

Direct Provision:

Framing an alternative reception system for
people seeking international protection

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First Published 2013 by
The Irish Refugee Council
2nd Floor,
Ballast House,
Aston Quay,
Dublin 2,
Ireland
Tel. +353 1 764 5854
www.irishrefugeecouncil.ie

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BACKGROUND

In November 1999, a government decision was taken to establish a central directorate “to deal with matters relating to the dispersal of asylum seekers throughout the country and preparation of plans for a system of direct provision of housing, health needs etc.”¹

The decision that the state would provide directly for the needs of asylum seekers² has given rise to a system that has become known as ‘Direct Provision’: full board and lodging with a nominal personal allowance in centres funded by the state but run (and largely owned) by private companies and dispersal on a ‘no choice’ basis around the country. The system was created out of a crisis due to the sharp increase in the numbers of people seeking asylum.³ From the outset, the system was criticised, not least by civil society⁴, and that criticism has been persistent and particularly focused on the impact on children being brought up in an institutionalised setting⁵. A review by the Reception and Integration Agency⁶, situated

1 Quoted in presentation by Noel Dowling, Reception and Integration Agency, to EMN Ireland Conference, 17 December 2012 <http://emn.ie/media/NDowling1.pdf>.

2 Asylum seekers are people who have applied to be recognised as refugees and are awaiting the outcome of their application for asylum or subsidiary protection and any appeal or court challenge against negative decisions.

3 These increased from 4626 in 1998 to 7724 in 1999 and 10938 in 2000. [http://www.orac.ie/website/orac/oracwebsite.nsf/page/CRSE-8Y4GA71395313-en/\\$File/December%202001%20Statistics.pdf](http://www.orac.ie/website/orac/oracwebsite.nsf/page/CRSE-8Y4GA71395313-en/$File/December%202001%20Statistics.pdf) The highest number of claims at any time was in 2002 when 11634 claims were registered.

4 Comhlámh (2001) Refugee Lives: The failure of Direct Provision as a social response to the needs of Asylum-Seekers in Ireland; Fanning B, Veale A., O’Connor D. (2001) Beyond the pale: Asylum seeker children and social exclusion in Ireland, IRC; FLAC (2003) Direct Discrimination: An analysis of the system of Direct Provision in Ireland.

5 Fifth Report of the Special Rapporteur on Child Protection 2012, available at <http://www.dcy.gov.ie/documents/publications/5RapporteurRepChildProtection.pdf>. Arnold S. (2012) State sanctioned child poverty and exclusion: the case of children in state accommodation for asylum seekers, IRC. In August 2013, the High Court of Northern Ireland refused to return a Sudanese family to the Republic of Ireland as the UK Border Agency had failed to properly consider the welfare of the children with reference to the circumstances in which they would be accommodated if returned. <http://www.baillii.org/nie/cases/NIHC/QB/2013/88.html>

6 The Reception and Integration Agency replaced the Direc-

within the Department of Justice, considered alternatives but concluded that, principally on the basis of financial cost, Direct Provision was the best form of support available⁷.

The Irish Refugee Council (IRC) has consistently urged a more humane approach to the accommodation of those seeking international protection, arguing that the human and the financial cost of Direct Provision is too high and is failing to meet Ireland's international obligations towards refugees and those who face a risk of "serious harm" if returned to their own countries⁸. This included producing a document in 2011 for the NGO Forum on Direct Provision setting out what an alternative system could look like⁹. This proposal builds on that document. Following the publication of 'State sanctioned child poverty and exclusion: the case of children in state accommodation for asylum seekers' by the IRC in September 2012, criticism has broadened to a point where there is a need to engage in wider consultation on replacing Direct Provision with an alternative system that is both humane and reduces the financial burden on the state.

This proposal addresses reception conditions in a manner that embodies the values of respect for human rights and protection for vulnerable and at risk

torate of Asylum Seeker Services (set up in April 2000 response to the government decision of November 1999). It is a functional unit of the Irish Naturalisation and Immigration Service of the Department of Justice.

7 RIA, Value for Money and Policy Review, Final Report, May 2010 <http://www.ria.gov.ie/en/RIA/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf/Files/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf>

8 ECRI, Fourth Report on Ireland, p.26, para. 115-117.

9 <http://irc.fusio.net/wp-content/uploads/2011/09/Direct-Provision-and-Dispersion-Is-there-an-alternative.pdf>

individuals that lie at the heart of international protection. It is a contribution to the debate that needs to take place between all of those interested in the welfare of those in need of international protection. It attempts to balance the obligation that Ireland voluntarily entered into when it became a party to the 1951 UN Convention on the Status of Refugees¹⁰ (the 'Refugee Convention') and when it signed up to the EU Qualification Directive¹¹ with the need to ensure that public funds are used appropriately and in a way that reduces the potential for harm.

It is not the intention of the IRC, in setting out options for supporting those seeking international protection, to advise on the appropriateness of such support for those foreign nationals who are deemed to be trafficked into Ireland (who are not in the asylum process) or for destitute EEA nationals awaiting return to their countries. Those are matters that need to be addressed separately.

10 Ireland became a party in November 1956. The Convention was amended by a Protocol in 1967 which Ireland ratified in 1968.

11 COUNCIL DIRECTIVE 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. The Qualification Directive was transposed into Irish domestic law in the European Communities (Eligibility for Protection) Regulations S.I. 518 of 2006 which came into force in October 2006. <http://www.inis.gov.ie/en/INIS/AsylumQual.pdf/Files/AsylumQual.pdf>

RECEPTION AS PART OF A SYSTEM FOR EXAMINING CLAIMS FOR INTERNATIONAL PROTECTION

Reception conditions cannot be considered in isolation from the process that exists to examine applications for asylum and subsidiary protection. The Refugee Status Determination process in Ireland, divorced from the Subsidiary Protection system, has itself been the subject of comment and criticism and Ireland remains out of step with the rest of the EU¹². In particular, the low number of asylum seekers accepted as refugees has led to an assessment of the asylum system in Ireland¹³ and to challenges in the higher courts with delays beyond the control of the person applying to the court. The absence of a 'single protection procedure' contributes not only to delay but also undermines people's ability to properly engage with the application process, for example, by impacting upon ability to recall events which have long since passed.

