



Promoting and Enhancing the Lives of Refugees

SUBMISSION TO IRELAND'S FOURTH PERIODIC REPORT UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Introduction

The Irish Refugee Council (IRC) is a national non-governmental organisation working with and for asylum seekers and refugees in Ireland. Based on extensive experience working directly with those affected, we have seen the huge financial cost of a failed system and the untold damage that has and is being done to men, women and children in the asylum process.

The IRC is grateful for this opportunity to comment on Ireland's Fourth Report under the ICCPR. The following submission elaborates and clarifies issues addressed in Ireland's Fourth Report.

Article 2.1: Rights of Covenant to be respected without distinction, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, bor other status.

- Direct Provision accommodation forces asylum seekers into years of institutional poverty and social exclusion. The system precludes asylum seekers from participating in Irish society while awaiting a decision on their asylum application and, for the few who are successful, negatively impacts on their ability to become self-sufficient and independent members of society.

Duration of Stay by Applicants in Direct Provision							
0-1 yrs	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5-6 yrs	6-7 yrs	7 yrs +
539	630	770	945	812	670	397	272

Table 1: Taken from a presentation by the Head of the Reception and Integration Agency to the European Migration Network Ireland conference, December 2012.

- There is a lack of an independent complaints mechanism for residents of Direct Provision or remedy for individuals who have been aggrieved. Asylum seekers do not fall within the remit of the Ombudsman, despite her repeated assertions that her remit should be extended.¹
- The Ombudsman for Children is limited in her ability to advocate on behalf of children in the asylum system and cannot respond to individual complaints in relation to children in Direct Provision. Therefore, asylum seeking children and child in Direct Provision (some of whom

¹ 'O'Reilly frustrated at asylum refusal', *Irish Times*, 25 February 2009

are in fact Irish citizen children) do not have access to an independent mechanism to vindicate their rights as per the UN Convention on the Rights of the Child.

- Furthermore, Direct Provision centres are outside the remit of the Health Information and Quality Authority (HIQA), which is responsible for inspecting private nursing homes and comparable facilities where vulnerable individuals are accommodated.
- As a result of the above exclusions, asylum seekers in Direct Provision are outside of the institutional framework for the protection of human rights described in the State Report.²

Decisions of tribunals and courts

- The Refugee Appeal Tribunal hearings take place behind closed doors and decisions are not published. Although, the IRC recognises the need to maintain the anonymity of refugee applicants, the rigid application of the in camera rule by the Refugee Appeals Tribunal prevents transparency and consistency in decision-making. Similar issues evident in child care proceedings has already led to the establishment of the Child Care Law Reporting Project which both protects the privacy of families and allows lawyers and advocates a greater understanding of the procedures.³

European Commission Against Racism and Intolerance (ECRI)

- ECRI's report of February 2013 noted with concern: "that residents of the direct provision centres have little control over their daily lives (cooking, cleaning, celebrating important events), which in many cases impacts negatively on family life ..."⁴ The Commission recommended that the authorities conduct a systematic review of the policy of direct provision and called for an alternative system that would promote independence and ensure adequate living conditions.⁵ However, the Minister for Justice continues to state that the policy of direct provision is a pillar of the Irish asylum system.

Article 3: Equal rights of men and women

Reception

- Contrary to the State's assertion in the *Third Report by Ireland on measures adopted to give effect to the provisions of the International Covenant on Civil and Political Rights* that all Government policy is gender-proofed, the asylum system in general lacks gender-proofing.⁶
- The system of Direct Provision fails women, in particular by the absence of female only accommodation for vulnerable women. In addition, lone females are often required to share rooms with mothers and children to whom they are not related.

² State Report, p.6, para.19.

³ Decisions of the Equality Tribunal are also published, see State Report, p.7, para.24.

⁴ ECRI, Fourth Report on Ireland, p.26, para.115.

⁵ *Ibid* para.116-117.

⁶ *Third Report by Ireland on measures adopted to give effect to the provisions of the International Covenant on Civil and Political Rights*, p.26.

