

## **Crosscare Migrant Project response to the Immigration, Residence and Protection Bill 2008 February 2008**

Crosscare Migrant Project welcomes the publication of the Immigration, Residence and Protection Bill that proposes to overhaul immigration legislation in Ireland, some of which dates back to 1935. A comprehensive overhaul of immigration legislation in Ireland allows the opportunity to lay the basis for a clearer, fairer, more transparent and accountable immigration system that draws on best practice from abroad. However CMP believes that the Bill in its current draft is far from comprehensive and the overall thrust of the Bill has the potential to further marginalise and alienate immigrants who have already suffered at the hands of an under-resourced and poorly planned immigration system over the last decade. This Bill proposes to take away more rights from those who have very few and also makes it harder for those who are here long-term to gain stable immigration status. This Bill has the capacity to be extremely divisive if enacted and its effects could work directly against attempts at integration.

In particular CMP is deeply concerned about a number of aspects of the Bill and calls for:

- A section in the Bill that will grant a right of residency to non-EU family members of Irish nationals
- A right in primary legislation for family reunification for all immigrants in Ireland
- Removal of unnecessarily punitive proposals in relation to undocumented immigrants
- Removal of proposals in relation to requirements for Ministerial permission to marry
- Removal of clauses that further restrict access to Long Term Residency
- Removal of proposals for a Bond system for visas

CMP's issues and suggestions on the Bill can be categorised under 3 broad themes:

1. Dehumanisation of the undocumented immigrant
2. The unnecessary encroachment of the State into the private lives of all members of society
3. Consolidation and deepening of a two tier society and the two tier family

## 1. Dehumanisation of the undocumented immigrant

Verbal promises of positive measures for those undocumented through no fault of their own are to be welcomed – however such proposals need to be accommodated in primary legislation as immigration systems need a core inbuilt mechanism of response for those who are essentially failed by the system. On the whole CMP believes that various aspects of this Bill further dehumanise the undocumented immigrant. Numerous proposals are in direct contradiction to the approach of the State towards undocumented Irish immigrants in the USA where it acknowledges their contribution to America, highlights the human suffering that they face and rightly makes every effort possible to push for legal status for them.

However in the Republic of Ireland this Bill would allow the Irish State to:

- Deport a person without giving him or her notice. *4 (5)*.
- Deport a person to any country that he/she will be accepted in. *54 (1)*.
- Imprison a person for up to 8 weeks while awaiting deportation. *55 (5)*.
- Charge a person for the costs of imprisonment and deportation. *60 (1)*.
- Deport a person even if the final decision on their status has not been decided by the Courts. *118 (9)*.

In addition, if a person believes there was something unlawful about the manner in which they were dealt with under immigration law their legal representative will be sanctioned if it is deemed that a consequent appeal is perceived not to carry enough weight (*118 (8)*). Such a threatening proposal to professionals who stand up for the weakest in society and those with least rights is unacceptable. **CMP proposes that this clause and all the above clauses are immediately removed from the Bill.**

## 2. The unnecessary encroachment of the State into the private lives of all members of society

Along with proposals on the collection of bio-metric data on ‘foreign nationals’ this Bill proposes to further extend the encroachment of the State into the lives of immigrants and Irish citizens. This Bill is proposing that consent would need to be obtained from the Minister for Justice if Irish, EU or non-EU citizens wish to marry a non-EU citizen. Also under this proposal solemnisers of marriages would be required to check the immigration status of the person in question and would have to check that he or she sought the permission of the Minister. Solemnisers who do not do this will be guilty of an offence.

