

# Civil Society Recommendations for Pact Implementation

April 2025

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	1.	Screening Process, Border Procedure and Fundamental Rights Monitoring Mechanism
	<b>Key concerns</b>	<b>Recommendations</b>
1.	It is unclear what the independent fundamental rights monitoring mechanism will look like.	That any rights monitoring mechanism be established in line with Fundamental Rights Agency (FRA) <a href="#">guidance</a> .
2.	Concerns regarding the power, scope and limitations of the monitoring mechanism.	That: <ul style="list-style-type: none"> <li>• The rights monitor has broad access to screening locations and applicants and be granted necessary investigative powers;</li> <li>• Findings, reports, and decisions of the monitor are enforced by the relevant authority, where appropriate;</li> <li>• The rights monitor be independent and adequately resourced;</li> <li>• Applicants be made aware of complaint mechanisms, and available remedies where there are breaches of fundamental rights, in a language they understand.</li> <li>• Government should consult Civil Society Organisations and those with lived experience of the international protection process in designing and implementing any monitoring mechanism.</li> </ul>
3.	It is unclear as to how the monitoring mechanism will interact with the forthcoming Inspectorate of Places of Detention which will pave the way for the State to ratify the	That: <ul style="list-style-type: none"> <li>• contradictions and inconsistencies are avoided and the division of responsibility as between the two bodies is made clear.</li> <li>• The proposed pieces of legislation should align on both the EU Pact and the Inspection of Places of Detention Bill to ensure that the Places of Detention Inspectorate may have a role in cases where someone is deprived of their liberty in an international protection or immigration setting.</li> </ul>

	<p>Optional Protocol to the Convention Against Torture.</p>	<ul style="list-style-type: none"> <li>Any facility where a person is or may be deprived of their liberty needs to be considered in light of the revised Inspection of Places of Detention Bill 2022. There must be clear definitions in place that ensure any deprivation of liberty, de facto or otherwise, does not occur save in accordance with law and is necessary and proportionate. There should be clarity as to how the new immigration legislative framework, including statutory monitoring bodies, interacts with the proposed Places of Detention Inspection Bill and ensure it is compliant with the Optional Protocol to the Convention Against Torture. Both legislative frameworks should create distinct safeguards and oversight where a person is or may be subject to any form of deprivation of liberty.</li> </ul>
<p>4.</p>	<p>Inadequate resourcing.</p>	<p>That:</p> <ul style="list-style-type: none"> <li>Proposed rights monitoring mechanism be allocated sufficient human and financial resources</li> <li>All staff and immigration officers present at screening facilities receive appropriate and ongoing training.</li> <li>Sufficient investment is made in legal aid services.</li> </ul>
<p>5.</p>	<p>Location and privacy of screening procedure.</p>	<p>That the screening process, particularly those aspects which include obtaining sensitive data- such as related to health or details of an applicant’s case- takes place in a confidential setting, which respects GDPR legislation and the dignity of the applicant.</p>
<p>6.</p>	<p>Lack of clarity as to how screening regulation will be applied to applicants who arrive over land border with NI, and those already in the State.</p>	<p>That:</p> <ul style="list-style-type: none"> <li>racial / ethnic minority data be collected by those working in the screening regulation to note who is being stopped, where and why.</li> <li>Legislation outlines the screening process for those who arrive over the border with Northern Ireland and those already in the State.</li> </ul>
<p>7.</p>	<p>Where a person is “apprehended” and subjected to screening procedure, this may exacerbate the impact</p>	<p>That racial / ethnic minority data be collected by those working in the screening regulation to note who is being ‘apprehended’, where and why.</p>

