

What asylum seekers told the Working Group about the length of time and the decision making system



Introduction

"[T]he Working Group took the view that it was essential to hear directly from those most affected by the system...With this in mind the Working Group engaged in an extensive consultation process over the course of December 2014 and January and February 2015 to ensure that its deliberations were informed by those in the system"¹

The Working Group on the Protection Process, chaired by retired High Court judge, Dr. Bryan McMahon, began its work in November 2014 and published its report in June 2015. The report contained 173 recommendations to the government spread throughout the main body of the report which extended to 257 pages. The views of asylum seekers and refugees were collected through consultations across the country, organised with the assistance of civil society organisations, and through written submissions. The reports from those consultations and the summaries of the written communications are contained in Appendix 3 of the report.

There is little evidence to suggest that the Working Group properly took into account comments on the asylum system by asylum seekers themselves. Rather, the Working Group was selective in what it chose to respond to from the evidence gathered from asylum seekers.

Chapter Two of the Working Group Report entitled, 'Views of Persons in the Protection System', opens by stating, "This chapter seeks to provide a brief overview of the consultation process undertaken by the Working Group and the main themes that emerged." The chapter devotes three pages to a summary of the 'main themes' articulated by asylum seekers. Of these, the 'length of time' is the first. Despite the sub-heading, 'length of time', the issues listed are indicative of the impact of long-term institutionalised living and do not relate to reasons for delays in the system:

"The "length of time" is at the heart of many of the concerns around Direct Provision and the supports available, and the fears of participants that they may not be capable of independent living when they get a final decision on their claim. The concerns raised include:

- *the uncertainty overshadowing their lives,*
- *the lack of personal autonomy over the most basic aspects of their lives and daily living – cooking, going to the shops, cleaning,*

¹ Para 2.1, p. 57, Chapter 2, Working Group to report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers.

- *the lack of privacy and the challenges of sharing with strangers,*
- *the boredom and isolation,*
- *the inability to support themselves or their family and contribute to society in a meaningful way,*
- *the impact on children of being born and/or living their formative years in an institutional setting,*
- *the impact on parents' capacity to parent to their full potential and on normal family life,*
- *the loss of skills and the creation of dependency, and the negative impacts on physical, emotional and mental health.”²*

This paper serves to draw attention to the strong articulation of the issues raised by asylum seekers that emerge from Appendix 3 to which the Working Group did not have sufficient regard and which did not inform their deliberations to any significant extent. It cannot be said, therefore, to have adequately addressed the views of those on the sharp end of the system.

This paper concentrates upon the views of asylum seekers regarding the length of time. In particular, it highlights a ‘culture of disbelief’ and the negative attitudes from decision makers that led to many applications being refused and therefore years spent challenging negative decisions. The report is notable for its failure to address the reasons that people are spending so long in the asylum system beyond the absence of a ‘single application procedure’.³

Length of Time in the system

Considerable emphasis is placed in the report on the length of time spent in the asylum system and particularly in Direct Provision while a person’s application is being processed. It is flagged in Chapter Two as being, “at the heart of many concerns around Direct Provision and the support available”. The Working Group made two principal recommendations to address the length of time: firstly, the introduction of a single application procedure and, secondly, the determination of applications which had been outstanding for more than five years within six months.⁴ The General Scheme of the International Protection Bill contains a single procedure, and was made public three months before the Working Group report was published. In addition, various schemes had been operated by the Department of Justice, some in collaboration with the Refugee Appeals Tribunal, for some time, to grant leave to remain for those who have been in the system for five years or more, albeit that the Working Group’s recommendation was more comprehensive in its reach.

² Para 2.13, p. 59, Chapter 2, Working Group to report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers.

³ For further information, see the IRC article headed ‘The Working Group and the time factor: a missed opportunity’

⁴ The recommendation also included people on Deportation Orders

Putting a cap on the length of stay in Direct Provision

“People likened living in Direct Provision to being in prison, except that in prison, you know the date of your release and you might be paroled if you behave well. There is no light at the end of the tunnel of Direct Provision. Asylum seekers are warehoused/ segregated/herded into a place outside society. They are stigmatised by the system and this leads to racism.”⁵

The Executive Summary of the report refers to the question of a cap being placed on the length of stay in Direct Provision but the Working Group concluded:

“the solution to the length of stay issue lies in the implementation of the recommendations in chapter 3 aimed at reducing long stays in the system now and into the future”
(p. 19)