Whilst the Reception and Integration Agency is not responsible for decisions on either asylum or subsidiary protection claims, it is part of the Department of Justice which, since October 2006 and until mid-November 2013¹⁴, had responsibility for the determination of subsidiary protection claims and yet determined very few since the procedure came into force¹⁵. It has retained responsibility for decisions on leave to remain

12 For example, IRC (2009), 'The Single Protection Procedure: a chance for change' <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/Chance-for-Change.pdf> and IRC (2012), 'Difficult to Believe: the assessment of asylum claims in Ireland' <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/Difficult-to-Believe-The-assessment-of-asylum-claims-in-Ireland.pdf>

13 'Difficult to Believe'

14 <http://www.orac.ie/website/orac/oracwebsite.nsf/page/subsidiaryprotection-mainpage-en>

15 In the four years after the introduction of the Subsidiary Protection Procedure in October 2006, 6356 applications had been submitted to the Department of Justice but only 1643 had been decided (just over 25%). Written answer from Minister Dermot Ahern to PQ 291, 9 November 2010.

applications and, if unsuccessful, the serving and effecting of Deportation Orders.

A single protection procedure, where asylum and subsidiary protection claims are considered as part of the same process, has been in draft legislation for at least five years¹⁶. Steps to bring it in towards the beginning of 2014 (possibly by way of a statutory instrument) are welcome and these will assist in implementation of a reception system that meets international standards.

But the delay arising from the split and unwieldy system is not the only factor which means that people spend far longer in the accommodation system than they should. Another reason is that because there are no clear immigration routes for people to go through, there are people who claim asylum who do not need protection as refugees. The State is obliged to consider any application for asylum even if the outcome is to deem it to be without merit or that another country (under the Dublin II Regulation) is responsible for the person and their application. Having to consider applications without merit slows down the system. But options need to be clearly available so that the right choice (which might be to leave the country) is made.

One other factor is that children born in Ireland to parents whilst the parents are in the asylum process are required to file an asylum application for that child in order to receive financial and support in kind, even if the child has no fear of persecution and therefore does not require asylum. Whilst some parents might choose to put a child

in the process to give themselves another chance of remaining in the country, the fact remains that there is no clear immigration route to enable them to register their children as dependants and receive the support that they need.

¹⁶ In the Immigration, Residence and Protection Bill, 2008 and again in the 2010 version of the Bill.

THE INTERNATIONAL FRAMEWORK

The Refugee Convention was transposed into Irish law in the Refugee Act 1996 which came into force in November 2000. The Act does not contain any reference or framework for the reception of asylum seekers which therefore remains within a completely administrative framework.

Responsibility for examining the implementation of the Refugee Convention rests with the UN High Commissioner for Refugees (UNHCR). In 2002 The Executive Committee of UNHCR published recommendations for reception systems¹⁷, which included the statement that:

*“While there is scope for flexibility in the choice of reception arrangements to be put in place, **it is important that the various reception measures respect human dignity and applicable human rights laws and standards**”* (emphasis added).

It continued as follows:

“Gender and age-sensitivity should be reflected in reception arrangements. These should address the educational, psychological, recreational and other special needs of children especially unaccompanied and separated children. They should also take into account the specific needs of victims of sexual abuse and exploitation, of trauma and torture as well as other vulnerable groups”

¹⁷ UNHCR (2002) Conclusion 2: Conclusion on reception of asylum seekers in the context of individual asylum systems. International Journal of Refugee Law 14(4), 599-601

In addition:

“Reception arrangements can be mutually beneficial where they are premised on the understanding that many asylum seekers can attain a certain degree of self-reliance if provided with the requisite opportunities”.

In its international handbook to guide the integration and reception of resettled refugees¹⁸, the first goal for integration set out by UNHCR is:

“To restore security, control and social and economic independence by meeting basic needs, facilitating communication and fostering the understanding of the receiving society.”

Whilst the handbook relates to those already recognised as refugees before arrival, it is a principle that applies to those seeking recognition as refugees as, even if they are eventually required to leave the ‘receiving society’, their treatment during that period of reception, particularly when protracted, should be no less humane.

As part of a common asylum system in the EU, the Reception Conditions Directive¹⁹, originally passed in 2003, created a framework for basic conditions of reception for those seeking asylum. It was introduced to ensure that applicants have access to housing, food, health care and employment, as well as medical and psychological care. It was based on an acknowledgement that diverging practices among EU Member States could lead to an inadequate level of material

reception conditions for asylum seekers.

In its preamble, the Directive states:

“This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the said Charter”

Ireland chose not to take part in the application of the Directive and is therefore not bound by its provisions. If it had done so, it would have been required to transpose the Directive into domestic law and therefore have a framework for reception facilities (including the right to work) that were, and still are, only in an administrative form.

Apart from other provisions, the Directive contained the right to work after a period to be decided by the Member State²⁰ and also that the best interests of the child would be a primary consideration when the provisions in the Directive were applied. The fact that Ireland chose not to participate in the Directive does not of itself mean that the principles are of no assistance when attempting to determine the best form of reception conditions that should be in place in Ireland. In addition, as a full member of the EU, it is nevertheless bound by the Charter of Fundamental Rights referred to

²⁰ In Written Replies to Parliamentary Questions about Ireland and the Reception Conditions Directive, it was said that giving the right to work would act as a “pull factor” as it had allegedly done in 1999. Minister for Justice, Dermot Ahern, 13 May 2010, in answer to PQ142, Vol. 709, No. 1. In fact numbers seeking asylum went up significantly across most industrialised countries at that time, regardless of their reception conditions. See, for example, “Asylum Applications in Industrialized Countries 1980 – 1999”, UNHCR November 2001, particularly pages 89-90.

within the Reception Conditions Directive. Article 1 of the Charter refers to the right to human dignity, Article 3 to the right to integrity of the person and Article 18 to the right to asylum.