	of racial profiling of applicants.	
8.	There is no automatic right of review or appeal of the referral to the border or accelerated asylum procedure.	That applicants referred to border or accelerated procedures have access to a review or appeal of that decision with the benefit of legal advice.
9.	The automatic application of border procedure to, and detention of, applicants, including children, who arrive without travel documents or with forged documents.	That: <ul style="list-style-type: none"> <li>• Applicants are afforded the opportunity to demonstrate good cause for their lack of travel documents;</li> <li>• That state authorities must demonstrate an applicant's "bad faith" before that applicant is subject to border procedure.</li> </ul>
10.	Lack of clarity as to assessment procedure where applicants are deemed a threat to national security or public order under Art. 42(1)(f) Asylum Procedures Regulation (APR).	That clear assessment guidelines are put in place and the substantive basis for any findings are provided to applicants.
11.	Automatic application of border procedure to applicants from countries at a 20% (or lower) recognition rate, particularly to applicants belonging to categories for whom the recognition rate	That authorities adopt a non-exhaustive list of categories of applicants from such countries whose specific protection needs warrant that they are not automatically subject to border procedure.

	does not represent their protection needs.	
<b>12.</b>	Capacity quotas and minimum number of applicants to whom border procedure is applied under Arts. 46 – 50 APR.	That: <ul style="list-style-type: none"> <li>• The border procedure be used as sparingly as possible and applicants are promptly redirected out of the border procedure should their case be complex or they are identified at any stage as having special reception or special procedural needs.</li> <li>• Applicants identified as having special reception or special procedural needs during the screening process should not be subjected to the border procedure.</li> </ul>
<b>13.</b>	That aspects of Eurodac may not be compatible with EU data protection law.	That there is full compliance with EU data protection law, and particular care is taken in processing the data of children.
<b>14.</b>	The Eurodac Regulation states that a proportionate degree of coercion may be used against minors to ensure they provide biometric data.	When implementing the Eurodac Regulation there should be no provision for any use of coercion to obtain biometric data from children.
<b>15.</b>	References to the Stateless Conventions or the specific rights of stateless persons should be integrated into the fundamental rights monitoring mechanism and screening process.	That: <ul style="list-style-type: none"> <li>• The draft legislation should make explicit reference to stateless people (within the meaning of the 1954 Convention), as well as a requirement to identify and record indications of statelessness as a vulnerability factor with procedural consequences.</li> <li>• Stateless persons should explicitly be excluded from the border procedure, and the outcome of identification of indications of statelessness at screening should be to refer away from the border to appropriate determination procedures. This should include referral at an appropriate juncture to a Statelessness Determination Procedure, either in parallel with or following the consideration of any</li> </ul>



		<p>application for international protection, without prejudice to the primacy of refugee status and with full respect of the principle of confidentiality.</p> <ul style="list-style-type: none"> <li>• References to statelessness should be included in data systems to allow for the capture of data on statelessness and risk of statelessness in all relevant data collection tools to enable accurate collection of nationality data.</li> <li>• Ireland should ensure that statelessness is adequately considered in individual return and detention decisions given that stateless people are very likely to have no country to which they can return.</li> </ul>
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2.		Legal Counselling
	Key concerns	Recommendations
1.	Absence of definition of 'legal counselling' in Asylum Procedures Regulations.	That: <ul style="list-style-type: none"> <li>• Legal counselling be defined broadly, with focus on one-to-one, case-specific and confidential legal advice supported by a reliable system of communication between authorities and applicants.</li> <li>• The State apply higher standards required by the APR, including free legal assistance at first instance.</li> </ul>
2.	Legal counselling and legal representation being only available at the request of applicant.	That applicants be informed of their right to legal counselling and assistance from the outset of the procedure, in a language they understand.
3.	Inadequate resourcing.	That: <ul style="list-style-type: none"> <li>• Sufficient human and financial resourcing are made available to the Legal Aid Board (<b>LAB</b>), to ensure quality and timely access to legal representation and enable legal representatives attend substantive interviews and Hearings.</li> <li>• A dedicated unit within the LAB be established to process requests for legal counselling by applicants.</li> <li>• A dedicated unit within the Legal Aid Board to bring Judicial Review proceedings where justice requires this.</li> <li>• Consideration be given to offering dedicated traineeships, and career progression within the LAB.</li> <li>• That the workload of legal aid solicitors is managed, and cases evenly distributed insofar as possible.</li> <li>• Funding be allocated for interpretation services and medico-legal reports.</li> </ul>