In Chapter Three, ‘Suggested Improvements to Existing Determination Process’, it reads,

“The Working Group has considered at length the desirability of placing a limit on the length of time that a person may spend in the system...A solution for the future has been set out at para. 3.163 dealing with the single procedure. Under the single procedure, the authorities aim to process cases within 12 months.” (p. 97)

They continued:

“Having considered the views of persons who participated in the consultation process, reviewed relevant statistics, consulted with experts, and taken account of humanitarian considerations, the Working Group considers that no person should in principle be in the system for five years or more. The Working Group recommends that this principle continue to apply into the future notwithstanding the solution for the future referred to above.” (p.97)

In contrast, and although suggestions on the time spent in any accommodation centre varied from a cap of six months to three years, the need for a cap was expressed time and time again in both the written submissions and regional consultations.

⁵ Appendix 3, p. 332, Working Group to report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers.

Written Submissions from adults

“I think the length of the whole process should be six months, maximum twelve months, rather than living in traumatic combination of hope and despair for years.”

(p. 271)

“Living in direct provision should not extend beyond six months.”(p. 289)

“Cap stays in Direct Provision at 6 months and move to community based accommodation. Introduce a determined period of Direct Provision residency.”(p. 289)

“Reduce the stay to less than one year.” (p. 289)

“There should be a clear legal basis on the length of time (e.g. six months). After this the authorising body should be able to determine whether the applicant is entitled to remain in the State either as a refugee or on humanitarian grounds or deported.”(p. 290)

“It would be a big improvement if all cases are dealt with fast enough so that the final decision is reached before two years.” (p. 290)

“After six months in Direct Provision asylum seekers can live and work in their communities and access education like everyone else.”(p. 293)

“People must not be allowed to stay in the direct provision system for a maximum period of not more than 12 months.” (p. 307)

Regional Consultations

“A time limit of say six months in direct provision would address this issue.” (p. 319)

“People should not have to stay in Direct Provision for longer than six months” (p. 323)

“It was recommended that more timely decisions be made and that 12 months would be the maximum duration of stay.” (p. 328)

“More than six months in Direct Provision is too long.” (p. 335)

The Working Group had an opportunity to properly address and put forward a recommendation suggested by the cohort of people most directly affected by this lengthy system. Indeed, one could go as far as to say that by recommending a cap on the length of stay in any reception system, the Working Group could have encouraged the Irish Government to bring in a timely and properly resourced application procedure. More importantly, a cap would act as a safeguard against history repeating itself. An opportunity to limit the time spent in any reception system was not taken.

Instead, the Working Group established a ‘principle’ that no person should spend any longer than five years in Direct Provision. Rather than recommend a ‘cap’, they recommended a solution for people that they deemed to be in the system for too long. This recommendation sets a precedent that five years in the asylum system and in Direct Provision is acceptable which goes against the clear views of those in the system, none of whom endorsed a principle of five years.

In determining this ‘principle’, the Working Group failed to have any regard to the views expressed by asylum seekers as to why they were left languishing in the system for so long, part of which was their strong belief that applications were dismissed as a result of what some of them described as a ‘culture of disbelief’.

The decision-making process and the culture of disbelief

Another worrying aspect in Appendix 3, wholly overlooked in Chapter Two, is the omission of people’s comments and feelings about the culture of disbelief that affected so many applications for protection. It is well documented that people’s credibility as individuals was often brought into question for, to use Mrs Justice Maureen Harding Clark’s words, ‘unfair and irrational’ conclusions, rather than ‘judicially and within the law.’⁶

On 17th February, 2014, Mrs Justice Maureen Harding Clark delivered a judgment on how a Tribunal member of the Refugee Appeals Tribunal (RAT) dealt with one particular application for refugee status and stated that:

“Sometimes the Court is called upon to review a decision which is so unfair and irrational and contains so many errors that judicial review seems an inadequate remedy to redress the wrong perpetrated on an applicant. This is such a case.”

“...the only conclusion which the Court could draw for the Tribunal’s decision not to recommend that the applicant should

⁶ A.A.M.O (Sudan) v. Refugee Appeals Tribunal & anor, [2014] IEHC 49, Ireland: High Court, 17 January 2014, available at: <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/5afb033c20e0ad7e80257c820059788a?OpenDocument>

be declared a refugee is that the Tribunal Member simply did not like the applicant.”

