



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

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Human Rights Officer
Groups in Focus
Special Procedures Branch Office
UN High Commissioner for Human Rights
Palais Wilson, Room 3-091
Geneva, Switzerland

Dear

**Information for the thematic report of the Special Rapporteur
on the Human Rights of Migrants**

Thank you for your request for information in relation to the above matter. The Commission understands that the annual report of the Special Rapporteur for June 2010 will focus on access to economic and social rights by migrants. The Commission would therefore appreciate your assistance in highlighting the following for the attention of the Special Rapporteur:

1. No Home from Home: Homelessness for people with no or limited access to public funds

In September 2009, the Commission published a report, *No Home from Home*, which investigated the availability of services for homeless non-UK nationals in Northern Ireland. The report documents the experiences of individuals who have come to Northern Ireland from the

European Union's A8 accession States (for example, Czech Republic and Poland), the A2 accession States (Romania and Bulgaria), and from outside the EU. The Commission welcomes the opportunity to provide information to the Special Rapporteur based on this investigation.

No Home from Home was conducted in response to growing concerns about destitution among non-UK nationals living in Northern Ireland. The investigation focused on homelessness and its effect on those who are not nationals of the UK, who often have no or limited access to public funds. In Northern Ireland and the rest of the United Kingdom, a complex mix of EU and domestic law means that homelessness assistance and welfare benefits are not available to non-UK nationals in a number of situations, including: persons subject to immigration control; migrant workers who do not complete the Worker Registration Scheme (WRS); family members of migrants; and some asylum seekers. The investigation examined the reasons for homelessness among non-UK nationals, the extent of this problem in Northern Ireland, and existing law and practice including the responses of relevant Government agencies: the Northern Ireland Housing Executive, the Health and Social Care Trusts and the Social Security Agency.

The report considers the relevant law and practice against regional and international human rights standards including Article 11 of the International Covenant on Economic, Social and Cultural Rights. In the report, it is recognised that Article 11 of the Covenant is a right that should be realised progressively, over time, to the maximum of the state's available resources. However, it is noted that there are core minimum obligations that the government must meet immediately. Therefore, governments should not prevent access to basic shelter and essential foodstuffs.¹ Among other matters, the investigation asks how far immigration laws that prohibit access to homelessness assistance are compatible with Article 11 of the Covenant.

The report also considered the extent of support available to asylum seekers in the UK. At present, asylum seekers are provided with UKBA funded accommodation through the Northern Ireland Housing Executive for the duration of their application as well as a weekly stipend under section 95 of the *Immigration and Asylum Act (1999)*

¹ Committee on Economic, Social and Cultural Rights (1990) General Comment No. 3 *The Nature of State parties' obligations*, at paragraph 10.

via the National Asylum Support Service (NASS). The rate of NASS support is calculated at 70 per cent of Income Support levels, the minimum amount which the government deems a person needs to live.² The rationale for providing NASS support below the amount a person needs to survive is that asylum applicants do not have to pay for accommodation or associated household bills. Investigators spoke with a number of professionals working with asylum seekers and considered a range of government agency case files as well as voluntary organisation case studies, which illustrated how difficult it is for asylum seekers to survive on this minimal support. There was also a range of difficulties surrounding the administration of payments. In spite of the hardship faced by asylum applicants, the government recently decided to reduce NASS support further to just £35.13 per week for a single adult over 25 years of age. This amounts to just under 55 per cent of the current income support levels for the same age category.³ The Commission is of the opinion that this level of support is unacceptable and should be reviewed as a matter of urgency.

Despite the fact that NASS offers only minimal support, under section 55 of the Nationality, Immigration and Asylum Act 2002 the government is able to deny this support to individuals who did not apply for asylum “as soon as reasonably practicable”. The rationale for the legislation was to allow the government to restrict people, who had been in the country a long time, from applying for asylum at a late stage and also that genuine applicants were likely to apply as soon as they arrived. Implementation of Section 55 led to an increasingly shorter window in which people could make an asylum application, to the extent that, at one stage, ‘in country’ applications had to be made within 72 hours of arriving and could only be made in person at the Asylum Screening Unit in Croydon or Liverpool. This policy caused large numbers of asylum seekers to be denied support and left destitute, as many were unable to submit applications within such narrow timeframes without the opportunity to find appropriate support and advice.

This practice of refusing subsistence to late asylum applicants was tested in the *Limbuela* case in 2005.⁴ The House of Lords ruled in

² At the time of conducting fieldwork for *No Home from Home* the weekly rate of NASS support for a single person over 25 years of age was £42.16.

³ According to the Department of Work and Pensions, Benefit and Pension Rates, August 2009 the personal rate is £64.30 for a single adult over 25 years of age.