CMP views this proposal as an overly invasive intervention by the State in the institution of marriage. CMP understands that measures need to be taken to prevent people from gaining residency in Ireland through marriages of convenience. However the anecdotal and inconclusive evidence of these type of marriages by no means warrants legislation

sanctioning Ministerial involvement in the marriage process. The Irish Naturalisation and Immigration Service (INIS) already has measures in place to prevent such abuses. **CMP sees the proposals of Ministerial permission for marriages and of making solemnisers of marriages quasi-immigration officials as an unnecessary step too far. CMP calls on the Minister to drop these proposals.**

### **3. Consolidation and deepening of a two tier society and the two-tier family**

CMP sees this current draft of the Bill as a missed opportunity to put in place measures that would help to build a more equal society. Already in Ireland there is a huge gap between the rights of those at the top and bottom of the socio-economic ladder. The Bill has the capacity to further polarise this division with a virtual absence of legislative rights for immigrants, extreme proposals for undocumented immigrants and unnecessary State encroachment in the private lives of individuals. While the Bill purports to be a comprehensive approach to immigration its most startling overall deficit is the lack of clarification on the fundamental rights of immigrants which need to be a central pillar and not a secondary consideration of a successful immigration system and an integrated society.

CMP has proposals in four areas under this section:

- Family Reunification
- Family members of Irish citizens
- Long-Term Residency
- The proposed ‘Bond system’

#### Family Reunification

In Section 27 (1) the Bill details 25 grounds on which a person can be refused entry into Ireland. Conversely, apart from the limited and exclusive proposals around Long Term Residency (36) the Bill proposes few rights for immigrants already legally in the State. Most crucial of all these rights is the right to live with one’s family in Ireland.

Some of the clearest anomalies of the Irish immigration system lie in the varying and disparate systems of family reunification. Family reunification rights are internationally recognised as central in facilitating integration. (See CMP’s paper ‘Family Reunification and Migrant Integration at [www.migrantproject.ie](http://www.migrantproject.ie) ).

According to the Irish Constitution,

*The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.*

*The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.*

Yet we continue to live in a society where some categories of immigrants are prevented from bringing their immediate family members to live in Ireland with them, despite the fact that the person may be living and working in Ireland for many years. There is much talk about learning from other countries that “have got immigration wrong”. The EU has accumulated a significant amount of knowledge and experience in relation to best practice approaches to integration. In EU Directive 2003/86/EC the European Commission stated of family reunification, that it:

*helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.*

It is time that our immigration system reflects our constitution and international best practice and facilitates clear and strong rights for family units to immigrate to Ireland rather than individual economic units – an approach which has been proven to fail elsewhere. **All immigrants in Ireland should have a stated right in primary legislation to family reunification for their immediate family members and clear pathways to reunification for extended family members.** While immediate family members are provided for in some limited categories of immigrants (those with Refugee status and certain categories of EU citizens) CMP believes that such fundamental rights should be granted to all categories of immigrants.

#### Family members of Irish citizens

One of the most glaring deficits of the Irish immigration system is the fact that non-EU family members of Irish citizens do not have a stated right to live in Ireland with their Irish family member/s. This is a barrier for Irish emigrants wishing to return to Ireland with their non-EU family members. There are also cases where spouses of Irish citizens are refused entry into Ireland because the Irish citizen is not earning enough money. The difficulties do not end there as there are 100s of cases every year where non-EU spouses of Irish citizens have to wait up to 12 months (without the right to work) for their request for residency to be processed. The anomalous situation for family members of Irish citizens also means that if certain categories of immigrant (those with Refugee status and certain categories of non-EU family members of EU citizens) are granted Irish citizenship they lose their rights to family reunification. There are broader questions for integration on this particular aspect of the issue.

**CMP calls on the government to insert a section in the Immigration, Residence and Protection Bill that would grant rights to non-EU family members of Irish citizens to reside in Ireland with their Irish family member/s.**

In addition, in Section 127 (5) the Minister outlines 11 broad grounds which he will take into account when considering whether to grant entry or residence to certain categories of immigrant. Such grounds include, among others:

- trade, commercial, tourist, cultural, educational or scientific activities,
- fostering and development of the links between the State and the United Kingdom of Great Britain and Northern Ireland.

