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**Africa Centre
&
New
Communities
Partnership**

**Immigration
Residence
and
Protection
Bill 2008**

Our Response



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This response to the Immigration, Residence and Protection Bill 2008 is submitted by the Africa Centre and New Communities Partnership (NCP).

The Africa Centre and the NCP are committed to empowering new communities to speak for themselves and represent their own interests and to engaging positively and in partnership with policy makers and civil society towards building a truly inclusive and intercultural Ireland

Underpinning our views is an acceptance of the following core realities:

- ❖ We must not lose sight of the fact that people have the right to their human rights independent of the country in which they are living. While no foreign national has a right to live in Ireland, once a person is lawfully living here, the State does not have the right to interfere with their enjoyment of such rights.
- ❖ There is an essential reciprocity between the State and the immigrants living, working, contributing and paying taxes within it. According rights and responsibilities on a par with Irish citizens can greatly enhance integration; cohesion; prosperity and stability in Ireland.
- ❖ Immigration regulations need to embrace the reality that immigration in Ireland is here to stay and cannot be regarded as a temporary phenomenon.
- ❖ Integration and immigration policy are inextricably linked. Building integration into every aspect of public and administrative life in Ireland will ultimately benefit all of those living and working in Ireland.

1. Long term residency

1.1 Context

1.1.1 People from other countries have been living, working, raising their families and making their homes in Ireland for a number of years. More will continue to do this in the future and a statutory provision recognising this reality is a move in the right direction.

1.1.2 A legal recognition of long term residency should result in much greater stability; a sense of security and the development of psychological and practical resources for long term planning. However, such provision is compromised and undermined by **arbitrary conditionality** and **restricted rights**.

1.1.3 Arbitrary conditionality requires permission to be renewed every five years while the Minister retains discretion on renewal, refusal & revocation. Without an independent appeals mechanism, the door is opened very quickly to the possibility of becoming unlawfully present in the State, leaving us vulnerable to the consequences of that unlawful state and to summary deportation.

1.1.4 While some rights similar to those enjoyed by Irish citizens are available to long-term residents, the significance of such a status is undermined by **restricted rights** regarding third level fees; voting and freedom of movement throughout the EU.

1.1.5 Long term & permanent residency recognises the essential reciprocity between the State and those contributing to it and according rights and responsibilities on a par with Irish citizens ensures that this measure can greatly enhance integration; cohesion; prosperity and stability in Ireland.

1.2 How this affects our lives

(The following are direct quotes from our Focus Group on 10 March 2008)

1.2.1 *This is really non-permanent permanent residence and it is still possible to become illegal after 5 years - this leaves a tremendous sense of insecurity.*

1.2.2 *It is very difficult to set long-term goals - for education or training, for employment, for housing - even for making friends and establishing relationships.*

1.2.3 *Our children work hard like any other children in school. They work towards passing their Leaving Certificate and moving forward into their future. The lack of permanence or security in their situation means that at any moment, they may have to leave - at any moment - in spite of all their efforts, the rug could be pulled from under them.*

1.2.4 *We want to have a sense of belonging here but we do not feel wanted. Psychologically, it makes life very difficult - stress builds up - it affects our health and our whole family.*

1.2.5 *Our careers suffer - employers are reluctant to promote or invest in training us when they know we could be refused residency and have to leave.*

1.2.6 *It is very difficult to get credit without long term prospects of living here - it is extremely difficult to get a mortgage or loan.*

1.2.7 *The way in which the system works forces us to go for Irish nationality against our will - many of our countries do not accept dual nationality so this means giving up our own nationality. We would really prefer to be able to apply for permanent residency.*

1.3 Recommendations

1.3.1 We recommend the introduction of permanent residence permission after five years.

1.3.2 We recommend that those with this permanent residence permission have the same rights in all areas of life as those enjoyed by Irish citizens including access to third level institutions at the same rates as Irish citizens and full voting rights.

2. Family Reunification

2.1 Context

2.1.1 We are deeply disappointed that the Minister has not taken this opportunity to explicitly recognise in primary legislation the right of those living and working here to a private and family life.