Domestic and gender based violence⁷

- The IRC welcomes the drafting of guidelines on gender based violence and harrassment (GBVH) for Direct Provision accommodation centres. However, there are serious concerns about the implementation of this policy given that it is wholly dependent on reports being made to a designated member of centre staff (the 'Reporting Officer'), who is not independent or qualified to deal with victims of GBVH. There is no provision for victims to complain to an independent body, even where their complaint pertains to a member of centre staff.

Asylum Process

- The Office of the Refugee Applications Commissioner (ORAC) has no published gender guidelines to guide its staff in the treatment of gender specific claims, such as those involving sexual or gender-based violence (SGBV).
- The IRC is concerned that protection applicants are not offered an interviewer and interpreter in the gender of their choice as a matter of course, as is best practice. This safeguard helps to facilitate disclosures of SGBV by both genders.
- ORAC does not collect gender-specific data, making it impossible to assess the degree to which men and women are treated equally in the system. Neither the ORAC, the RAT nor the Minister for Justice keep gender disaggregated data on gender related protection applications.

Article 7: Prohibition on torture and cruel, inhuman or degrading treatment or punishment

Deportation practices

- The protocols surrounding deportation may amount to inhuman or degrading treatment, in particular the practice of 'dawn raids' in which men, women and children are collected for deportation without notice in the early hours of the morning. Ireland continues to deport children without proper regard to their length of residence and the strength of their connection. Ireland does not allow the International Organization for Migration to assist people to return to their countries voluntarily after a Deportation Order has been signed.
- The IRC is aware of one incident in which a mother was physically restrained and reportedly sedated in front of her two small children during a deportation flight. The IRC has also received reports that deportees have not been permitted to close toilet doors or have been denied access to toilet facilities. The IRC is aware of one incident in which a child was left with no alternative but to urinate into a plastic bottle.⁸ Children have also reportedly been left in soiled clothing on long flights due to the absence of nappies or changes of clothes on board.

Article 8: Right to Freedom from Slavery

Trafficking

- As mentioned in the State report⁹, in order to fall under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, an individual must be formally identified as a victim of trafficking by a member of the Garda Síochána not below the rank of Superintendent. In 2010, only 4% of alleged victims were provided with the 60

⁷ Dealt with on p.23 of the State Report.

⁸ 'Council criticises flight for deportees', *Irish Times*, 23 December 2010.

⁹ State report, p.136, para.886.

day recovery and reflection period and/or a renewable six month temporary residence permission.¹⁰

- In the IRC's experience, individuals who have lodged an application for asylum are excluded from the scope of the Administrative Arrangements and do not benefit from the recovery and reflection period or temporary residence permission. In this way, 36 of the 78 alleged victims of trafficking in 2010 were automatically excluded from the Arrangements. The fact that the asylum seeker has not been identified as a victim of trafficking can also have negative implications on the credibility of their asylum claim.

Article 9: Right to liberty

Detention of asylum seekers

- The IRC notes that detention of asylum seekers is not widely used. However, the provisions of the Refugee Act regarding the detention of asylum seekers allow for detention where the asylum applicant:
 - Has not made reasonable efforts to establish his or her true identity
 - Without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.

These provisions fail to take into account the special circumstances of people who are fleeing persecution who are not able to approach the authorities in their home states for documents due to fear. Many protection applicants are forced to use irregular channels of entry to assess a safe state, and as a result often do not have documents, or had forged documents retained by the trafficker who arranged their flight.

Article 10: Protection for individuals deprived of their liberty

Detention of asylum seekers

- Despite the Human Rights Committee recommendation that the State should ensure that "persons detained for immigration related reasons are held in facilities specifically designed for this purpose"¹¹, asylum seekers continue to be detained in ordinary prison facilities. However, as noted above detention of asylum seekers is not widespread.
- The IRC have significant concerns in relation to the protocols for deportation, as above.