Other international instruments which assist in examining the suitability of reception systems are the UN Convention Against Torture²¹ and the UN Convention on the Rights of the Child²². Under Article 14 of the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment, victims of torture or physical, psychological or sexual abuse have a right to the medical, psychological and social services necessary in order to achieve as full rehabilitation as possible²³. The first step of the State’s obligation in Article 14 is to establish appropriate screening mechanisms to identify and assess special needs²⁴. With respect to children, Article 22 of the Convention on the Rights of the Child (CRC) ensures that children seeking refugee status, whether separately or as part of a family, receive appropriate protection and assistance in relation to both the rights in the CRC itself and other international instruments. Article 3 of the CRC establishes that the best interests of the child “shall be a primary consideration” and that institutions, services and facilities responsible for the care and protection of children “shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as

well as competent supervision” (emphasis added). Finally, Article 8 of the European Convention on Human Rights²⁵ contains the right to respect for family and private life and, although qualified, the interference by a public authority in that right is strictly limited.

It is within this framework that the current system of reception conditions for asylum seekers has been examined. The basic premise of this paper is that reception is an essential component of a fair and effective international protection system and is part of Ireland’s commitment under the Refugee Convention to provide a place of safety for refugees. This proposal therefore addresses reception in a manner that embodies the values of respect for human rights and protection for vulnerable and at risk individuals that lie at the heart of international protection. Crucially, this proposal can reduce costs for the taxpayer both by removing reception from the realm of private business and by reducing the possibility of harm in a system that values the person as highly as the financial cost.

¹⁸ UNHCR, ‘Refugee Resettlement: An international handbook to guide reception and integration’, October 2002

¹⁹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. The directive has been recast but it will not come into force until 2015.

²¹ <http://www.un.org/documents/ga/res/39/a39r046.htm>

²² <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

²³ See Freedom from Torture, ‘The Poverty Barrier: The Right to Rehabilitation for Survivors of Torture in the UK’ (Freedom from Torture, 2013); Waters, S, ‘Direct Provision and the Right to Rehabilitation’, Journal of Socio-Legal Studies (forthcoming).

²⁴ General Comment No. 3, Committee Against Torture, 13 December 2012, at paras.11-1, available at http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf

²⁵ http://www.echr.coe.int/Documents/Convention_ENG.pdf

THE SYSTEM OF DIRECT PROVISION IN IRELAND

The system that has become known as Direct Provision was introduced in April 2000 in response to a housing crisis in Dublin arising from an unprecedented number of people seeking asylum in Ireland (and across the EU). It was envisaged that people would spend no more than six months in the system. Until then, asylum seekers had been able to access social welfare payments and rent supplements. The Reception and Integration Agency was created to oversee the system and although there was an original intention to place RIA on a statutory footing, that idea was subsequently discarded²⁶.

Contracts were entered into with companies around the country and some properties were purchased. Without exception, none of the companies had any experience of working with asylum seekers or refugees and some maintained a distinctive interest in unrelated matters²⁷. Some companies were from the tourist industry; others were in the equestrian business²⁸. None of the accommodation centres were designed for long-term living. The property portfolio under RIA's control in November 2013 includes holiday chalets, mobile homes, hotels, hostels and a convent. In the past there was a significant difference in the costs paid to companies that owned the centres and those that ran but did not own the

²⁶ Quinn E. and Hughes G. (2005), 'Reception Systems, their capacities, the social situation of asylum applicants within the reception system in Ireland', European Migration Network http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/reception-systems/ire-report-24-7_en.pdf

²⁷ FLAC (2009) One Size Doesn't Fit All: a legal analysis of the direct provision and dispersal system in Ireland, 10 years on, see section 1.6 http://www.flac.ie/download/pdf/one_size_doesnt_fit_all_full_report_final.pdf

²⁸ FLAC (2009). Drishane Castle in Millstreet, Co. Cork, owned by Millstreet Equestrian Services Ltd., was recently the scene of protests by residents about conditions and restrictions imposed by management <http://www.irishexaminer.com/text/ireland/cwmhojcwauoj/>

centres²⁹. One company, Bridgestock, runs one the state-owned centres, Lissywollen in Athlone, which is a mobile home park, and also owns and runs a former convent in Ballyhaunis in Co.Mayo.

The contracts with the Department of Justice are to provide full board and accommodation. Hence food is provided at fixed times in canteens. The centres are staffed by personnel hired by the contractor. There is no requirement for staff to have training or a background in working with asylum seekers, vulnerable people or children.

In the EMN report of 2005 about reception systems³⁰, it was outlined that bathrooms should be *en suite* and the size of rooms would comply with housing law:

“In accordance with adherence to regulatory requirements, many rooms in direct provision are *en suite*.”

It continued:

“...maximum room capacity is determined in accordance with section 63 of the Housing Act 1966 which requires that sleeping accommodation provides 11.32 cubic metres per person”³¹

Whatever the regulations or the statutory requirements, many asylum seekers occupy rooms which are not simply bedrooms but their entire living space; children often share a room with parents regardless of their age and gender; bathrooms are shared with strangers as indeed are bedrooms for single people or lone parents. If you add in the very disparate backgrounds, languages, lifestyles, life experience and, for some, real isolation from local communities, the absence of play space and opportunities for children to develop by participation in stimulating activities, then it is not surprising that there are real concerns about the long term impact both on people’s mental health and their ability to adapt to life outside. There is little surprise then that this has been called the next big scandal that will cost Ireland dearly, both financially and in terms of its international reputation.

It was initially envisaged that Direct Provision would be a short-term solution with asylum seekers remaining in Direct Provision centres for approximately six months³². However, due to delays in the system for considering applications for international protection, most residents have been in Direct Provision for over three years and some for more than seven years.

29 Quinn and Hughes: The cost paid to a contractor was between €189 and €230 per resident per week for a privately owned centre and between €83.72 and €135.31 for a state owned but privately run centre.

30 Ibid.

31 A second focused study of reception systems across EU countries was commissioned by the EMN in April 2013 with a final reporting date and a synthesis report due to be completed by mid-October 2013. Although country reports of some other EU Member States are on the EMN website, the report for Ireland is not expected to be available before February 2014.