2.1.2 Leaving the details to secondary legislation; policy statements and excessively broad Ministerial discretion makes the system extremely vulnerable to arbitrary decisions; inconsistencies; prejudice and the risk of interfering with rights enshrined in domestic and international law.

2.1.3 Immigrants living and working with permission in Ireland are not provided with sufficiently clear and explicit guidelines to enable them to plan for their family's future or to know when they will be in a position to enjoy their private and family life.

2.1.4 The definition confines family to married spouses and unmarried children under 18 - this is too restricted. The European Court of Human Rights has demonstrated a continually evolving concept of family - as well as the above, it recognises family life between children and their parents regardless of marital status; between siblings; between children and grandparents; between uncles/aunts and nieces/nephews.

2.1.5 There is no independent appeals mechanism. The only way to challenge decisions is to seek judicial review within 14 working days and the Bill permits the High Court to award costs against legal representatives where it deems an action frivolous or vexatious. These provisions have no parallel in any other legislation in the State.

2.2 How this affects our lives

(The following are direct quotes from our Focus Group on 10 March 2008)

2.2.1 *The Irish Constitution is based on a very strong respect for family - family matters just as much to all of us as it does to any Irish citizen. However, the provisions of the Bill and their direct effects deny the enjoyment of such rights to non EEA nationals. It is impossible to ignore the striking contrast between the constitutional recognition of the vital importance of family for Irish families and the total disregard in this proposed legislation for its equally crucial role in our families.*

2.2.2 *Being apart from our spouses, from our children, from our families and having no idea of when we will be able to be together again - this is at times unbearable - it causes so much distress, loneliness and heartache. We need our families close to us - it is not good for us and it is not good for our societies to keep us separated*

2.2.3 *The meaning of family within the Bill is not sufficiently broad - for us, family includes our parents or an aunt that took care of us when we were young. We do not make this distinction between nuclear and extended family.*

2.2.4 *There is a failure to realise that many of us are living here for 5 to 8 years already - we are working here - we are paying taxes. There has to be recognition of the need to base relations on reciprocation.*

2.2.5 *There are some anomalies in the system - some of us - as refugees - have a right to family reunification but if we become citizens, we lose this right. Citizenship should open doors but in actual fact, it closes them.*

2.3 Recommendations

2.3.1 We recommend a provision in the Bill recognising the right of immigrants living and working here legally to a private and family life.

2.3.2 We recommend a broader definition of family which respects wider concepts of family life

2.3.3 We recommend the inclusion in the Bill of clear and explicit guidelines governing family reunification.

2.3.4 We recommend the establishment of an independent appeals mechanism and support the Ombudsman's call in her 2006 Annual Report: when she proposed that " - - the full range of administrative actions in the immigration and residence area should be subject to investigation by my Office." Ireland is one of the few European countries where this area of public administration is outside the jurisdiction of the Ombudsman.

3. Conditions & procedures for visas and residency

3.1 Context

3.1.1 The conditions and procedures governing visas and residency are excessively broad; ambiguous and open to varying interpretations and at the same time, overly restrictive. They are premised on preoccupations with security rather than regulation of the normal flows of immigration that arise naturally in a country where 10% of the population is foreign born.

3.1.2 The system makes no distinction between applications for those entering the state to visit family or conduct short term business and those wishing to come to Ireland to live and work here. Immigrants who live here lawfully, contribute, work and pay their taxes are entitled to clear and proportionate guidelines and straightforward procedures in order that they can have family members join them for holidays and special occasions.

3.1.3 The Bill does not make provision for family members who would not be directly economically active to enter the state. This completely ignores the contributions of such family members in creating stable and happy homes. In many cases, the family is in a position to be financially self-sufficient so there is no requirement for assistance from the State.

3.1.4 On the one hand, the State is actively recruiting people from other countries to live and work in Ireland - on the other hand, the restrictions, lack of clarity, cumbersome procedures and cost of enjoying a family life is designed to be as prohibitive as possible. There is a need for coherent and integrated thinking across government departments to ensure that migration policies do not conflict

with the long-term personnel requirements of the IT, financial services and healthcare industries in Ireland.

