

Roadmap for Asylum Reform

The Irish protection system is fraught with lengthy delays and expensive legal proceedings. For applicants, many of whom have gone through terrible ordeals before they arrive in Ireland, it means years of living in uncertainty. The result is a system that bears an unnecessary human and financial cost, which serves neither the applicants, the state nor the taxpayer.

We now have an opportunity to achieve a reform of the asylum system that will end the misery and needless waste of public funds inherent in the current system. In this document, the Irish Refugee Council has outlined a roadmap for an asylum system that embodies the principles of **efficiency, fairness** and **transparency** as well as representing value for money.

What a good asylum system would look like

1. A single protection procedure
2. Clear, good-quality and transparent decision-making
3. Humane reception conditions including the right to work
4. Care for separated children on a par with that offered to Irish children in care
5. Special consideration for the needs of vulnerable individuals and groups
6. Effective remedies

Irish Refugee Council

Promoting and Enhancing the Lives of Refugees

The Irish Refugee Council (IRC) is Ireland's only national non-governmental organisation which specialises in working with and for refugees in Ireland.

The main focus of our work is on those in the asylum system who are applying to be recognised as refugees. For almost 20 years we have observed the changes that have been made in response to the arrival of refugees. Based on extensive experience

working directly with those affected, we have seen the huge financial cost of a failed system and the untold damage that has and is being done to men, women and children in the asylum process.

The IRC is committed to change that will be beneficial for refugees, the decision makers and the tax payer. This document is our Roadmap for Asylum Reform.

The Asylum Process in Ireland

Office of the Refugee Applications Commissioner (ORAC)

- Applicants are given a lengthy questionnaire to complete within a maximum of 2 weeks (which they can do in their own language). They can only apply for asylum at this stage, not any form of subsidiary protection. They are entitled to legal advice from the Refugee Legal Service but in practice this is limited to information about completing the questionnaire.
- Substantive interview with a caseworker. Although the applicant is entitled to have a legal representative present this rarely happens. The interview is conducted in the applicant's first language if there is an interpreter available.
- The question and answer during the interview is read back to the person intermittently during the interview but a copy of the interview record is not released to the applicant until the appeal stage.
- Median processing times = 6 - 7 weeks for prioritised applications or 9 weeks for non-prioritised applications (Minister for Justice Alan Shatter TD, Written Answer to Maureen O'Sullivan 21/7/2011)

In 2010, only 1.1% of applicants were granted refugee status by ORAC.

Appeal to Refugee Appeals Tribunal (RAT)

- Depending on the recommendation in the ORAC report the applicant has either 4, 10 or 15 days to lodge an appeal.
- Hearings take place behind closed doors and decisions are not published.
- Median processing times = 33 weeks for substantive appeals (cases involving an oral hearing) OR 9 weeks for accelerated appeals (appeals on the papers) (Minister for Justice Alan Shatter TD, Written Answer to Maureen O'Sullivan 21/7/2011).

In 2010, the RAT affirmed 94% of substantive decisions of ORAC and 99% of decisions subject to the accelerated procedure.

Seek Judicial Review (JR)

- The only way to challenge a negative RAT decision is by way of an application for Judicial Review in the High Court
- If the applicant is successful, the original decision of the ORAC/RAT is quashed and the case is returned to ORAC or the RAT.
- Average waiting times: 27 months for a pre-leave hearing (leave to apply for JR) and an additional 4 months for a full hearing.

Deportation Notice

Upon a negative RAT decision (or after an unsuccessful JR) the Minister then gives the applicant a notice of proposal to deport. This give the applicant three options:

- Leave the State before the Minister makes a deportation order.
- Consent to a deportation order.
- Apply for subsidiary protection and/or leave to remain in the state.

