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The Board of Spirasi (Spiritan Asylum Services Initiative), which incorporates the Centre for the Survivors of Torture (CCST), wishes to make this submission in response to the discussion document **Immigration and Residence in Ireland (April 2005)**. Because of the specialised focus of our organisation we do not propose to address the document as a whole, but rather to those areas of the document which appear to us to be relevant to the situation of asylum seekers and survivors of torture. We propose to address the document using the fourteen chapter headings of the document itself.

The opportunities for the development of “*a diverse but coherent society*” (the Minister’s foreword) in Ireland are enhanced by the presence of asylum seekers and refugees in our midst. While the reasons for asylum seekers arriving at our borders are external to our society, A humane and generous approach to the reception of asylum seekers will ensure that these potential new residents and citizens of Ireland will start their new status in an appreciative disposition to their new country of adoption. Insofar as the document ‘**Immigration and Residence in Ireland**’ (April 2005) together with ensuing legislation contributes to the humane reception of these asylum seekers into our society, the Board of Spirasi welcomes the initiative. However, we feel that there are numerous ways in which the proposals can be improved, to ensure that the competing values involved in the proposals can best be integrated.

## **TO THE INTRODUCTION (pp. 7 – 20)**

The document lists four areas of EU legislation which will require action and legislative change in Ireland. All are geared to restrict the ability of immigrants to reach our borders. The section does not seem to be aware that asylum seekers, by nature of the circumstances of their flight from oppression, do not have the possibility of obtaining visas, and probably do not have passports (with or without biometric identifiers). By passing legislation to make carriers responsible, may ensure that worthy asylum seekers can never actually reach our borders. To state that the Irish government assents to the 1951 Geneva Convention to receive genuine asylum seekers who present themselves at our borders is purely notional if we have taken all possible precautions to ensure that these people never actually reach our borders. The document is strong in defending the borders against “*significant criminal and terrorist threats*” (p. 13), but very weak in defending the right of the defenceless to reach our borders in order to make their case for asylum, which is our obligation to examine and determine in international law.

## TO CHAPTER 2. (pp. 21 – 27)

It is significant that the chapter opens by listing the legislation which has governed immigration and asylum policy, starting with the *Aliens Act 1935*. I hope the legislature will keep in mind that the *Aliens Act 1935* is not something we as a society should be particularly proud of, as it was dictated by the need to defend our borders against the Jews of Germany fleeing Nazi persecution. One can only speculate how many could have been saved from the death camps of Europe during the period 1939-45 if the legislation of 1935 were more generous. It would be tragic if, in the present international climate, Irish society were to embark on legislation whose effect was again to refuse to accept our international responsibilities to deal humanely with victims of persecution and torture.

The proposals laudably wish to frustrate the exploitation of human beings by “*people smugglers and traffickers*” (p. 22). However, the more difficult we make it for asylum seekers to reach our borders, the more likely we make it for people to resort to using the services of professional smugglers and traffickers. It is relatively easy to frustrate individuals trying to reach our borders on their own initiative. Once people are driven into the hands of professional smugglers by the lack of viable alternatives, a criminal network is created whose activities further corrupt the integrity of the immigration system, and of the individuals who are driven to use these criminal means.

The document refers to the need to ensure that migration “*is economically and socially sustainable*” (p. 22). In the present economic conditions, asylum seekers are a small proportion of total immigrants into Ireland. Thus, whatever decisions are made in the broader context, it must be accepted that at present levels asylum policy has little relevance to what is “*economically and socially sustainable*”.

At the end of p.23 due respect is given theoretically to the demands of international law on asylum and torture, referring to how this matter is dealt with in Irish law. However, no reference is made to the overall effect of many of the proposals which in effect ensure that asylum seekers do not reach our borders to make their case.

P. 25 refers to an assumption “*that not all decisions should be open to review or appeal*”. It is not at all clear why this should be assumed. No office holder of government should have total discretion on decisions, without being open to review by a higher authority, which ensures justice and equity. Uncontrolled discretion without being answerable to a higher authority is a formula open to dictatorship and corruption. Ultimately, all subjects of law should have the possibility of recourse to the courts when they are convinced they have been dealt with arbitrarily (or worse) by an unsupervised executive. Our view is that all decisions should be open to review or appeal. Only in this way can democracy survive.

P. 26 proposes that the receivers of services should be responsible for the costs involved. It is clear that equity demands that essential services should be available to all, independently of their ability to pay; and this will be particularly the case for asylum seekers.

## **TO CHAPTER 5 : BORDER CONTROLS (pp. 45 - 52)**

Again a main emphasis of this chapter is carrier sanctions, designed to ensure that worthy asylum seekers will not reach our borders. It is designed to force legitimate carriers to make decisions beyond their competence, as to whether a particular person has a case for asylum. Obviously carriers will tend to err on the side of caution, as there is no gain for them in taking a chance. The glib statement: *“If an illegal immigrant arrives in Ireland it represents a failure of our system and a success for those who facilitate or traffic illegal immigrants”* surely needs to be balanced by a parallel statement that if a worthy asylum seeker fails to reach our borders because of the restrictions designed by this proposed legislation, this represents a failure of our system also.