3.1.5 Costs for assorted visas, work permits and residency as well as registration are very high and no longer proportionate with administrative charges. In addition, the size, scope and conditions for introducing a bond/deposit are not laid out in the legislation but have the potential to discriminate against those with limited income. The requirement for a guarantor to have lived in Ireland for 5 years is very restrictive.

3.1.6 There is no independent appeals mechanism. Apart from review within the department itself, the only way to challenge decisions is to seek judicial review with provisions which demand a higher standard with greater restrictions - such provisions have no parallel in any other legislation in the State.

3.1.7 The lack of an independent appeals process, combined with the wide powers of discretion afforded the Minister and limited access to any kind of remedy leaves the system open to:

- inconsistent and arbitrary decision making
- scope for the exercise of prejudice
- charges of unaccountability and lack of transparency
- a lack of checks and balances against the intentional or unintentional abuse of vulnerable persons/groups

Brief Case Study I

A non EEA national married to an Irish citizen was informed by an official that she would have to produce a travel ticket in order to have her visa renewed. She lives in Ireland with her husband and had neither intention nor plan to travel anywhere. Unable to reason with the official, she left and returned three days later - her visa was immediately renewed. The official apologised and assured her that the demands of his colleague three days earlier were "completely incorrect"

3.1.8 The standard **eligibility requirements for long-term residency** require that the foreign national:

- is lawfully resident in the State for at least 5 years
- has been financially self supporting
- is tax compliant
- is reasonably competent in Irish or English
- has made reasonable efforts to integrate into Irish society
- is of good character

The first three of these may be determined on the basis of measurable data, but the other three are open to very broad interpretation. Will a measurable language standard be established and applied to determine the applicant's reasonable linguistic competence? What constitutes reasonable efforts to integrate? What does it mean to be "of good character"? If one comes to the attention of the authorities because one defends oneself or another from attack on the street or in a public place, does this divest one of one's "good character?"

3.1.9 The categories of time which are reckonable for residence or citizenship are too restricted. The time spent here as a student should be reckonable for residence purposes.

3.1.10 Although there is a 6 month grace period after passing final exams in which to look for work - in reality - this is far too short. It takes 2 - 3 months to get through the application procedure for an employment permit and if the six months are up before it has come through, then you are putting yourself in an "unlawful" position. Employers will not want to take on these headaches - they will opt instead for graduates who do not require a visa or permit.

3.1.11 The Minister **may revoke or refuse an application** for a visa/residency if he is satisfied that:

- information is false or has been withheld
- the applicant's connections in their country of origin/residence are insufficient to ensure they will return;
- the applicant will be unable to support themselves without recourse to public funds
- the applicant's presence in the State would result in an inappropriate expenditure of public resources
- conduct or criminal convictions on the part of the applicant or a member of their family indicates that they would be unlikely to comply with the conditions of the permission
- the applicant fails to provide a bond, deposit or guarantee
- the applicant's entry into or presence in the State would be a risk to public security, public health, public policy or public order
- circumstances have changed and had the new circumstances existed at

that time, permission would not have been granted

- permission was granted in error
- there has been a breach of the conditions attaching to the permission
- the applicant has served or is serving a term of imprisonment in the State;
- a court has recommended removal
- there are other reasons which justify the revocation of the permission

In arriving at this decision, the Minister must **have regard to** the following:

- humanitarian considerations;
- the common good; public security, public policy and public order
- age
- duration of residence in the State
- family/domestic circumstances
- connection with the State
- employment/self-employment record & prospects
- character and conduct (including criminal convictions) both within and outside the State

The Bill should specify that criminal convictions should be of a serious nature and the Minister needs to bear in mind that criminal convictions secured in other jurisdictions may have arisen from activities defending human rights; peaceful protest or exposing corruption. Furthermore, the wording in the Bill makes it possible that activists who want to highlight abuses taking place in their home countries could be seen as public order threats. In addition, punishing applicants because of the crimes and misdemeanours of other family members does not have a parallel in any other area of law and should be removed.

3.1.12 The provisions on marriage represent a gross interference with a number of rights in domestic and international law and are not proportionate to the objective of discouraging so-called "marriages of convenience".