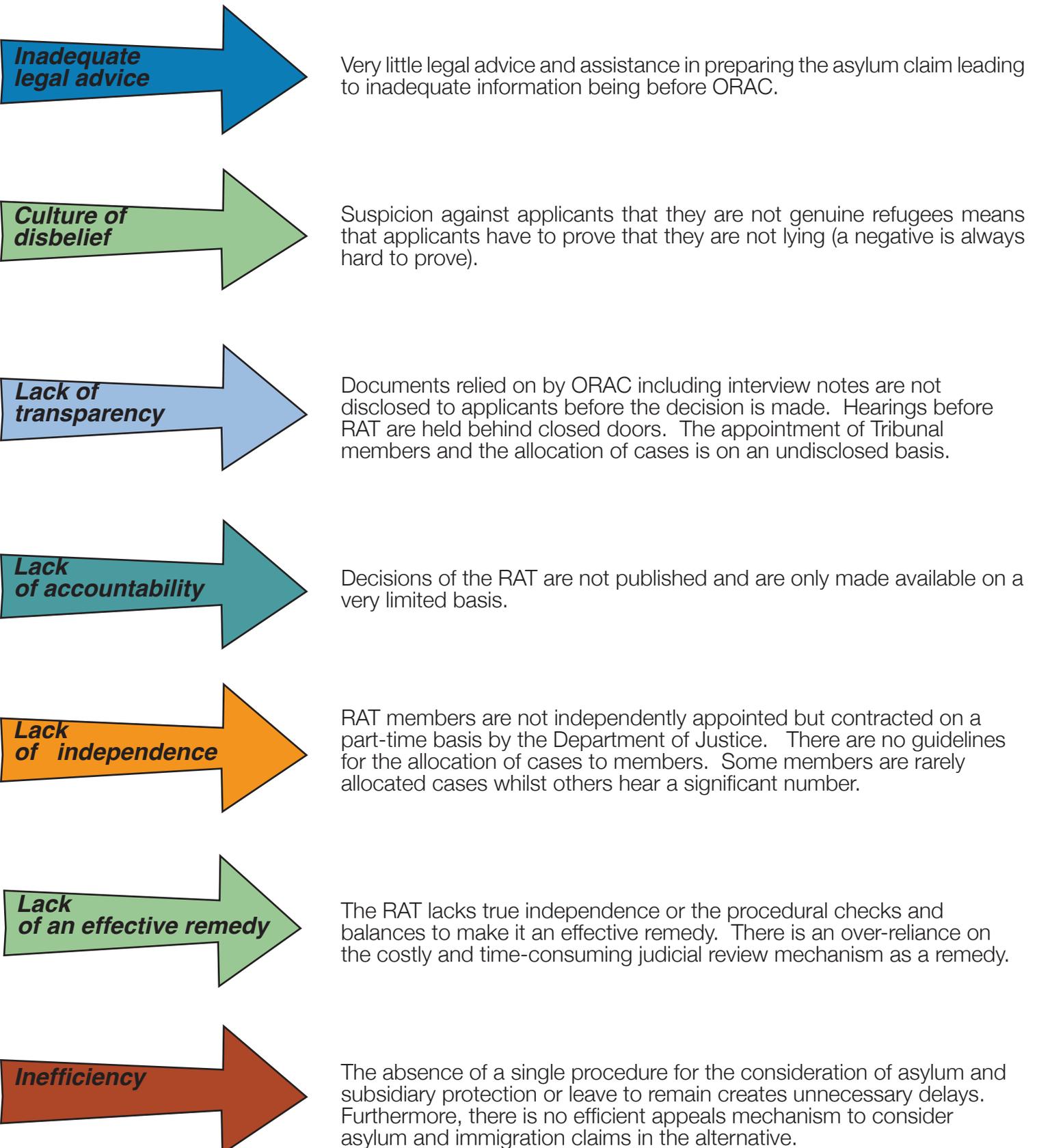
Application for subsidiary protection

- If subsidiary protection is granted, an applicant is permitted to stay in the State and qualifies for certain rights and entitlements. These are set out in Regulations. There is no appeal against a refusal of subsidiary protection, the only avenue open to an aggrieved applicant is to apply to the High Court for Judicial Review.

- Median processing time = 2 years.

Only 5 people were granted subsidiary protection in 2010 and only 40 people have been granted subsidiary protection since 2006 (Submission by the UN-HCR for the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review).

A Broken System



What would change the Irish asylum system?

A single protection procedure

Claims for asylum and subsidiary protection can be made simultaneously and in the alternative.

What that means:

- Replace the current situation whereby every protection applicant must first apply for asylum, whether or not they fit the criteria for refugee status, and be refused before they can apply for subsidiary protection.
- Eliminate the waste of time and resources taken in examining the same application twice.
- A reduction of between one and four years in decision-making time.
- Savings of approximately four years in Direct Provision accommodation.

In 2010, there were 6,107 people, including 2,144 children, living in Direct Provision at a cost of €79m. 2,778 people had been living in Direct Provision accommodation for over 36 months (RIA Annual Report 2010).

Ireland is the only European Union member state without a single procedure for assessing asylum and subsidiary protection claims.

Achieving sustainable decisions

Enhancing procedural fairness and ensuring that well justified and evidenced cases are presented at first instance, resulting in more sustainable decisions and fewer appeals.

What that means:

- High quality and independent interpretation services.
- Legal advice and representation at the earliest stages.
- Requirement that officials conducting interviews are specially trained to deal with the cultural sensitivities and vulnerability of applicants for protection, many of whom have undergone trauma.
- Recognition of the practical difficulties which protection applicants have in producing documentary evidence through measures to adopt the UNHCR's recommendation that, while the burden of proof rests

Efficiency, Fairness and Transparency

with the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner.