4.	Quality control issues and inadequate training of staff.	That staff involved in legal counselling receive appropriate training on a regular basis, including training on trauma-informed practice, identification of victims of human trafficking and stateless persons, etc.
5.	Exclusion of applicants from free legal assistance on basis: a) That they are making second/subsequent application (Art 16 APR); or b) Of a merits test or the fact that they are making a 2 <sup>nd</sup> level appeal (Art 17 APR)	That: <ul style="list-style-type: none"> <li>• Legal counselling be made available to applicants, irrespective of whether it is a second/subsequent application, or 2<sup>nd</sup> level appeal.</li> <li>• In the alternative, if absolutely necessary to exclude applicants from access to legal counselling, this only happen following an assessment of their individual needs &amp; circumstances.</li> <li>• That availability of legal counselling at appeal stage not be subject to a ‘merits test’.</li> </ul>
6.	There is concern that the regulations are unclear who is qualified to provide legal counselling. There is a wide discretion to Member States to determine who will be permitted to provide legal counselling.	That qualified legal professionals or suitably trained paralegals under the supervision of qualified legal professionals be permitted to provide legal counselling to applicants.
7.	States may impose monetary limits or time limits on the provision of legal counselling.	That: <ul style="list-style-type: none"> <li>• Adequate timeframes be established for the provision of legal counselling;</li> <li>• Consideration be given to the provision of legal representation over weekends, through rotations of “on duty” solicitors; and</li> <li>• ‘Necessary support’ for applicants with special procedural requirements may include more time spent with legal counsellors.</li> </ul>

<p><b>8.</b></p>	<p>There is concern regarding the adequacy of the environment(s) in which legal counselling will be provided.</p>	<p>That:</p> <ul style="list-style-type: none"> <li>• Legal representatives be provided access to reception and detention centres; and</li> <li>• Applicants be enabled to receive legal advice in a confidential setting.</li> </ul>
<p><b>9.</b></p>	<p>Accreditation of interpreters.</p>	<p>That:</p> <ul style="list-style-type: none"> <li>• Best practice guidelines are produced for a professional interpretation service</li> <li>• <b>Formal Training:</b> Completion of a specialized legal interpreting program covering legal terminology, procedures, and ethical considerations.</li> <li>• <b>Language Proficiency:</b> Demonstrated fluency in both the source and target languages, including legal terminology and cultural nuances.</li> <li>• <b>Professional Conduct:</b> Adherence to a strict code of ethics, ensuring confidentiality, impartiality, and accuracy.</li> <li>• <b>Assessment &amp; Certification:</b> Passing an accreditation exam or assessment that evaluates interpreting skills in legal contexts, including consecutive and simultaneous interpreting.</li> <li>• <b>Continuous Professional Development:</b> Commitment to ongoing learning, including participation in training programs, legal updates, and practical workshops.</li> </ul>
<p><b>10.</b></p>	<p>Implementation of protections for stateless persons.</p>	<p>That there be engagement with and resourcing of Civil Legal Aid Board, Independent Law Centres and statelessness experts, including from civil society and communities affected by statelessness to support effective implementation of the Pact provisions on statelessness, as well as necessary improvements to national legal framework (i.e. introduction of a formal Stateless Determination Procedure) for the protection of recognised stateless persons.</p>