32 Thornton, ‘Social Welfare Law and Asylum Seekers in Ireland: An Anatomy of Exclusion’ [2013] 20 (2) Journal of Social Security Law 24 AT 33

DURATION OF STAY BY APPLICANTS IN DIRECT PROVISION

0-1 YRS	539
1-2 YRS	630
2-3 YRS	770
3-4 YRS	945
4-5 YRS	812
5-6YRS	670
6-7 YRS	397
7+ YRS	272

Asylum seekers are not permitted to work or to seek work³³ and they therefore experience forced idleness³⁴. They are excluded from receiving normal social assistance payments. In addition, education for adults is limited to language tuition (where available) and basic IT classes; access to third level education is subject to their ability to pay overseas student fees. They receive a weekly cash allowance of €19.10 per adult and €9.60 per child which is paid for out of the social protection budget. The rate has not changed since 2000. Between its introduction in 2000³⁵ and 2010, this system cost over €655 million in contrac

33 In answer to a Parliamentary Question on 13 May 2010, Minister Dermot Ahern outlined the reason for Ireland not participating in the Reception Conditions Directive and said: “The principal reason for Ireland’s position to the provisions of ... the 2003 Directive which deals with access to the labour market...**This is contrary to the existing statutory position in Ireland which provides that an asylum seeker shall not seek or enter employment**” (emphasis added).

34 This is a phrase that the Minister for Justice, Alan Shatter, himself used when he was the Fine Gael Justice Spokesman in opposition. See Liam Thornton, Irish Times Opinion Piece, <http://www.irishtimes.com/news/crime-and-law/in-opposition-shatter-was-fiercely-critical-of-direct-provision-for-asylum-seekers-1.1587414>

35 Press and Information Office, Department of Justice, Equality and Law Reform, “Minister for Justice, Equality and Law Reform announces that asylum seekers will be dispersed throughout the country”, 19 October 1999.

contracts paid to the private companies who operate the centres³⁶.

Despite the fall in numbers of those claiming asylum in Ireland³⁷, the financial costs to the state have remained high.

APPLICATIONS

2002	11598
2003	7483
2004	4265
2005	4304
2006	4241
2007	3933
2008	3807
2009	2660
2010	1918
2011	1282
2012	940
TOTAL:	46431

36 Written Answer by Minister for Justice, Alan Shatter TD, to Deputy Maureen O’Sullivan TD, Thursday, 14th February, 2013.

37 940 new claims were registered in 2012 compared to 11634 in 2002.

In 2012, the total costs were in excess of €70 million.

COST OF DIRECT PROVISION 2012	€
RIA CONTRACTS	63,500,000
QTS INSPECTIONS CONTRACTS	20,018
SOCIAL WELFARE PAYMENTS	4,500,000
RIA OPERATING COSTS	2,000,000
ANNUAL COST	70,020,018

A COMMENT ON 'THE VALUE FOR MONEY AND POLICY REVIEW: ASYLUM SEEKER ACCOMMODATION PROGRAMME'³⁸

In May 2010, the Reception and Integration Agency (RIA) published its report following an examination of the Direct Provision system. In the Executive Summary it states that:

“It had to examine (with particular concentration on 2005 to 2008) the aims and objectives of the Programme and determine if these aims and objectives remain relevant and warrant the continued allocation of public funds; to determine whether the Programme is providing value for money; to make recommendations as to how the value for money of the Programme can be improved; to examine alternatives to the Programme and to determine whether these alternatives would provide better value for money.”

The effectiveness of the system, which lay behind the assessment of the monetary value, was within the following framework:

“The accommodation programme was found to be effective in that it has provided for the accommodation needs of all asylum seekers that require accommodation and it has dispersed accommodation centres around the country to ensure, as far as possible, that the additional demand on local services is not an undue burden in any one location.”

The Review considered a number of alternatives to Direct Provision: Firstly, allow Asylum Seekers to claim Social Welfare and Rent Supplement; secondly, provide self-catering accommodation; thirdly, Local

³⁸ <http://www.ria.gov.ie/en/RIA/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf/Files/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf>

Authority housing. It concluded that these options would be “*significantly more expensive*” than Direct Provision.

Within that framework, its conclusion on the effectiveness of Direct Provision was as follows:

“The Programme is therefore 100% effective in that it has always provided accommodation to any asylum seeker entitled to the service and who seeks to avail of the service and the burden on public services such as health and education have been proportionately shared across the country.”

There was no reference to the length of time spent in the system or the number of times people are transferred or the manner of dispersal during that period. The possibility of removing reception facilities from private business and therefore the profit motive was not considered. Neither was the possibility of running accommodation centres with proper facilities and with appropriately qualified personnel to reduce the harm and provide a level and type of support that enables people, whatever the eventual outcome of their case, to play a part in their community and stand a better chance of becoming self-sufficient and less dependent on the State.

In addition, and understandably, the financial cost to the State of the actual amount paid out to run the system was paramount in the assessment and also the easiest to quantify. What is harder to assess and indeed to quantify are the unseen costs which would include the impact on mental health, childhood development, family life and the development of inappropriate learned behaviour in children which place a burden

on the State but which, to a significant extent, are risks that could be diminished, if not altogether avoided. For example, referrals to mental health units were not part of the review. Neither was the cost of placing children into care when the ability of their parents to care for them (quite possibly as a result of the impact of Direct Provision) or the quality of the accommodation was questioned³⁹. The review could not assess the reliance on public funds after people leave Direct Provision, a reliance which may result from the deskilling and demotivation of years of forced idleness and the lack of work experience in Ireland. But if the burden on the State is a crucial factor in the assessment of the Direct Provision system, as indeed it must be, then these are all relevant to that ongoing assessment as to whether Direct Provision is working in the best interests of tax payers, let alone those who experience it.