More recently on a Prime Time Investigates Special⁷, Sean Deegan, a former RAT Member expressed alarming sentiment considering the decision-making role he had held:

“I would have dealt with, I’d say, about, probably, roughly in around 500 cases. I let in two people in six years. Two ladies, one from Moldova and one from Nigeria. The majority of the cases were not refugees, within the meaning of the statute, or within the meaning of the United Nation’s declaration on refugees, that was quite obvious.”

Continuing on the same theme, Deegan added:

“It is clear that the majority of people were actually trafficked into this country and then that these people obviously had to have money to get this far. And one’s to surmise that the real refugees are left back at home. Those who can’t afford to pay the trafficker.”

In 2013, Deegan wrote a letter to the Irish Times after columnist Breda O’Brien wrote an article appealing for reform of the Direct Provision system:

“Sir,

Breda O’Brien (“Inhumane asylum seeker system needs radical reform”, Opinion, March 23rd) states, “Our current system also prevents asylum seekers from finding work, and forces them to depend on the meagre bounty of the State. One man said to me that if you had worked in your own country, not even being allowed to apply for a job is like torture.”

If this gentleman she refers to had a job in his own country, why is he looking for the protection of this State – protection that he is claiming, as an asylum seeker, is not available to him in his home country, for such is what a real refugee is.

“This man, clearly, is an economic migrant and not a refugee, similar to the undocumented Irish in the US.

SEAN DEEGAN,

(Former Member of Refugee Appeals Tribunal)”⁸

⁷ RTÉ Prime Time report, 2 July 2015, available at: <http://www.rte.ie/news/player/prime-time/2015/0702/>

⁸ ‘Reform of asylum seeker system’, Irish Times 28 March 2013, available at: <http://www.irishtimes.com/opinion/letters/reform-of-asylum-seeker-system-1.1340642>

Are we to surmise from his comments that anyone who held down a job in their country of origin or anyone who had the means to engage a smuggler to escape from their country cannot possibly be a 'genuine' refugee? How could any person have their case heard fairly and rationally when they are up against this type of logic? The Tribunal Member worked from a premise that anyone in need of protection must be poverty stricken and if they even speak of a desire to work, they must be an economic migrant.

Going back further still, in February 2006, two members of the RAT, Barristers Sunniva McDonagh and Doreen Shivan, resigned, citing dissatisfaction with the manner in which the Tribunal was run. The previous year, in the Bar Review, Ms McDonagh wrote that the publication of decisions would allow for a consensus about best practices to emerge and would reveal inconsistencies that existed.⁹

These developments came some months after the RAT had been criticised by the High Court for its lack of transparency. In a major judgment delivered the previous year, Mr Justice McMenamin ruled against the RAT on its refusal to publish its decisions or allow access to them by lawyers for applicants.

In his reserved judgment, he said this position was "unique in the common law jurisdictions"¹⁰ and it "cannot accord with the principles of natural and constitutional justice, fairness of procedure or equality of arms".¹¹

Following this, in March of the same year (2006), a case was brought by three asylum seekers seeking leave to bring a judicial review of the allocation of their cases to James Nicholson, a Tribunal Member, by the Refugee Appeals Tribunal.¹² They claimed that his 100 per cent refusal record gave grounds for their fear of bias on his part. They were asking the Chairman of the Tribunal to allocate their cases to a different Tribunal Member other than Nicholson, or alternatively to provide statistics on his decisions, including decisions he made allowing appeals. Seven solicitors from the Refugee Legal Service and private practice, all specialists in refugee law, put forward affidavits stating they had never known Mr Nicholson to give a positive ruling on an appeal.

One such solicitor was John McDaid whose affidavit concluded:

"In the light of the absence of any practitioner dealing in the area of refugee law having a recollection of the second-named respondent ever having made a recommendation for refugee status in favour of an appellant, and also in the light of my own observations, I now feel obliged to advise all my clients whose

⁹ Assessing the Refugee Appeals Tribunal: The Case for the Publication of Decisions, The Bar Review, 1 April 2005, Sunniva McDonagh BL, available at: <http://issuu.com/thebarreview/docs/2-2005>

¹⁰ 'Asylum tribunal must disclose findings' Irish Times 8 July 2005, available at: <http://www.irishtimes.com/news/asylum-tribunal-must-disclose-findings-1.465512>

¹¹ RAT appealed the decision of Mr Justice McMenamin to the Supreme Court, which in July 2006 upheld the High Court ruling on the publication of decisions.