Article 12: Right to liberty of movement and freedom to choose residence

Reception

- The system of Direct Provision, the lengthy delays in the asylum process and the lack of a right to work for asylum seekers regardless of how long they have been in the asylum process deprives this Article of any meaning in the case of asylum seekers.¹²

Other issues

- Persons who are granted leave to remain are required to apply for a passport first to their country of origin and be refused unreasonably before they can make an application for a travel document in Ireland. This is the case even where it is patently unfair to demand this, e.g. where a person maintains that they have an ongoing fear relating to contact with their

¹⁰ Anti-Human Trafficking Unit Annual Report 2010, pp14 and 35.

¹¹ Concluding Observation (para. 17) of the Human Rights Committee on Ireland's Third Periodic Report.

¹² State Report, p.139, para.902.

country. There is also the practical difficulty of some Embassies not having a representative in Ireland.

Article 13: Rights of Aliens

Reform of the asylum and immigration systems

- Consideration of a change in the law in the form of the Immigration, Residence and Protection (IRP) Bill has once again been delayed. Since coming into office in March 2011, the Minister of Justice has regularly expressed his intention to re-introduce with bill with substantial amendments. However, it is not known whether these amendments will address the concerns raised in the Concluding Observations of the Human Rights Committee regarding summary removal, access to legal representation, and independent appeals for all immigration related decision.¹³
- In 2010, Ireland had the lowest grant of refugee or subsidiary protection status in the EU¹⁴, in 2011 and 2012 the rate was well below the EU average of 25% at just 5% and 8%, respectively.¹⁵ This clearly suggests that there is a need for comprehensive reform of the protection applications and appeals process beyond the introduction of a single protection procedure proposed in recent version of the IRP Bill. It should be noted that only 80 grants of subsidiary protection were made 2008-2012, thus the single protection procedure will only expedite the process in a small minority of cases.
- The IRC advocates placing an emphasis on supporting asylum seekers at the initial application through the introduction of early legal advice – currently asylum seekers can access free information from a caseworker at the Refugee Legal Service, but cannot obtain state funded legal representation until the appeal phase. There is no mention of early legal advice in recent versions of the IRP Bill.
- Further, the proposed Protection Review Tribunal, which is to replace the Refugee Appeals Tribunal does not contain the checks and balances needed to create a robust, truly independent appellate body. The IRC advocates the introduction of a single immigration and protection appeals process which truly realises the right to an effective remedy. Specifically, the appellate body should have independently appointed judges with expertise in immigration and protection matters and feature transparent allocation of cases to judges, public and published decisions (anonymised if necessary).
- There are over 4,800 people¹⁶ currently in Direct Provision accommodation that will not be affected by the new procedures. The majority have been waiting for three years or more while some have been waiting for more than seven years. The IRC believes that it is incumbent on the State to address the circumstances of these people alongside reforming the protection process for future applicants.

Article 14: Fair and equal treatment before the law

Delays in the asylum list

- The IRC is concerned at the extensive delays experienced by asylum seekers if they choose to challenge a negative appeal decision in the High Court. Although 59% of judicial reviews

¹³ Para 19.

¹⁴ 'Asylum in the EU27:', Eurostat, March 2011.

¹⁵ 'Asylum in the EU27', Eurostat, March 2012 and 'Asylum in the EU27', Eurostat, March 2013.

¹⁶ As of December 2012. Taken from presentation by the Head of the Reception and Integration Agency to the European Migration Network, Ireland conference, December 2012.

relate to asylum¹⁷, these are dealt with in a separate list to 'ordinary' judicial reviews. The procedural mechanism applied to cases in the asylum list involves: imposing a 14 day time limit (which the court may extend at its discretion where there is good and sufficient reason), that the leave application be on notice to the relevant respondent(s); and a requirement to show substantial grounds, rather than arguable grounds. In *Okunade v Minister for Justice, Equality and Law Reform* (16 October 2012), Mr Justice Clarke identified the problem with these procedural rules: "[p]art of the problems with which the High Court is facing in attempting to deal with the very large volume of judicial review challenges in the immigration field are statutory measures which have, as their inevitable effect, either the delay of applications or the necessity to hear additional applications arising out of the same set of facts. This is highly undesirable."¹⁸

Article 18: Freedom of thought, conscience and religion

Education

- The Fourth Periodic Report states that 96% of primary schools are under denominational patronage, with approximately 90% of Roman Catholic ethos.¹⁹ Due to the rural location of most accommodation centres and the limited means available to their parents, children in Direct Provision have few options of education providers and are compelled to attend the local Catholic national school.