- See the UK experience of the Early Legal Advice Project, Solihull.

UK: The Early Legal Advice Pilot, Solihull

The main aim of the project was to ensure that all material facts and all relevant evidence were in front of the decision maker at the time of the first decision. It was envisaged that the legal representative would play a more active role in representing the applicant before, during and after the main substantive asylum interview.

On allocation to a case-owner at the UKBA, the applicant was informed about the process, and told who their legal representative was and the date of their first legal appointment.

Prior to the substantive asylum interview, the legal representative prepared and submitted a detailed statement of claim and supporting evidence, identifying what other evidence, e.g. a country expert's report or medical report, might be useful. The case-worker and legal representative narrowed down the issues which were in contention and which should be the focus of the interview.

The interview acted as a forum for clarifying issues and identifying where further evidence or submissions were required. Both sides shared the responsibility of ensuring that all matters relevant to the claim were put forward, tested and were available for consideration before the decision was made. On conclusion of the interview, the legal representative and caseworker reviewed the case and determined what, if any, further evidence was needed before the final decision was taken.

Outcomes

- Faster recognition and integration of refugees;
- Increased positive decisions at first instance, more sustainable negative decisions and fewer successful appeals;
- Faster and less controversial enforcement of negative decisions;
- Overall cost savings with any rise in the Legal Aid budget offset by savings elsewhere.

'Evaluation of the Solihull Pilot for the UK Border Agency and the Legal Services Commission' by Jane Aspden, October 2008.

Robust independent appeals mechanism

A single independent appeals tribunal dealing with asylum and immigration cases.

What that means:

- An appeals tribunal which is independent of the Department of Justice.
- Independently appointed judges with experience and training in asylum and immigration cases.
- Hearings held in public, unless the applicant is a minor or an application is made for the hearing to be held in private.
- Clear, detailed and published procedural rules governing the preparation for and conduct of appeal hearings.
- Publication of decisions.
- See below, examples of international best practice.

New Zealand: Immigration and Protection Tribunal

- A single body hears appeals against decisions relating to immigration and protection matters: e.g. refusal of resident visas, refusal of refugee status or subsidiary protection, deportation orders.

Belgium: Aliens Litigation Council

- Hears appeals against refusal of refugee status, refusal of subsidiary protection, revocation of refugee status or subsidiary protection.
- Oral hearings.
- Decisions are anonymised and made publicly available in the Council building and can be accessed on the Council's website.

UK: First-tier and Upper Tribunals of the Immigration and Asylum Chamber

- Hears appeals against immigration and protection decisions on one or more grounds: e.g. decisions not in accordance with the law (including any Ministerial statements; decisions in breach of obligations under the Refugee Convention, Qualifications Directive, Human Rights Convention, Children's Rights Convention).
- Means and merit tested legal aid available.
- Published procedural rules which govern the conduct of appeals and the timeframe in which appeals should be determined.
- Hearings in public unless the appellant is a minor or an in camera application is deemed justified by the Immigration Judge.
- Immigration Judges are recruited through an open competition by an independent body.
- Publication of decisions which set guidance for others e.g. Country Guidance Cases.
- Ongoing training of Immigration Judges.

Refugee:

“Any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”, (United Nations Convention on Refugees, 1951).

Asylum seeker:

Someone who is seeking to be recognised as a refugee. If they are granted this recognition they are declared a refugee.

Subsidiary Protection:

Under an EU Directive implemented in Ireland in 2006, a status of subsidiary protection was introduced. If a person is from a third country [i.e. outside the E.U.] or is stateless and does not qualify as a refugee but does face a real risk of suffering serious harm if returned to his or her country of origin, they are eligible for subsidiary protection.

Leave to remain:

A person may be granted ‘leave to remain’ in Ireland for humanitarian or other compelling reasons. This is at the discretion of the Minister for Justice. People with leave to remain can live and work in the country, but cannot apply for family reunification. The conditions attached to ‘leave to remain’ can vary considerably.

Separated Children:

Children under 18 years of age, who are outside their country of origin, and separated from both parents and their previous/legal customary primary care giver.

Prioritised applications:

From January 2005, arrangements were introduced for the speedier processing of prioritised asylum applications from nationals of designated ‘safe’ countries. These arrangements include faster processing at first instance in ORAC and faster appeal determinations with prioritised applications processed in 15 days.

Roadmap for Asylum Reform

Efficiency, Fairness and Transparency

1. Single Protection Procedure

A single procedure for the consideration of asylum and subsidiary protection claims.

2. Sustainable decisions

Enhancing procedural fairness and frontloading legal services to produce sustainable decisions.

3. A robust independent appeals

A single tribunal, independent from the Department of Justice, dealing with asylum and immigration appeals cases.