¹² Nyembo v The Refugee Appeals Tribunal, [2006] IEHC 388 (2006)

cases have been assigned to the second-named respondent that there is no prospect of their appeal being successful.”¹³

This was the first time that appellants had taken steps to deal with the perception of bias before the appeal hearing. Mr Justice Butler agreed the case was unprecedented, and granted leave for judicial review in all three cases. In June 2007 the Supreme Court ruled that statistics on Nicholson's decisions could be examined.¹⁴ Nicholson resigned in November 2007 and the Tribunal settled the case with the three asylum seekers in December 2007.

It emerged in 2008 that senior members of the Refugee Appeals Tribunal, former Director of Public Prosecutions, Eamonn Barnes, former Minister, Michael O'Kennedy SC, and Donal Egan, were so concerned about the running of the Tribunal that they were prepared to challenge its Chairman in court. The three Members sought a correction of a statement made by the Chairman of the Tribunal to the Supreme Court, along with changes in the way the Tribunal operated. The case was settled by the Tribunal which meant the three Tribunal Members were not able to present their concerns to the Court.¹⁵

The views of asylum seekers about the asylum application process

As part of their input to the Working Group, asylum seekers made their own views clear on their experiences of the asylum application process including the culture of disbelief that they encountered.

Written Submissions from Adults and Groups

“If application commissioner’s office is allowed to make rejections upon the whims and caprices of the interviewer, the system will always remain opaque.”

(p. 272)

“A sense of fairness and humanity should be espoused when dealing with applications of asylum seekers.” (p. 272)

“Rejection decisions often contain large excerpts of reports selected to suit the refusal.

¹³ ‘Bias claim against member of refugee tribunal’ Irish Times, 8 March 2006, available at:

<http://www.irishtimes.com/news/bias-claim-against-member-of-refugee-tribunal-1.1025091>

¹⁴ Nyembo -v- The Refugee Appeals Tribunal & anor, [2007] IESC 25, Ireland: Supreme Court, 19 June 2007, available at: <http://www.refworld.org/pdfid/4f426d422.pdf>

¹⁵ ‘Members of refugee appeal body considered taking legal action’, Irish Times, 4 March 2008, available at:

<http://www.irishtimes.com/news/members-of-refugee-appeal-body-considered-taking-legal-action-1.899515>

I would suggest that the use of country reports be put to the test of objectivity.” (p.272)

“Ireland registers poorly in terms of granting refugee status or subsidiary protection when compared to other EU countries.” (p. 284)

“The initial interview is frightening up to 13 hours.” (p. 285)

“It is difficult sometimes to tell someone all about your life when you don’t know them.”(p. 285)

“The whole process appears to start with a strong misconception and prejudice towards the applicant. The asylum seeker seems to be considered as an intruder.” (p. 285)

“There seems to be a culture of disbelief amongst the individuals charged with processing the asylum applications.” (p. 285)

“Privacy and confidentiality must be practised. The interviewer should not show any sign of body language of not believing the story.” (p. 285)

“ORAC staff must render impartiality – a few lack professionalism and courtesy.”(p. 285)

‘The very act of [rejecting] applications is considered a positive action to combat immigration which is a topic that creates fear in all nations.’ (p 285)

“The applicant is called upon to lay down clear facts and present appropriate documentation. The nature of events that lead to flight and exile are themselves not coherent, nor sensible. Flight and exile often occur in unplanned circumstances. The applicant is at best unprepared and at worst traumatised.” (p. 285)

“Many asylum seekers have to fight the numerous unnecessary appeals while living their lives in limbo.” (p. 286)

“The protection process however adopts a twisted approach to the appeal. The specific grounds upon which the appeal was made are not dealt with. Instead, what is offered is a fresh interview, to shield the application commissioner’s office.” (p. 286)

“When dissatisfaction with a decision is taken to the High Court, the time is extremely long. In that period one attempts to deal with the traumatic physical and mental hardship arising

from the situation. Success at the High Court only leads to another interview. The High Court sends you back to the same place where an injustice was done without any specific guidelines.” (p. 286)

“The reform of the subsidiary process in 2013 did not include those who had been issued with a deportation order which had not been executed, as a result of this flawed process.” (p. 286)

“The system for determining whether an individual has a legal right to refugee or some other protection status, needs to ensure that well-reasoned decisions are taken in a fair and transparent manner that will offer certainty to applicants.” (p. 290)

