

NGO Coalition Opposes Summary Removal

A Coalition of seven national and regional NGOs objects to the provision in the Immigration, Residence and Protection Bill 2010 which allows for summary removal without access to a fair hearing of migrants who are in the State without the permission of the Minister for Justice and Law Reform. The Coalition is calling on Minister for Justice and Law Reform, Dermot Ahern, TD, to drop provisions allowing for summary removal from the Bill and is urging him to provide fair removal procedures, including an independent review mechanism which would ensure that both immigration and protection procedures are carried out in a fair, transparent and efficient manner.

The Crosscare Migrant Project, Doras Luimní, the Immigrant Council of Ireland, Irish Refugee Council, Migrant Rights Centre Ireland, The Integration Centre and NASC: The Irish Immigrant Support Centre have come together in a coalition to oppose summary removal provided for in the Immigration Residency and Protection (IRP) Bill 2010 and to reiterate the call for the introduction of fair removal procedures including an independent appeals body.

Summary Removal: Failure to provide notice

The IRP Bill 2010 fails to provide notice of removal to someone who is in the State without permission prior to their removal. This is in marked contrast to the current system which provides an individual fifteen working days to make representations to the Minister setting out why he/she should be allowed to remain in the State. Those reasons can include situations such as threats of violence, trafficking, exploitation, family and medical grounds and many other humanitarian considerations. The new Bill aims to take away this basic provision and seeks to create the conditions under which vulnerable migrants and those in need of protection may be removed without having had access to justice and fair procedures.

The coalition is particularly concerned about cases where, although unlawfully in the State, migrants and members of their families may have legitimate human rights claims.

Case Study I

Elaina was an undocumented worker in Ireland. She met and later married an Irish man. One night she was viciously attacked in their apartment by Irish criminals and maimed for life. During the investigation she admitted to the Gardaí that she had been living in Ireland using a false identity. However, due to the serious nature of her injuries and her newly founded family relationship, she was able - under current legislation - to make representations to the Minister for Justice and Law Reform, to regularise her status. Under the new legalisation this would no longer be possible.

Summary Removal: contrary to International law and the Constitution

Allowing for summary removals is contrary to the jurisprudence of the Irish Supreme Court and ignores observations from the UN Human Rights Committee which urged Ireland not to introduce summary removals as they are contrary to international law.

Ignores UN Human Rights Committee

The summary removal provisions of the Bill are contrary to the UN Human Rights Committee's concluding observations on Ireland's compliance with the International Covenant on Civil and Political Rights (ICCPR) in 2008, which found that "(T)he State party should amend the Immigration, Residence and Protection Bill 2008 to outlaw summary removal which is incompatible with the Covenant".

Contrary to Irish Supreme Court Rulings

Section 6(5), 59(1) and 60(1) of the Bill appear to be in direct conflict with the 2008 Supreme Court judgments in the cases of *Oguekwe v. Minister for Justice, Equality & Law Reform* and *Dimbo v. Minister for Justice, Equality & Law Reform* which confirmed that consideration of constitutional rights and rights protected by the European Convention on Human Rights and Fundamental Freedoms (ECHR) is required prior to the arrest, detention and removal of a person who an immigration officer is "satisfied" is "unlawfully present in the State".

Case Study II

Asha was a victim of forced labour. She was paid less than €20 per week. Her employers dictated when and what she could eat and she was locked in her room on several occasions by the family. After three months she escaped by jumping out of her bedroom window to avoid detection. A passerby found her in a desperate situation and brought her to the Garda Station. She was undocumented at this time. Asha was able to rectify her legal status, however under the new Bill she could be removed without notice and access to justice.

Garda Discretion

The Bill also effectively moves the decision-making power in relation to removals from the Minister to immigration officers and members of An Garda Síochána. The Bill proposes that immigration officers and members of An Garda Síochána are given powers to make decisions in respect of a person's fundamental rights and the principle of *non-refoulement*, a principle in international law that concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened. This is a deeply flawed situation, considering that immigration officers and members of An Garda Síochána will not have the legal expertise to assess the humanitarian and protection needs of a person who is liable to summary removal under the forthcoming legislation.

Also, under Section 60 of the Bill an immigration officer or a member of the Garda Síochána may, for the purposes of removing a foreign national from the State, under Section 59, arrest the foreign national without warrant. Under Section 59, a foreign national residing unlawfully in the State may be removed without prior notification by an immigration officer or member of An Garda Síochána, and without prior approval from the Minister, provided they are "satisfied that a foreign national is unlawfully present in the State". This is a very dangerous, fundamental shift of powers.

Establish an Independent Appeals Mechanism

The repeal of Section 3 of the Immigration Act, 1999 without an equivalent replacement in the IRP Bill 2010 is of grave concern to the coalition as it may lead to the summary removal of vulnerable migrants and those in need of protection. The establishment of an independent appeals mechanism to deal with immigration decisions as well as protection applications will ensure access to fair procedures and effective remedies for migrants and their family members who are seeking to challenge decisions affecting their human rights. This is missing from the Bill despite the Government's commitment in that regard.

Establishing independent appeals mechanisms for the review of both immigration decisions and protection applications, together with clear and fair rules, would be a more cost effective option than relying on the courts. This proposal was echoed by the UN Human Rights Committee in its concluding observations on Ireland's compliance with the International Covenant on Civil and Political Rights in 2008.

Government U-Turn

The current Government coalition committed itself to establishing a fair and strategic immigration system in its 2007 Programme for Government. It appears that

the Government has decided to persist with legislating to allow summary removal after telling opposition parties that this part of the legislation would be scrapped. It would be a travesty if the Government had decided to pursue this agenda in the hope of achieving some kind of political gain when it knows there is every chance the courts will strike the provisions down.

The Programme for Government contained a commitment to establish a visibly independent appeals process for immigration related decisions. Disappointingly, the Immigration, Residence and Protection Bill 2010 makes no provision for an independent appeals body to review immigration related decisions. Calls for the establishment of a truly independent Protection Review Tribunal to deal with appeals against decisions relating to asylum or protection applications have been ignored.

TAKE ACTION

In Ireland we value fairness, transparency and due process. The Immigration Bill in its current form goes against these basic principles. By allowing summary deportations, and not providing fair removal procedures including an independent appeals process, the new Immigration, Residency and Protection Bill denies minimum safeguards and tramples on an individual's civil and fundamental rights.

Contact Minister Ahern today and tell him to:

- 1. Eliminate summary removal from the new Immigration, Residency and Protection Bill.**
- 2. Establish fair removal procedures including an independent appeals body in the Bill.**
- 3. Honour the commitment to a fair and strategic immigration system**

Dermot Ahern TD
Minister for Justice and Law Reform
Department of Justice and Law Reform
94 St. Stephen's Green
Dublin 2
T: 01-602-8321

Visit your Local TD to tell them about this



Join the Coalition on Facebook @ No to Summary Removal