³⁹ Child Care Law Reporting Project, November 2013 <http://www.childlawproject.ie/wp-content/uploads/2013/11/correctedinterimreport.pdf>. See O'Brien C, Irish Times, 23 October 2013 <http://www.irishtimes.com/news/social-affairs/child-born-in-hostel-for-asylum-seekers-placed-in-state-care-for-her-own-safety-1.1569889>

CRITICISMS OF THE DIRECT PROVISION SYSTEM

The Special Rapporteur on Child Protection, Geoffrey Shannon, has raised concerns about the detrimental effect of Direct Provision accommodation on children and on parents' ability to provide adequate care. He describes the system as amounting to institutionalised poverty⁴⁰. The IRC raised similar concerns in its 2012 report “State Sanctioned Child Poverty and Exclusion”, which catalogued reports of unsuitable living conditions, malnourishment, poverty, exclusion and lack of play space over the first 13 years of Direct Provision accommodation. The High Court of Northern Ireland recently found that it would not be in the best interests of a child to return to the Republic of Ireland under the Dublin II Regulation⁴¹ due to the conditions it would face in DirectProvision⁴².

The Direct Provision system has come under international criticism from the European Commission on Racism and Intolerance, which recommended a complete review of the system in its Fourth Report on Ireland⁴³. In its report on human rights and extreme poverty, the UN Human Rights Council expressed concerns about the length of time spent in Direct Provision, the limits on autonomy, the impediments to family life and the prohibition on working⁴⁴.

⁴⁰ Fifth Report of the Special Rapporteur on Child Protection 2012, <http://www.dcy.gov.ie/documents/publications/5RapporteurRepChildProtection.pdf>

⁴¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, known as the “Dublin II Regulation”, sets out the criteria for which Member State is responsible for processing an asylum application. Generally, it is the first port of entry.

⁴² In the matter of an application by ALJ and A, B and C for judicial review [2013] NIQB 88, Stephens J, 14 August 2013.

⁴³ ECR, Fourth Report on Ireland, p.26, para. 115-117.

⁴⁴ Report of the Special Rapporteur on extreme poverty (17 May 2011), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/132/17/PDF/G1113217.pdf?OpenElement>

The Special Rapporteur on the situation of human rights defenders also raised concerns that asylum seekers in Direct Provision fear retaliation (e.g. transfer to another centre) if they attempt to make a complaint in respect of their rights to privacy, an adequate standard of living and adequate standards of physical and mental health⁴⁵. He repeated the criticism in a report published in November 2013⁴⁶.

In 2011, the Committee on the Elimination of Racial Discrimination noted with concern the negative impact of Direct Provision on the welfare of asylum seekers. They found that the inordinate delays, low success rate and poor living conditions placed asylum seekers at risk of health and psychological problems, which would lead to serious mental illness⁴⁷.

On a national level, Ombudsman Emily O'Reilly has been highly critical of the lack of independent oversight of the system and has stated that the treatment of asylum seekers "may well breach international human rights conventions"⁴⁸. Retired Supreme Court judge, Mrs Justice Catherine McGuinness has warned that a future Irish government will have to issue a State apology to and compensate former residents, particularly children⁴⁹. The 2012 report by the Special

Rapporteur on Child Protection, Geoffrey Shannon, highlighted the 'real risk' of child abuse in Direct Provision accommodation arising from the shared sleeping arrangements whereby single parent families are required to share with strangers and teenage children are obliged to share with parents and siblings of the opposite sex. Shannon cites an incident where a 14-year-old girl was raped and became pregnant by a male resident living within the accommodation centre⁵⁰.

⁴⁵ Report of the Special Rapporteur on the situation of Human Rights defenders (November 2012), at p.18, http://www.ihrc.ie/download/pdf/unsrhrd_report_on_ireland_2013_ahrc2247add3_en1.pdf

⁴⁶ <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2392948&SecMode=1&DocId=2079144&Usage=2> and for further comment see Cahill A, 'Austerity is 'undermining' human rights', Irish Examiner, 5 December 2013

⁴⁷ 'Concluding Observations of the Committee on the Elimination of Racial Discrimination', 10 March 2011, CERD/C/IRL/CO3-4, para. 20.

⁴⁸ O'Reilly, 'Asylum seekers in our Republic: Why have we gone wrong?' (2013) 102(406) *Studies* 131. See also Committee Debates, Ombudsman (Amendment) Bill 2008: Discussion with the Ombudsman, Wednesday, 10 October 2012. Available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/NVJ2012101000003?opendocument#>

⁴⁹ 'Next state apology will be to asylum seeker children warns former judge', *The Irish Times*, 24 April 2013.

⁵⁰ Shannon, 'Fifth Report of the Special Rapporteur on Child Protection' (2012).

PROPOSALS FOR REFORM: A NEW RECEPTION SYSTEM FOR IRELAND

The proposals set out within this document are addressed on the basis that Ireland is now receiving less than 1000 new asylum claims a year. They are therefore proposals as to how new asylum applicants can be dealt with. As RIA itself acknowledged in its Value for Money and Policy Review, there is no like for like comparison that can make assessment of reception facilities an easy basis for analysis. But there are elements in other systems which can be drawn upon to assist the process of framing an alternative.

SUPPORTING NEWLY ARRIVED APPLICANTS: SPECIALISED RECEPTION CENTRES

Reception needs to reflect the fact that protection applicants are a 'particularly underprivileged and vulnerable population group in need of special protection'⁵¹. Special needs and vulnerabilities can have a significant impact on the applicant's ability to provide a full account of their claim⁵². The effects of trauma, in particular, can interfere with the applicant's ability to render a full and true account of their claim. Thus reception of newly arrived asylum seekers should include access to the necessary services for the identification and assessment of needs, including legal support. The IRC proposes that this should take place in specialised reception centres which operate as a 'one-stop-shop' for newly arrived protection applicants.