3.		Vulnerable Applicants
	Key concerns	Recommendations
1.	Concerns about how vulnerability assessments are conducted and the setting in which they take place.	<p>That:</p> <ul style="list-style-type: none"> <li>• Safe spaces should be provided in which to conduct assessments.</li> <li>• Adequate support staff should be employed and trained to support unaccompanied minors.</li> <li>• Develop a robust, ongoing assessment tool to ensure in-depth assessments that help staff proactively identify both visible and non-visible indicators of vulnerability.</li> <li>• Establish a referral mechanism that ensures applicants with special reception and procedural needs receive timely and appropriate support.</li> <li>• Care plans be created for therapeutic supports for applicants identified as vulnerable.</li> <li>• Vulnerability assessment should not be a one-off assessment. Not all vulnerabilities are physically evident and can develop after an initial assessment has taken place.</li> <li>• The government implement recommendations of the <a href="#">UNHCR Vulnerability Screening Tool</a> and the <a href="#">Italian Government Handbook</a> for ideas of positive practises in conducting vulnerability assessments.</li> <li>• An independent appeal mechanism be created.</li> </ul>
2.	Lack of availability of Medico-Legal Reports. Spirasi has a long waiting list, must operate within a strict remit and cannot provide Medico-Legal Reports to all applicants. There is a very small pool of other providers of Medico Legal Reports.	<p>That:</p> <ul style="list-style-type: none"> <li>• The fee for providers of Medico-Legal Reports be increased.</li> <li>• Increase funding to Spirasi to increase its capacity to provide this service.</li> <li>• Increase capacity by recruiting more providers of Medico-Legal Reports to place on a panel established by the Minister.</li> <li>• Section 23 (3) of the International Protection Act 2015 be retained and implemented, and the Minister establish a panel of registered medical practitioners who can provide Medico-Legal Reports.</li> </ul>

<p><b>3.</b></p>	<p>Insufficient resources to identify special reception needs and special procedural guarantees within 30 days.</p>	<p>That adequate resources are allocated to ensure:</p> <ul style="list-style-type: none"> <li>• Qualified personnel with specialist knowledge are involved in identifying special reception and procedural needs.</li> <li>• Sufficient staff are available to ensure early identification of special reception and procedural needs.</li> </ul>
<p><b>4.</b></p>	<p>Inadequate training to identify special reception needs and special procedural guarantees.</p>	<p>That authorities:</p> <ul style="list-style-type: none"> <li>• Develop comprehensive, specialised, and ongoing training for those involved in identifying special reception and procedural needs.</li> <li>• Consider the involvement of a variety of stakeholders in the training process, including specialists from fields such as psychosocial support and mental health.</li> <li>• Consider the involvement of specialist NGOs</li> </ul>
<p><b>5.</b></p>	<p>Whether there will be a transparent process around the vulnerabilities assessment procedure, allowing other actors to refer applicants and/or share information on their behalf.</p>	<p>That the State ensure the process is transparent, allowing for various NGOs with specialised expertise such as medical, mental health and psychosocial, gender-based violence and child protection needs, to identify needs.</p>
<p><b>6.</b></p>	<p>Conduct of age assessments</p>	<p>That:</p> <ul style="list-style-type: none"> <li>• Age assessments be carried out by qualified professionals only, and that those professionals receive relevant and ongoing training and oversight;</li> <li>• Age assessments not be based solely off an applicant’s physical appearance and behaviour</li> <li>• Principles of best interests of the child, the benefit of the doubt and the presumption of minority to be applied in all cases involving unaccompanied minors</li> <li>• Where an assessment is inconclusive, the applicant should be given the benefit of the doubt, i.e., deemed a child</li> </ul>

- Age assessments should only be conducted as a measure of last resort, not as standard or routine practice and only where there is a reasonable doubt regarding their age following interviews and attempts to gather documentary evidence on the individual's age.
- An independent appeal on initial age assessment determinations should be carried out by a multidisciplinary team of suitably qualified professionals. With appeals having suspensive effect, and provisions to support the applicant to make the appeal.
- Given the importance of age assessments, and the risks of an unaccompanied child entering an inappropriate asylum procedure, applicants should have access to legal counselling for the duration of the age assessment process and any appeal.
- Applicants should be entitled to have a support person with them throughout the process, to ensure they understand what is happening and that their rights are vindicated.
- When carrying out age assessments the least invasive option must always be followed, and the individual's privacy and dignity must be respected at all times.
- The benefit of the doubt in relation to documents should be provided to the individual as required by the UN Committee on the Rights of the Child and the ECtHR. If required, training should be provided to all professionals involved in determining age assessments, including social workers, on how to assess documents.
- To avoid disruption to the applicant and detrimental knock-on effects in terms of education, employment and other supports, age assessments should take place in a prompt manner according to the UN Committee on the Rights of the Child and the Council of Europe.
- Child appropriate accommodation should be provided to individuals whose age is in doubt and are undergoing the age assessment process, including appeal. The intended model operated by Tusla and DCEDIY of separate residential units for applicants whose age is in doubt should be continued.