⁴ *R v Secretary of State for the Home Department (Appellant) ex parte Adam; R v Secretary of State for the Home Department (Appellant) ex parte Limbuela; R v*

Limbuela that withholding support from late applicants may be a breach of their Article 3 rights to be free from inhuman and degrading treatment under the European Convention on Human Rights (ECHR). The landmark ruling gave strong consideration to the reasons why an application might be delayed, for example, due to the mental state of the individual, the disorientation in a new country, language barriers and lack of knowledge about the process. Despite the ruling, five years later, s.55 of the Nationality, Immigration and Asylum Act 2002 has not yet been repealed. At present, alternatives are being considered by the Home Office and this matter is a key area of scrutiny for the Joint Committee on Human Rights.

Chapter 7 of *No Home from Home* also considers the hardships faced by refused asylum seekers and unaccompanied asylum seeking children. In addition, the report includes a range of real life case studies, which illustrate the impact of current UK immigration legislation on persons facing destitution. By way of example, two of the case studies are summarised here: ⁵

- **Gary's case:** Gary came to Northern Ireland as a jobseeker but was unable to find work and was forced to sleep on the streets. After two months on the street Gary developed a lung infection, asthma and heart problems and was admitted to hospital for two months for treatment. At the time of the investigation, Gary was again sleeping on the streets while looking for work.
- **Jo's Case:** Jo, a woman from an A8 State with her young son, presented to a voluntary organisation for help having experienced domestic violence. As an A8 national she was unable to access homelessness assistance and benefits because she had not met the requirements of the Worker Registration Scheme. The local Health and Social Care Trust offered to pay for her to travel home however she could not do this with her son because her partner had a residence order for the child. In the end the Trust agreed to cover one week's accommodation in a refuge. At the time of the investigation, a voluntary organisation was using its own funds to help the woman with child care and accommodation so that she could work and get registered on the WRS.

Secretary of State for the Home Department (Appellant) ex parte Tesema (Conjoined Appeals) [2005] UKHL 66.

⁵ To protect confidentiality the case studies do not use real names.

It has been impossible to provide comprehensive figures of the numbers of homeless individuals who live in Northern Ireland and are excluded from availing of public funds. However, using the information that was made available during the investigation, the Commission estimates that the numbers are in the hundreds rather than in the thousands. For example, figures provided by one homeless hostel showed that 164 non-UK nationals had presented seeking emergency accommodation between August 2007 and May 2008. *No Home from Home* concludes with a list of recommendations aimed at the Government and relevant public bodies. The recommendations include that:

- Regardless of nationality or immigration status [...] no-one should be allowed to fall into destitution (page 141).
- The Government should ensure that everyone has access to appropriate emergency accommodation (page 142).

The implementation of these recommendations will require legislative change at the Westminster Parliament and the Commission appreciates that this may take some time to realise. Therefore, in the meantime, the Commission calls on the government to develop an emergency fund that can be accessed by relevant voluntary organisations that accommodate or otherwise support individuals who have no or limited access to public funds. The Commission continues to highlight the need for this 'emergency fund' through various meetings and briefings provided to relevant Committees at the Northern Ireland Assembly. It is the Commission's view that the need for such a fund is urgent.

2. Response to the Home Office consultation 'Earning the Rights to Stay: a new points based test for citizenship'

The Commission has engaged extensively with the government and the legislature in relation to the reforms to naturalisation as a British citizen and settlement. The Commission responded to the Home Office's *Path to Citizenship* consultation of February 2008 and issued a number of briefing papers to parliamentarians on the Borders, Citizenship and Immigration Bill. Among the Commission's main human rights compliance concerns is the rationale and implications of the citizenship reforms introduced in relation to 'earning' rights and migrants being required to endure longer periods without social protection.

The *Borders, Citizenship and Immigration Act 2009* (hereafter the 2009 Act) empowered the introduction of the 'earned citizenship' policy. This policy, commencement of which is scheduled for July 2011, involves the introduction of additional criteria for obtaining citizenship or settlement and lengthens the qualifying time periods. The Act introduced the additional phase of 'probationary citizenship' following the existing period of temporary residence. Extending restricted temporary residence through 'probationary citizenship' extends the time period without social protection.

The Commission's primary concern with this is that generally migrants seeking to settle will be more vulnerable through being obliged to spend a much longer period of time, than at present, without social protection. The absence of social protection for longer periods of time was set out by government as advantageous in fiscal terms. However, the Commission is concerned it will come at a considerable human cost. The fundamental human rights recognised under the European Convention on Human Rights (ECHR) and a range of international human rights treaties, to which the UK is a party, are equally accessible to all persons within the jurisdiction of the state, meaning migrants as well as citizens. The Commission has been consistently concerned at the suggestion that migrants should 'earn' rights which are human rights. This implies a move away from internationally recognised human rights towards 'citizen's rights'.

I have forwarded a copy of each of the reports referred to above by email. If you have any questions about any of the information provided or require anything further, please do not hesitate to contact me. Thank you for your interest in our work.

Yours sincerely

Peter O'Neill
Chief Executive