⁵¹ *M.S.S. v Belgium and Greece*, Application No, 30696/09, (2011) 53 E.H.R.R. 2

⁵² MAPP, A Dutch project for asylum seekers with mental health problems identifies the following consequences of traumatization: memory problems, hypernesia, amnesia, or tunnel memory; avoidance; distrust; shame; limited ability to concentrate. Viewed at http://www.roteskreuz.at/fileadmin/user_upload/PDF/Site/Mental_Health/MAPP%20programme%20for%20the%20early%20detection%20of%20mental%20health%20problems.pdf

The principles which lie behind such centres would have the following elements:

- Appropriate accommodation which respects family life
- A system that embodies the best interests of the child
- A system that identifies and properly supports individuals with special needs and vulnerabilities
- The availability of early legal advice
- Independent complaints and inspection mechanisms
- Transfer to independent living within a maximum of six months
- Healthcare
- The right to work

ACCOMMODATION AND THE RESPECT FOR FAMILY LIFE

Respect for the dignity of the individual and of family life should be a principle underpinning the accommodation arrangements and conditions. In so far as possible, families should be provided with their own quarters and own sanitary facilities⁵³. Self-catering facilities should be provided in recognition of the fact that meal times and food are not only essential for physical well-being, but also for family unity. They also provide an element of self-control and therefore provide for the dignity of the

individual and their family. In addition, it also allows parents to properly meet the dietary needs of children which do not fit easily into the framework of set meals at set times.

THE BEST INTERESTS OF CHILDREN

As a priority, children must be accommodated in a safe environment where their welfare can be protected and their natural development nurtured. Essentially, parents need to be able to parent and to be as self-contained as a family unit as possible.

Continuing access to mainstream education for children in the asylum process is vital to overall wellbeing, as well as to the integration of the children and their parents. Children must be given access to education at the earliest opportunity. Additional support may need to be provided by the centre in cooperation with the local school, for example a library space for children to do homework and additional language support. It is essential that children are able to participate as soon as possible within school and therefore community life and moved out of communal accommodation at the earliest opportunity to reduce the possibility of stigma. To fully participate however, they also need a level of financial support which keeps pace with the cost of living and suitable accommodation which enables them to enjoy their childhood.

For child protection to be at the heart of any reception system, appropriately trained staff should be present within the accommodation system and not simply at a national central point with remote access.

⁵³ See the recommendations of the European Commission Against Racism and Intolerance and the Report of the Special Rapporteur on Human Rights and Extreme Poverty.

SYSTEM OF IDENTIFICATION OF INDIVIDUALS WITH SPECIAL NEEDS AND VULNERABILITIES.

Appropriate mechanisms should be put in place at the initial reception centre to identify any particular vulnerabilities or special needs. This would also mirror the obligation to conduct an individual assessment in order to identify the special reception needs of vulnerable persons in the recast Reception Conditions Directive⁵⁴.

The specific situations of persons with special needs must be taken into account in every aspect of their reception, including material reception conditions and physical and mental health care. Where a special need is identified, medical or other appropriate care must be made available at the earliest possible opportunity.

It follows that staff at the centre must have appropriate vetting and training to work with vulnerable people. They must also be bound by confidentiality⁵⁵.

⁵⁴ Article 21-24. The recast Directive is not due to come into force until July 2015

⁵⁵ ECRE, 'Position on the Reception of Asylum Seekers', para. 9

THE FOLLOWING EUROPEAN EXAMPLES GIVE AN INDICATION AS TO HOW PROVISION FOR SPECIAL NEEDS CAN BE INCORPORATED INTO LEGISLATION ON RECEPTION:

In Bulgaria, the definition of vulnerability⁵⁶ is provided for in law and includes: separated children; pregnant women; elderly people; single parents, if accompanied by minor children; individuals with disabilities; victims of severe forms of psychological, physical or sexual abuse. These factors are to be taken into account in deciding on accommodation, however, NGOs note that there is an absence of specific measures in law or in practice to address these needs⁵⁷.

In Belgium, Article 36, Reception Act identifies children, separated children; single parents with children; elderly people; pregnant women; individuals with a disability; and victims of human trafficking, violence or torture as vulnerable persons. Article 22 of the Act puts in place a mechanism to assess special needs of vulnerable persons in reception facilities. Within 30 calendar days of being assigned accommodation, the individual situation of asylum seeker is examined to determine if it is adapted to their specific needs. Particular attention is paid to signs of vulnerability that are not immediately detectable⁵⁸. In practice, specialised centres are available for separated children, single women with children and persons with psychological problems. However, the high number of asylum applicants in Belgium means that many asylum seekers become homeless.

In Germany, special needs should be taken into account as part of the admission procedure to the initial reception centres, and social workers or medical personnel in the reception centres can assist with applications for specific medical treatment. However, there is no systematic assessment procedure for vulnerable persons.

In Sweden, the Migration Board has designated accommodation for persons in wheelchairs. The needs of persons with other forms of physical disability are assessed by the local municipality in the same way as nationals. The municipality makes recommendations regarding an individual's need for special care and the agreed costs are born by the Migration Board. The Migration Board can also arrange safe houses for at risk individuals in cooperation with the local police and social welfare authority.

⁵⁶ Law on Asylum and Refugees, Article 30a

⁵⁷ Bulgarian National Report, p. 31

⁵⁸ Ibid.

BEST PRACTICE EXAMPLE: MAPP, A DUTCH PROJECT FOR ASYLUM SEEKERS WITH MENTAL HEALTH PROBLEMS

- Early Detection: the applicant's lawyer or Dutch Council for Refugees reports signs of mental health problems to MAPP;
- Examination protocol: psychiatric interview, non-verbal concentration test, PTSD questionnaire, inventory on all psychiatric problems, (if necessary) non-verbal IQ test, psychiatric evaluation throughout the examination.
- Report to lawyer and medical office
- Commence treatment as soon as possible.

The results of the project illustrate how failure to detect mental health problems at an early date can interfere with the asylum application process:

1. **54%** identified as having problems which **surely interfere** with the applicant's ability to render a coherent and consistent account.
2. **21%** identified as having problems which would **most likely interfere** with the applicant's ability to render a coherent and consistent account.
3. **17%** identified as having problems which would **potentially interfere** with the applicant's ability to render a coherent and consistent account.
4. **8%** identified as having problems which **would not interfere** with the applicant's ability to render a coherent and consistent account.