Conditions governing visas and residency are premised on preoccupations with security rather than regulation of the normal flows of immigration that arise naturally in a country where 10% of the population is foreign born.

On the one hand, the State is actively recruiting people from other countries to live and work in Ireland - on the other - the restrictions, lack of clarity, cumbersome procedures and cost of enjoying a family life is designed to be as prohibitive as possible.

There is a need for coherent and integrated thinking across government departments to ensure that immigration policies do not conflict with the needs of industry and the economy.

3.2 How this affects our lives

(The following are direct quotes from our Focus Group on 10 March 2008)

3.2.1 *For those of us who are living and working here lawfully, we want to have our spouses and our families with us - we have a right to enjoy our private and family life and a right to bring this about without having to jump through hoops which depend so frequently on the arbitrary views or interpretations of the official with whom we are dealing. The effects on families are dramatic - families break down - relationships suffer. To try to continue to live with our right to a private and family life effectively denied results in poor mental health; conflict and unhappiness in the work place. In turn, this results in lower productivity, higher costs and difficulty attracting and retaining staff which is not in the interests of the Irish economy or society.*

3.2.2 *The main reason that most spouses do not work is because there is no family support to take care of the children. They have a right to work, they would like to and the economy needs them to but childcare is very expensive in Ireland and very often we would prefer to have someone from our own culture here with us taking care of our children - a mother - a sister or other family member. This person would not be a drain on the State - we would take full responsibility for them and in fact the State would gain because a second income would mean more revenue in tax. So many of us are single income families - from a financial point of view, we are living from one month to the next. By the time rent and bills are paid, there is nothing to put aside in savings for our children's future - one breadwinner in each house is going to have a serious impact on the next generation.*

3.2.3 *The effort, the cost and the heartache involved to try to get a*

short term visa for a family member to come visit is so difficult to deal with and so frequently we are still refused. Our children's friends have their grandparents; aunts; uncles and cousins with them for big events in their lives - for religious services, for special birthdays - but not our children - extended family misses out on all these events and so do our children. It is so sad not to be able to bring our parents to Ireland to visit - even for a short stay.

3.2.4 *When women have our first children - we really need to have our mothers - both our parents with us - to support and help out. Our husbands are out working most of the time and without family or close friends, we can feel very isolated; alone and inadequate - the emotional stress can be really terrible. Irish women need the help and support of their mothers and their families - it is no different for us and yet it is so difficult to get a visa.*

3.2.5 *Employers are not willing to go to the trouble and take the time to apply for work permits - all other things being equal, they will opt for the person who has no difficulty with permission to work rather than taking the time and trouble to get a work permit for one of us.*

3.2.6 *The costs of visas, re-entry visas, residence permission, work permits and registration is very high - and especially for people who have children - paying for a re-entry visa for each member of a family of four or five to visit another EU country is really prohibitive - it really cannot be justified in terms of administrative time. On top of all that, even if you have organised everything and someone has been granted their short term visa - or told that they do not need one at all, they can still be turned back at the airport. The right of immigration officers to refuse entry to those who have been granted a visa or to those who do not require a visa has serious cost implications. Who takes responsibility for the wasted*

expenditure on the part of those who were entitled to a reasonable expectation of entry into Ireland - who- having been refused entry - find themselves on the return journey home?

Brief Case Study II

A non - EEA national has lived and worked in Ireland over the past five years, she has a valid work permit and is tax compliant. About a month before she first travelled to Ireland, a romance began to blossom between her and a man friend she had known for a few years. Over the course of her five year stay in Ireland, they have built up their relationship through letters, emails and phone calls. Given the prohibitive cost of travel between Ireland and her country of origin, neither has traveled to see the other - until a couple of months ago when she traveled back home for their wedding.

Returning to Ireland, she submitted an application for her husband to join her in Ireland. She was refused on the grounds that she has not produced sufficient evidence by way of "hand-written correspondence" to establish that they had a genuine relationship prior to the marriage. While in an age when most long distance correspondence relies on a PC and internet, such outdated evidence is meagre grounds on which to reject her application, more troubling still is the extent of intrusion into her private affairs to establish the authenticity of the marriage. It must be possible without descending into such intrusion to establish reasonable and rational guidelines which allow the State to satisfy itself that marriage is not a smokescreen for entry into the country and at the same time, respect the dignity and privacy of the individuals concerned and their relationship.

