRC they have no welfare entitlement in Ireland despite clear connections with the country. We have seen clients of ours in this situation. The small number of people who are not covered by 'adopted country' social security systems or who are not covered by Bi-Lateral Social Security Agreements are most likely to be those who were in unstable employment and vulnerable situations and thus often most in need of State support on return. It seems unjust that those emigrants who were not as successful as others have a lesser chance of getting State support on their return.

While some may view the numbers of Irish citizens refused supports as 'acceptable collateral damage' CMP simply does not believe that it is necessary to refuse a returning emigrant support from a State he or she may have been failed by in the past and perhaps had no option but to leave. Our diaspora are given a lot of lip service and it is easy to avoid action and hard decisions when they are far away and/or out of sight.

CMP has a very specific suggestion that would assist in ensuring that returning Irish would not be refused state support if they require it. As it stands the Department of Social and Family Affairs cannot give an assurance that permanently returning Irish will be given State support if required. The power to make the decision if someone is HRC compliant is devolved to officers all over the country. Such officers have different ways of understanding the HRC and when the nebulous concepts of '*Centre of Interest*' and '*Future Intention*' come into play, clearly there can be no guarantee under the current guidelines that permanently returning Irish citizens can be assured of social protection. The statistics, we believe, reflect this.

We believe that one of the clear deficiencies of the guidelines rests in the interpretation of the '*Centre of Interest*' criterion. This criterion does not clearly recognise the link a person can have with their place of birth even if they have not lived there for many years or even decades. We all know how Irish abroad can feel such a strong connection to their homeplace even if they have not lived there for a long period of time.

CMP understands that the HRC cannot favour or discriminate against an applicant on the grounds of his/her nationality. While the connection that people feel to their native country may be partly based on nationality, it is ultimately based on the fact that it was the place he or she was born and very often raised.

CMP proposes that in assessing '*Centre of Interest*' that an officer can give extra weight to a person's application if that person was born in Ireland, based on the concept that it is reasonable to assume that a person has a strong and clear connection with their place of birth. We believe that this additional sub-criterion is of enough distance from the concept of nationality (at least as distanced as the criterion of '*The applicant's length and continuity of residence in a particular country*') to avoid sanction based on discrimination on grounds of nationality. It is very important to note of course that Irish nationality is no longer directly linked to birthplace, so birthplace can be seen as a distinct concept from nationality. Of course this sub-criterion of birthplace could also be used in the future for non-Irish citizens who would be born in Ireland. It is important to note that this proposal is only a form of sub-criterion and the 5 main criteria would still hold.

It is also possible to develop sub-criteria for '*The applicant's length and continuity of residence in a particular country*' that would give extra weight to a childhood spent in the country. Few would argue against the bond that a child develops with the place where he/she grew up. Currently this is not overtly recognised by the HRC and it is a deficit that directly affects returning Irish emigrants. For example if a person, regardless of nationality, could prove residence in Ireland for 10 of the first 20 years of their life this could be used as a criterion for passing the HRC.

CMP urges the Committee and the Minister to ensure that guidelines for the HRC will ensure that returning Irish will be given support if they are planning to live in Ireland permanently. Currently we have to advise people who are thinking about returning that they may fail the HRC. It is our advice that people should not sever links with their 'adopted country' as often when someone returns to Ireland they simply find it too

difficult to resettle and thus by keeping links open with the USA (for example) they have an insurance policy if their move back to Ireland has not gone to plan. The problem with this advice however is that it is contrary to the steps that one needs to take to pass the HRC under the current guidelines – i.e. severing links with the country you have left. This puts intending returning Irish facing a dilemma – cut links with the USA (for example) and hope that the move back to Ireland works out **or** maintain links with the USA and hope that you do not need Irish state support. Of course if the only way you can return to Ireland is by getting state support you simply may not take what is a high risk. So in effect the HRC is acting as a deterrent not to the emigrants that did well but to those who have struggled and not done do well financially. This is simply an unacceptable situation.

I urge you to consider our proposals and if you wish further elaboration and/or explanation please feel free to contact me.

Sincerely

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