**CMP proposes that the Minister includes an additional ground, in the manner of the following suggestion:**

*The wishes of Irish citizens abroad to return to live in the State with their family members*

### Long Term Residency

CMP views the provisions for Long Term Residency (36) as unnecessarily exclusive. The Bill is proposing that immigrants who fall into situations of vulnerability and may need to access their rights through the welfare system, will be penalised by not being eligible for Long Term Residency. Those on low wages will be more susceptible to such a need and thus Long Term Residency permission will be granted to the more fortunate and/or better paid, thus increasing an already present socio-economic division in society. The proposed qualification criteria for Long-Term Residency are over and above the current requirements for Irish citizenship and in their current form will serve to further socially and economically stratify rather than integrate immigrants.

CMP also views the proposal for continued welfare and educational restrictions into the 'Qualified Long Term Resident' 37 (2) (c) status as unnecessarily restrictive and ultimately counter productive.

Section 36 (4) (c) (iii) mentions the requirement of 'reasonable efforts to integrate'. The question here is how reasonably can the immigrant be expected to integrate if he/she has no right to live with his/her family?

**CMP calls on the Minister to make Long Term Residence permission more accessible by dropping 36 (4) (c) (iv) which requires that applicants cannot have had recourse to public funds.**

**In light of no provided definition of integration and the somewhat vague and contradictory requirement of 36 (4) (c) (iii) in relation to 'reasonable efforts to integrate' CMP believes that this clause should be dropped.**

**CMP also recommends that Long Term Residency should be granted on a permanent basis.**

## Bond System

Combined with the lack of rights to family reunification and only an exclusive right to Long Term Residency, this Bill is now also outlining a possibility that only family members of an exclusive group of immigrants would be allowed to visit Ireland.

Via the proposed 'Bond System' for visas (13) only Long Term Residents, Irish citizens or EU citizens resident in Ireland for 5 years would be able to act as guarantor for a Bond (financial or otherwise) that can be required to accompany a visa application. This will serve to further punish those who are economically and socially on the margins of society, thus again exacerbating social exclusion and division. We have an ongoing need for non-EEA immigrants who do not qualify for Greencards, (See Appendix 1 for more detail) who under this Bill will not have a right to family reunification, may not qualify for Long Term Residency and whose family may not be able to visit Ireland.

**On the grounds of being unnecessarily punitive to those immigrants on the lower socio-economic scale CMP believes that proposals for a Bond system of visas should be dropped.**

## **4. Other proposals**

- CMP views the proposal to grant victims of trafficking only an initial 45 day period (124) of legal status in order to recover and reflect from their ordeal as inadequate. With possible deportation looming at the end of this short time span, a 45 day period will have the effect of moving a person from one situation of pressure to another. Such a short time period will continue the situation of instability and vulnerability for the victim. **CMP recommends a period of 6 months for an initial recovery and reflection period.**
- In relation to section 35 (1) (d) on replacement of lost permits, **CMP suggests the removal of this clause on the grounds that it is not reasonable to expect someone to provide evidence that their permit was lost or destroyed.**
- In relation to section 40 (3) (b) on the period of time within which a person must respond to a notification to revoke a renewable residence permission, CMP suggests a time period of significantly more than 5 days. Considering margins of error, the time involved in making a review application and the seriousness of the issue for the person involved **CMP proposes that a time period of at least 15 working days would be more appropriate.**
- **CMP proposes an additional clause in the Bill in relation to the obligation of an Immigration Officer to provide any person from whom he/she confiscates a document with a receipt detailing the officer's name and title, the date, name and reference number of person in question and an exact description of the document confiscated and a reason explaining why the document was confiscated.**

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## Appendix 1.

The following is a table of new work permits issued to non-EEA nationals in the 3 years following the 2004 accession of new EU states:

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>New Work Permits issued to non-EEA nationals</b>	7, 354	7, 298	10, 134

From [www.entemp.ie](http://www.entemp.ie) on 18/2/08