3.3 Recommendations

3.3.1 We recommend simplifying and clarifying conditions; streamlining procedures and reducing or eliminating costs for short term visas.

3.3.2 We recommend that clear, reasonable and objectively verifiable criteria for long-term residency be included in the Bill.

3.3.3 We recommend that permission be granted to family members to enter and reside in Ireland for the purposes of enjoying family life where the principal visa/permit/residency holder can satisfactorily demonstrate that they are willing and able to provide full financial support.

3.3.4 We recommend the introduction of an independent appeals mechanism for decisions on visas, permits and residency.

3.3.5 We recommend the introduction of a cap on any bond/deposit linked to the granting of a visa at a proportionate sum and we also recommend reducing the requirement for the guarantor to have resided in Ireland from 5 to 2 years.

3.3.6 We recommend that the time spent in Ireland as a student should be reckonable for residence purposes.

3.3.7 We recommend the extension of the 6 month grace period for graduates be extended to 1 year.

3.3.8 We recommend the removal of the provision for a family member's conduct or convictions to adversely affect the outcome of a visa or residency application.

3.3.9 We recommend that the criteria around conduct and criminal convictions on which the Minister may refuse or revoke a visa or residency permission specify that such conduct and convictions should be of a serious nature.

4. Requirements for the production of documentation and biometric data

4.1 The Context

4.1.1 The provisions requiring foreign nationals to produce documentation and to provide biometric data on demand have the potential to be discriminatory.

4.1.2 The absence of any kind of parameters establishing the places; conditions and reasons for demanding such information means that members of An Garda Síochána and immigration officials will have recourse to nothing more than appearance in deciding of whom to make their demand. This presents huge problems for these officers in implementing these provisions.

4.1.3 In the interests in good community relations; avoidance of racial profiling and non-discriminatory practices, the experiences of other jurisdictions are valuable and should be heeded

4.1.4 There are many questions to be answered in relation to the collection of biometric data:

- For what purpose is it collected?
- How will it be stored?
- For what purpose will it be used?
- Who will have access to it while it is storage?
- What are the conditions for its destruction?
- Are there any conditions under which it would be shared with other state and/or non state parties?

4.1.5 Our experiences with the South African pass laws have taught us that it is unwise to create a system of identity documentation which applies to some people who live in a country and not to others - its implementation invariably discriminates and it gives rise to feelings of victimisation and unhealthy perceptions that are not good for inter-community relationships and not good for society.

4.2 Recommendations

4.2.1 We recommend the removal of a requirement on foreign nationals to produce documentation on demand. We recommend that foreign nationals be subject to the same requirements to produce evidence of identity and place of residence under the same circumstances and conditions which apply to Irish citizens.

4.2.2 We recommend that foreign nationals be subject to the same requirements to provide biometric data under the same circumstances and conditions which apply to Irish citizens, with parameters and procedures for its collection, storage, use & destruction in line with privacy laws and best practice.

Our experiences with the South African pass laws have taught us that it is unwise to create a system of identity documentation which applies to some people who live in a country and not to others.

Its implementation invariably discriminates and it gives rise to feelings of victimisation and unhealthy perceptions that are not good for inter-community relationships and not good for society.

5. Protection

5.1 Context

5.1.1 The inclusion of protection and immigration in the same piece of legislation is not a good idea. The Bill's architecture creates an ambiguity about whether it will be the provisions on immigration or those on protection which will prevail in the case of those seeking asylum.

5.1.2 Immigration officers do not currently have the training or the time to make careful distinctions between those seeking to enter the State. Bringing the legislation together in this one Bill risks creating distorted perceptions and reinforcing existing prejudices about people seeking to enter the State, by framing all provisions in the context of security

5.1.3 The Bill manifests a tendency towards criminalising those seeking asylum - provisions relating to detention; summary deportation and choices around language implies suspect motives on the part of those seeking protection.