SAMPLE BUDGET BASED ON 2013 FIGURES:

PROFILE	SOCIAL WELFARE	PER MONTH	PER YEAR	NO
SINGLES	RENT SUPPLEMENT @ €92/WK	368	4784	
2-3 YRS	SWA @ €188/WK	762	9776	
TOTAL PER PERSON				14560
TOTAL AT 1699 PERSONS				24,737,440
FAMILIES	RENT SUPP @ €275/WK	1100	13200	
PARENTS	SWA @ €188/WK	368	4784	
TOTAL PER PARENT				17984
TOTAL AT 1289 PERSONS				23,181,376
CHILDREN	CHILD BENEFIT	140	1560	
TOTAL AT 1818 PERSONS				2,836,080
TOTAL COST OF ACCOMMODATION AND SUBSISTENCE				50,754,896
RIA OPERATING COST				2,000,000
TOTAL				52,754,896

EARLY LEGAL ADVICE

Early legal advice is advice given or overseen by a qualified lawyer who specialises in international protection work at the earliest stage of an asylum claim. It enables the person seeking protection to put forward their claim in their own words and in a way which assists the decision maker to understand it and have all the available information and evidence at the earliest opportunity. It reduces the stress for the applicant, gives them greater respect for the legal process and therefore they are more likely to engage fully with it, and reduces the cost (human and financial) of a person challenging a poorly presented or wrongly determined decision. It assists the decision maker in reaching a well-informed decision and enables them to focus on what the essential elements of a claim are.

INDEPENDENT COMPLAINTS AND INSPECTIONS

Legislation should set out that reception centre(s) should be ‘designated centres’⁵⁹ for the purposes of the Health Act 2007, thus bringing them under the remit of HIQA. HIQA is given responsibility for setting

59 “Designated centre” means an institution:
 (a) at which residential services are provided by the Executive, a service provider or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004 or under section 10 of the Child Care Act 1991:
 (i) in accordance with the Child Care Act 1991; (ii) to persons with disabilities, in relation to their disabilities; or (iii) to other dependent persons, in relation to their dependencies,
 or
 (b) that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990, but does not include any of the following:
 (i) a centre registered by the Mental Health Commission;
 (ii) an institution managed by or on behalf of a Minister of the Government;
 (iii) that part of an institution in which the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care;
 (iv) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities;
 (v) a special care unit;
 (vi) a children detention school per s 3 Children Act 2001

standards for health and social care services at asylum support centres, and ensuring that the standards are being met. New National Quality Standards: Residential Services for Asylum Seekers are developed by HIQA analogous to those used in relation to residential services for children, older people and people with disabilities.

Designated NGOs and UNHCR should be granted access to reception facilities for monitoring of conditions, as well as provision of services. This should be set out in the legislation.

TRANSFER TO INDEPENDENT LIVING

Long-term stays in reception centres lead to institutionalisation, dependency on the state and are damaging to long-term employment or integration prospects either in Ireland or on return to the country of origin⁶⁰.

“Experience has shown that those who master their life in exile, often are better qualified for managing the transition that is involved in re-establishing oneself in the country of origin. Thus there is no contraindication between measures facilitating an active, self-reliant life in Norway and measures aimed at facilitating repatriation.”⁶¹

Thus, the period of stay in any reception centre should be as short as possible and should not exceed six months. Asylum seekers who have been in process for six months should be included in the rent allowance scheme under the same conditions

60 See ECRE, ‘Position on the Reception of Asylum Seekers’, para.11. On social exclusion amongst children in Direct Provision see Arnold (2013), 22-27.
 61 Refugee Policy, The Ministry of Local Government and Labour of Norway, 1995.

as Irish citizens and granted a ‘cash allowance’ sufficient to maintain an adequate standard of living.

HEALTHCARE

Asylum seekers should continue to have access to mainstream healthcare and any specialist treatment identified irrespective of where they are accommodated. As in the present system, there should be automatic entitlement to a medical card under the same conditions as Irish citizens, i.e. subject to a non-discriminatory means test. Access to healthcare also involves not interrupting treatment in progress or accommodating someone closer to the place where the care is provided.

THE RIGHT TO WORK

The state body charged with promoting integration notes:

Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible⁶².

In line with all other EU countries⁶³, asylum seekers should be granted access to the labour market after six months to allow them to maintain their skills and employability. Thus any asylum seeker who can support themselves and their families will not be entitled to the cash payment and may not be

entitled to the rent allowance payment⁶⁴.

62 Office of the Minister for Integration, Migration Nation: Statement on Integration Strategy and Diversity Management (Office of the Minister for Integration, 2009) 31. Note this ministry was removed by the Fine Gael-Labour government in 2011 and replaced by the Office for the Promotion of Migrant Integration.

63 This includes Denmark which, like Ireland, has not opted in to the Reception Conditions Directive.

64 This is calculated on the basis of income, thus employed asylum seekers would be assessed in the same manner as other Irish citizens.

INTRODUCING THE RIGHT TO WORK OUTSIDE OF THE RECEPTION CONDITIONS DIRECTIVE – THE DANISH EXPERIENCE

Following a report by a Government committee, the Danish Minister for Justice Minister Morten Bødskov proposed introducing the right to work for asylum seekers after six months. The measure is aimed at giving asylum seekers a better opportunity to have a normal life while their cases are being processed or waiting to return home, which also includes initiatives to strengthen the motivation to leave for asylum seekers who have been refused asylum. At time of going to press the proposal had not been made law.

Justice Minister Morten Bødskov says:

“What I am presenting today is a concrete proposal as to how we can offer of relocation from asylum centers and access to the labor market. The proposal provides asylum seekers with better conditions and the opportunity to live a normal life. If they get asylum, they will have a better basis for integration in Denmark and zhome they will be in a better position to start a new life in their homeland.

So that we can have a functioning asylum system, it is important that rejected asylum seekers leave Denmark. It should preferably be done on a voluntary basis. The proposal therefore also contains suggestions on how we can strengthen the voluntary departure of asylum seekers who have been refused asylum”.

- Asylum seekers over the age of 18 and who been in Denmark for 6 months or more and who meet certain other conditions, can apply to the Danish Immigration Service to approve an offer of employment until they are granted a residence permit in Denmark, leave Denmark or are deported from Denmark.