“Put in place a system which will treat people seeking asylum with dignity and respect again, ensuring rigorous control of your border and immigration procedures.” (p. 290)

“Grounds upon which applications are rejected must be looked into, made objective or at least reasonable.” (p. 291)

“It would be of great value if the working group could question the appeals process and make it relevant to the specific issues that are brought up by the grounds of appeal. The appeal should be a time to test the reasons for rejection.” (p. 291)

“The reform of the subsidiary process in 2013 should be broadened to include those who had a deportation order issued but not acted upon, as the initial decision which led to the order was flawed but not included in the reform.” (p. 291)

“Address the fact that asylum seekers experience “culture of disbelief” during their interviews.” (p. 291)

“Interpreters and all document translation read and done before any signing. Interpreter should not be judgemental, listens attentively in one language, Repeats message accurately without interpretation, takes note, ensures confidentiality, have no role in establishing applicants credibility.” (p. 291)

“I would like them to carry out research on the country a person is seeking asylum from. I accept not everyone’s story is credible but when it is linked it to real events and activities which they don’t know the information about, it might be credible.” (p. 292)

“The process of seeking asylum in Ireland is one of frustration, hopelessness and despair. It has left most people blaming themselves and regretting ever fleeing to safety to this country.”
(p. 306)

Regional Consultations

“Feel like they don’t believe you – if you make a mistake/omit a piece of information/ they don’t ask you a certain piece of information, they doubt what you’re saying” (p. 313)

“The spirit is not there to believe you – interviewers shaking their heads while story is being told” (p.313)

“They are trying to catch you out, asking you your story and then asking the same thing later to make sure your answers are the same” (p.313)

“Interviews too long & biased & prejudiced” (p. 315)

“In relation to interviewers, the opinion was expressed that they do not have the proper training and experience to deal with asylum seekers. One submission stated, ‘They ask for documents we cannot get. How can you have all these documents when you are running for your life? It’s absurd the questions we are asked during the interviews and documents we are asked to provide during these interviews.’” (p. 319)

“Staff in processing agencies require better inter-cultural training.” (p. 321)

“The legal process is flawed. Some of the interviewers have very little cultural understanding and there is inconsistency in decision-making.” (p. 333)

“People conducting the protection interviews are often very young and seem overly reliant on the internet for their country of origin information. They have a negative mind-set and disbelieve everything you say.” (p. 333)

“Asylum seekers are blamed for taking [Judicial Reviews] in the High Court. This is perceived as an abuse of the system and a way of frustrating the decision-making process. But what other choice to people have if they have not received a proper hearing before the

asylum bodies? Also, if asylum seekers had proper legal advice from the beginning, they wouldn't need to go to the High Court.” (p. 334)

From the report of the consultation with Young LGBT asylum seekers/refugees

“Those that were at the consultation talked about being asked inappropriate questions, e.g. ‘Do you want to be normal? You don’t look gay, you were married/have children, how can you be gay?’ Participants don’t know what evidence to give apart from them self-identifying as LGBT: ‘how can you prove you’re gay?’” (p. 341)

“LGBT friendly interpreters should be available: some participants found that interpreters would sometimes chastise the person for being LGBT; they also experienced people using derogatory terms to describe their sexual orientation or gender identity.”(p.341)

Conclusions

These extensive views did not fit neatly with the Working Group’s consensus that the main problem with Ireland’s asylum procedure is the lack of a single protection procedure. The Irish Government has publicly rehashed the same rhetoric in the media and parliamentary questions, shifting the blame for the dire state of Ireland’s asylum system to asylum seekers, arguing that their use of appeals to the Tribunal or applications to the High Court are designed to delay, when that is the only way in which they can try to put the record straight.

The Working Group did not acknowledge this historical legacy of delays and disbelief as a part of the problem we are seeing today. It undermines their avowed statement about the importance of being mindful of the views of those directly affected by poor decision-making and delays beyond their making and control. Many people have been failed through no fault of their own and as a result have been left languishing in the asylum process and the Direct Provision system for years because they exercised their right to claim international protection and expected a fair and transparent process. The statements clearly made by asylum seekers in good faith to the Working Group were largely ignored. How do you correct for the future if you ignore the past? As one woman who has been in Direct Provision for more than seven years commented in an article she wrote for the Journal.ie on the 16 August 2015:

"Life is a gift we all have to share equally and if we don't learn from our past and see where mistakes can be corrected from history then we as human beings will never develop."