5.1.4 There is a subtle changing of the goalposts in relation to the protection afforded refugees - a move away from the rights based provisions of the 1951 Geneva Convention and towards the more limited subsidiary protection.

5.1.5 The conditionality attached to affording limited protection to victims of trafficking does not reflect best practice.

5.1 Recommendations

5.1.6 We recommend the recognition of the right of a separated child to reunify with their parents and with their siblings

5.1.7 We recommend the recognition of the right of a separated child to be reunited with their siblings; grandparents; uncles/aunts if their parents are deceased.

6. Unlawful presence in the State

6.1 Context

6.1.1 The Minister creates the impression that becoming unlawful in the State would require a deliberate, wilful and conscious act or series of acts on the part of the person who has become unlawful. In practice, this is not a true impression - on the contrary, there is a myriad ways in which a foreign national can move from lawful to unlawful presence in the State and through no fault of their own.

6.1.2 Examples include the following: (a) A non-EEA citizen acquires a 3 month join spouse visa. Immigration officials delay the awarding of a longer term visa. The spouse remains without any documented permission to be in Ireland for the 9 intervening months. (b) A non-EEA citizen in a similar position whose marriage broke down during the first 12 month period is now in a legal limbo with no documents, no rights and living in a twilight zone with no work, studies or income. (c) A foreign national returned their passport to their home country and it has not been returned in time to have their visa renewed. (d) Exploitation and abuse in the workplace forces migrant workers out of work and separates them from their work permit, leaving them undocumented. (e) Migrant workers who have come to Ireland with work permits who have been made redundant.

6.1.3 The restriction of services during a period of unlawful presence in the State, excepting emergency services, places medical workers in the role of immigration officers and risks the health of immigrants

6.2 Recommendations

6.2.1 We recommend the introduction of a 6 month bridging visa which would permit people to regularise their situation.

6.2.2. While we appreciate that each individual's circumstances needs to be examined on its own merits, we recommend a workable arrangement for the many undocumented workers in Ireland to provide them with a means of regularising their situation.

6.2.3 We recommend the use of "undocumented" and "irregular", in preference to "illegal" and "unlawful."

equally about meaningful participation in decision making and beyond to the implementation of policies. It is about equal rights for all.



Founded in 2000 by members of the African immigrant community, the **Africa Centre** aims to promote the participation of the African immigrant community in Ireland; engage in community development and poverty alleviation projects; advance public education and knowledge on intercultural and anti-racism issues; promote links between Ireland and Africa and advance partnership on development issues; and build capacity and resources for African and Africa-Ireland issues.



The **New Communities Partnership (NCP)** is a national network of over 64 ethnic minority led organisations with offices in Dublin, Cork and Limerick. Its members work together to support their communities and to address the underlying causes of the difficulties facing them in Ireland including racism; discrimination; unemployment & access to employment; housing & accommodation and access to public services. NCP believes that integration is about building a society that respects diversity and develops the capacity to fully accept people from different cultures. It is

Framing our response

The main points were formulated at meetings and a focus group with representatives from migrant communities held at the Africa Centre on Monday 10 March 2008. Using key questions to frame the discussion, the focus is on six aspects of the Bill's proposed regulations:

- Long-term residency
- Family reunification
- Conditions & procedures for visas and residency
- Requirements for the production of documentation and biometric data
- Protection
- Unlawful presence in the State

Focus Group - Key Questions

Key Question 1

What are the implications of living in Ireland without a prospect of permanent residency?

Key Question 2

What are the implications of the conditions which will apply to family reunification?

Key Question 3

What are the implications of the conditions and procedures which will underpin obtaining and maintaining visas and residency in Ireland?

Key Question 4

How will the requirements for documentation and biometric data impact on migrant communities living in Ireland?

Key Question 5

What is your opinion of the inclusion of asylum seekers and refugees under the protection section of the Bill and are there any aspects of the protection section you would like to discuss?

Key Question 6

How can one become unlawfully present?

The Africa Centre & New Communities Partnership would like to thank Mary Bigley and Marian Tannam of Harnett Tannam Consultancy who assisted in the production of this document