It should be noted here that immigration officers and their superiors in the past have resisted strongly any neutral monitoring of entry procedures, and the fairness of their implementation. In the year 2000, a project was initiated jointly by three organisations (the Irish Refugee Council, the Vincentian Refugees Service and SPIRASI) to establish an independent monitoring service for asylum seekers at Dublin Airport such as is the case elsewhere in Europe. Substantial funding was approved from the European Union to support such a professional service. The money eventually had to be returned to the EU, after months of active frustration by the immigration authorities.

## **TO CHAPTER 7 : Admission for the purposes of work, self-employment and research**

As a mark of its commitment to the introduction of immigration and residence legislation, the Government should sign up to the *“UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families”*. It would appear from media reports that unscrupulous employers consider migrant workers easy prey for exploitation. Whatever would enhance the rights of such migrants can only benefit the overall social justice of our society.

### **Visa and Pre-Entry Clearance/ Border controls**

- Guidelines for decision-making on visa applications and criteria for refusing entry to the State need to be clearly set out
- Reasons for visa refusals or refused entry should be provided and an independent appeal system put in place
- Those refused entry should have access to an independent review procedure
- Alternatives to detention should be put in place for people refused entry
- Work permit system needs to be revised to ensure that rights of employees are assured and exploitation eliminated

## **TO CHAPTER 8 : Admission for the purpose of study**

- Subject to annual verification from the educational institution, a visa should be granted for the duration of a person's studies
- family members of a student on a course of over 6 months' duration should be allowed take up employment

## **TO CHAPTER 9 : Admission for the purpose of family reunification**

Statutory provision must be made for family reunification for Irish citizens and all legally resident migrants. In cases of breakdown of family relationships, rights of migrants admitted under family reunification should be safeguarded

## **TO CHAPTER 10 : Admission of non-economically active persons**

There is one category of non-economically active persons omitted from the proposals : asylum seekers willing to be economically active, but forced to be inactive by present legislation. It is hard to justify insistence that asylum seekers remain inactive and dependent on the State when most of them would be more than willing to take full part in the economic life of the State. At present asylum seekers spend some years in enforced idleness until their cases are determined. Then, if they are successful, they are expected to become economically active immediately they are granted refugee status. It makes no rational sense. This contributes to the popular perception that asylum seekers are lazy and useless to the State, when it is this very State which is enforcing their idleness.

## **TO CHAPTER 11 : Residence status and residence permits**

It would appear likely, that as a reaction to fears of terrorist or criminal threat, the State apparatus will become more intrusive into the lives of individuals, including (or maybe even particularly) migrants, refugees and asylum seekers. The state has no doubt the right to preserve the security of the State. However such intrusion in the case of asylum seekers needs to be done transparently with regard to the collection of personal data. Many of these asylum seekers have fled powerful and oppressive state bureaucracies where such personal information gathering was used for the suppression of legitimate aspirations. Asylum seekers are often suspicious that such personal data could be used by the regimes they have fled from to trace them and identify them in the new society in which they are trying to make a new life. Fear is a powerful provoker of the imagination in such cases, and the desire of asylum seekers to avoid such personal identification must be understood against this background.

Comprehensive policies should be clearly set out regarding rights of immigrant workers and non-economically active persons and their families in relation to entry, residency, work, social and other welfare provisions. There is need for independent status for victims of violence.

- long-term status must be introduced with conditions for eligibility clearly set out
- grounds for granting, for refusing and for revoking residency should be laid down
- irregular migrants should have access to services such as health, education and social welfare essential for them as human beings.

## **TO CHAPTER 13 : Removals (pp. 111 – 117)**

Criteria governing how, when, and in what circumstances deportation /forced removal is carried out should be clearly laid down and should not be in breach of an individual's human rights. Again the chapter is most concerned with ensuring that those abusing the system should not prevail, requiring *a fair and efficient removals process*. One can only hope that the proposed legislation will also provide an equally fair and efficient system to ensure that genuine asylum seekers will receive the security and stability they need in our State.

- deportation or forced removal ought to be a last resort.
- clear guidelines should be in place concerning an application to return to Ireland by a person removed from the State

## **BY WAY OF CONCLUSION**

- Need for communication and coordination within and between Government Depts. to ensure coherence and consistency in policies and procedures regarding all facets of immigration .
- Need for greater consultation and co-operation between Government and the voluntary sector, including immigrants
- Need for immigration and residency legislation to be complemented by comprehensive integration policies which promote, facilitate and resource social inclusion
- Need for all legislation relating to immigration and residence to be in harmony with international law, European Conventions and Constitutional and domestic law and to be implemented according to 'best practice'.

Prepared on behalf of the Board of Spirasi

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