Other issues

- The IRC notes the negative impact of Direct Provision, especially the regulated meal times, on the free practice of religion. Residents of Direct Provision also report a lack of sensitivity toward religious practices such as abstinence from pork products, with frying oil and utensils used for pork products being used for other foodstuffs. Adjustments to meal times to facilitate Muslim residents observing Ramadan are sometimes not made, which causes residents undue distress.

Article 20: Incitement to hatred

- The IRC notes with regret that the present Government has abolished the Department of Integration and demoted it to an Office for Integration.
- Rising levels of racism in Ireland are in general a source of concern to the IRC, and the community it serves.
- The isolation and stigmatisation of asylum seekers in accommodation centres that suggest that they are to be kept separate can also generate hostility and negative stereotyping with potentially serious consequences for anyone perceived to be 'foreign' let alone an asylum seeker.

¹⁷ Court Services Annual Report, 2011 at p.30
([http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/1EAF33B0C5E24F980257A3E0037FCC9/\\$FILE/Courts%20Service%20Annual%20Report%202011.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/1EAF33B0C5E24F980257A3E0037FCC9/$FILE/Courts%20Service%20Annual%20Report%202011.pdf))

¹⁸ At paras.2.10 and 2.11.

¹⁹ State Report, p98, para.632.

Article 23: Rights of the Family

Legal developments with regard to the family²⁰

- There is an absence of published guidelines as to how LGBTI families are accommodated in Direct Provision

Other issues

- The IRC notes the negative impact of prolonged living in the institutionalised system of Direct Provision on family structure. In particular, parents are deprived of the ability to make choices about their children's meals, unable to properly protect them, have a real choice about where they go to school or people with whom they come into contact on a daily basis.

Article 24: Rights of the Child

*Aftercare*²¹

- In relation to aftercare,²² separated children face particular difficulties if they 'age out' while awaiting a decision on their asylum application. Once the separated child turns 18 they no longer fall within the remit of the Health Services Executive and are most often transferred to Direct Provision accommodation, interrupting their schooling and private life, taking them away from their support networks.

Other issues

- The IRC is especially concerned at the impact of Direct Provision on a parent's ability to care for their child. Due to the communal nature of accommodation centres, parents cannot control basic aspects of their children's lives, such as meals, or who comes into contact with them on a daily basis. Under RIA's child protection policy: "concerns about the welfare, safety or wellbeing of a child in Direct Provision are reported to the HSE Children and Family Services, in line with Children First. Referrals include welfare concerns such as a parent being hospitalised, parental illness, a child being left unsupervised by an adult or mental health concerns regarding the parent, while a smaller number would relate to child protection concerns."²³ However, parents do not have an accessible means of communicating concerns they may have about their own children arising out of a living situation over which the parents have no control.
- The IRC notes with concern reports that asylum seeker parents have experienced difficulties in having their children registered at birth. In addition, the IRC notes the absurd situation by which all children born in Direct Provision are obliged to make an application for asylum in order for them to receive support in Direct Provision.
- Of further concern is the practice of transferring families from centre to centre, thereby breaking any ties that the child has with the local school and community. There is no independent complaints mechanism for parents to challenge such transfers, which often appear ad hoc and happen without warning.
- The IRC welcomes the inclusion of reception centres in the National Vetting Bureau (Children and Vulnerable Persons) Act 2012.

²⁰ Dealt with at p.108 of the State Report.

²¹ Dealt with at p.116 of the State Report.

²² Dealt with at p.115, para.760 of the State Report.

²³ Written answer by Minister for Children and Youth Affairs, Frances Fitzgerald TD, Wednesday, 12th June, 2013.