7.	The Pact outlines the duties of a representative for unaccompanied and separated children.	<p>Any new service for the provision of a representative or guardianship should be modelled on the duties of a representative in the Fundamental Rights Agency <a href="#">guidance</a>. These include:</p> <ul style="list-style-type: none"> <li>• safeguarding the child, including by ensuring the child receives appropriate care and services and protecting the child against all forms and risks of violence and exploitation.</li> <li>• supporting children to enrol in education, access healthcare services and facilitate their participation in decisions being made about them.</li> <li>• act as an advocate for the child and ensure they have access to information and legal advice as needed.</li> </ul>
8.	Family Tracing Service	That an appropriately funded and robust family tracing service be established. This is especially important for vulnerable applicants.

4.		Reception Conditions
	Key concerns	Recommendations
1.	Insufficient reception capacity and contingency planning.	<p>That sufficient resources are allocated to ensure adequate reception capacity and to:</p> <ul style="list-style-type: none"> <li>• Scale-up state-provided accommodation</li> <li>• Eliminate reliance on emergency and tented accommodation</li> <li>• Avoid homelessness among international protection applicants</li> <li>• That the State implements the <a href="#">Comprehensive Accommodation Strategy</a> and ensures that the reception system is human rights compliant in line with the approach set out in the <a href="#">White Paper on Ending Direct Provision</a>.</li> <li>• That the State develop a contingency planning framework to address potential fluctuations in international protection applications. This framework could be integrated into the national strategic approach for managing asylum and migration. This includes preventive measures to mitigate the risk of migratory pressure and ensure effective contingency planning.</li> <li>• Obtain guidance on contingency planning from the <a href="#">EUAA Guidance on Contingency Planning in the context of reception</a>.</li> </ul>
2.	Restriction on freedom of movement	<p>That:</p> <ul style="list-style-type: none"> <li>• All applicants should be able to access essential services, supports, employment, education and social networks while in the asylum process, including while in the border procedure.</li> <li>• Any restriction of movement must be necessary, proportionate, aimed at achieving a legitimate objective, and grounded on legal and factual reasoning, taking into account the circumstances and needs of the applicant.</li> <li>• Applicants should not be subject to restrictions that could amount to <i>de facto</i> detention.</li> <li>• Guaranteed freedom of movement and choice of residence for refugees lawfully within the territory of a State, noting that refugee status is declaratory.</li> </ul>

3.	Reduction or withdrawal of material reception conditions under specific circumstances.	<p>That:</p> <ul style="list-style-type: none"> <li>• Serious or repeated breaches of accommodation centre rules, or threatening behaviour within the centre should not result in the complete withdrawal of material reception conditions, thereby making the applicant homeless.</li> <li>• Any sanctions should observe the principle of proportionality and respect for human dignity.</li> </ul>
4.	Detention of children	<p>That the Government should not include any provision for the detention of children, including both unaccompanied and separated children and children in families, as per the UN Committee on the Rights of the Child which states that detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.</p>
5.	Places and standards of accommodation	<p>That:</p> <ul style="list-style-type: none"> <li>• Emergency accommodation centres not be used, or used sparingly, to house applicants, including under contingency measures;</li> <li>• All accommodation centres be subject to the <a href="#">National Standards</a> and HIQA inspections. See also recommendations, above, regarding forthcoming Inspectorate of Places of Detention and fundamental rights monitoring mechanism.</li> <li>• Special Emergency Arrangements not be used to house unaccompanied/separated children and they be house in specialised units under the oversight of Tusla, with key workers in place for all young people under their care; and</li> <li>• Age disputed applicants be accommodated in designated residential units.</li> </ul>