Asylum seekers can be employed in any ordinary full- or part-time, paid or unpaid employment but are not permitted to run their own business. They may not begin working until they have gained approval from the Danish Immigration Service.

Asylum seekers offered employment within a designated area of work can also apply for a residence permit on these grounds.

- The asylum seeker may be required to pay rent if he/she lives in an asylum centre or in an independent residence affiliated with an asylum centre. The asylum seeker may also be required to pay for accommodation for his/her spouse and his/her children under 18.

Work is not a valid reason for failing to attend meetings with immigration officials.

IMPLEMENTATION AND TRANSITION

It must be acknowledged that a new reception system cannot be introduced overnight. The State is tied into existing contracts for accommodation services. The following steps are therefore proposed in the light of the existence of the current system of Direct Provision:

- Existing contracts for Direct Provision services that fall far short of the criteria set out within this document are not renewed when they expire.
- An assessment is made of the compliance with existing housing legislation both on the basis of sleeping space but also the availability of other living space, particularly for children.
- Separated children who reach the age of 18 are not placed in to Direct Provision but into some form of independent living if their foster care arrangement cannot continue.
- Families are offered the opportunity to move out of Direct Provision with steps taken to give grant rent and supplementary welfare allowance, particularly those who have been in Direct Provision for three years or more *per* the IRC's pre budget submission⁶⁵.

- The State invites tenders for a pilot centre to be run on a not-for-profit basis which would include self-catering facilities, family units and a resource centre to house services. Funding is available for such projects through the European Refugee Fund, soon to be replaced by the Asylum and Migration Fund.

- The universal child benefit is restored for the children of asylum seekers.
- The weekly allowance currently paid to asylum seekers be increased in line with the increases in social welfare since 2000.
- A single protection procedure be introduced as soon as possible in 2014 in order that the aim of processing the majority of new asylum claims within six months can be achieved.

As set out at the beginning of this document, this proposal is not intended to be definitive but a contribution to a debate about what are the best forms of State support for those seeking international protection in Ireland.

⁶⁵ <http://www.irishrefugeecouncil.ie/wp-content/uploads/2013/08/Irish-Refugee-Council-Pre-budget-submission-2013.pdf>

CASE STUDY: PORTUGAL - AN EXAMPLE OF WHAT CAN BE DONE

The Conselho Portugues para os Refugiados CPR, the Portuguese Council for Refugees¹, operates a centre on the outskirts of Lisbon, which has some of the characteristics that the IRC would view as important for the proper reception of asylum seekers.

CASE STUDY: PORTUGAL²

CPR was established in the early nineties following the closure of the national office of UNHCR. In effect, CPR undertakes the role of the High Commissioner for Refugees in Portuguese asylum law and works closely with national immigration office, Serviço de Estrangeiros e Fronteiras (SEF)³. In the mid-nineties, CPR began to take on a reception function with a mixture of EU, government and UNHCR funding. Today, CPR runs two reception centres in Lisbon: one for applicants in the admissibility procedure and one for separated children⁴. Both reception centres are purpose built and are staffed by CPR staff with qualifications in social care, vocational support, legal support, etc.

ADULT AND FAMILY CENTRE

The construction of the primary centre was funded by the European Social Fund. The purpose built centre was designed to provide for the needs of newly arrived applicants and to encourage interaction with the community. The policy in Portugal is to commence the process of integration on arrival in the state. This policy underlies the operation of the CPR centre: language classes and vocational support are provided within the centre; an on-site kindergarten, library and theatre space are used by the residents and local Portuguese families; asylum seekers are encouraged to shop for themselves and to attend free activities in Lisbon. The centre also provides legal and social services to support the asylum seeker in making their application.

¹ A non-governmental organisation that is funded through a combination of UNHCR, EU and government grants.

² Despite its proximity to countries where high numbers of asylum seekers travel from and the more attractive reception facilities, these have not been a 'pull factor'.

Total Applications	295
Total Decisions	295
Total Positive Decisions	100
Rate of Recognition at First Instance	43.9%

³ CPR is informed of decisions and has the right to interview applicants and submit an opinion.

⁴ "Separated children" are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver, Separated Children in Europe Programme, Statement of Good Practice, (SCEP, 3rd ed. 2004) Available at www.separated-children-europe-programme.org.

CASE STUDY: PORTUGAL

The centre is self-catering but breakfast is provided daily. €100 cash allowance is paid per month to buy food and necessities. This is supplemented by food and clothing donations from local community and a partnership with a local supermarket. Staff report that residents tend to come together to buy food and cook for each other, which creates a sense of normality and family. Residents are employed to help with day to day running of the centre e.g. deliveries of food, clothes bank, cleaning.

Cost = €600-800,000 per annum

- 42 staff: social work; training & employment; language; lawyers; counselling; public information; administration; kindergarten staff.
- Centre capacity is 42; 70 currently in residence.
- Complaints can be addressed to the Ministry of Social Security and there is a complaints book in the centre in which residents can register issues. In practice, staff say that any problems are raised with the social work or integration team who are available during their office hours on a daily basis.
- The rooms are dormitory style with single beds, with own locker and lockable wardrobe. Each room is en-suite. There are 4-5 beds in the dorms at the moment due to overcrowding.
- Each room has a designated laundry day (industrial washing machines) and access to irons. All linen and towels are laundered on Mondays.
- The social and integration team organise activities in the centre approximately once a month but they encourage residents to go to free events, exhibitions, etc in Lisbon city in order to become integrated into Portuguese life and culture.
- The centre was designed to ensure that it would benefit the local community. There is an on-site kindergarten which takes children from the centre as well as local children. As it is a social project, parents pay according to their incomes. It was initially intended that the kindergarten would be an additional source of income for the centre but due to high levels of unemployment locally this is not the case at the moment.
- There is a small hall and stage attached to the centre that is used by the residents for staging shows and plays, but can also be rented out or lent to other community groups.
- A library space with computers, videos, DVDs and language aids can be used by children doing their homework and by local residents as a quiet space to read or use the internet.

