

### Reforming the Asylum Process: Reasonable Time Periods for Determinations

1. It has been reported that reform of the asylum process could lead to decisions delivered within weeks. I would caution that care needs to be taken to ensure that Ireland does not return to a situation where extensive use of accelerated asylum procedures becomes acceptable. While the current delays are inexcusable, leaving many lives in limbo for years on end, the risks of accelerated procedures are great.
2. In 2001, I completed a report on behalf of the Irish Refugee Council, *Manifestly Unfounded: Manifestly Unjust*, which examined the rapid increase in the use of such procedures in Ireland. In 2000, when Ireland was receiving significantly more asylum seekers than it is today, 18% of asylum claims received were subject to accelerated procedures, deemed to be 'manifestly unfounded', lacking in credibility. Many of those decisions were wrong, based on flawed decision-making processes that ultimately led only to further appeals, judicial reviews and ongoing delays.
3. Errors continue to be made in the asylum determination process. In a strongly worded statement from the High Court earlier this year, Judge Maureen Harding Clark described a decision of the Refugee Appeals Tribunal as 'so unfair and irrational', that the remedy of judicial review was inadequate to redress the wrong that had been perpetrated.
4. The consequences of erroneous decisions, when asylum claims are processed too quickly and mistakes are made, are grave. The core obligation of refugee law is that of *non-refoulement*, to ensure that a person is not returned to a situation where her life or freedom is threatened. As has been noted by the courts, where the result of a flawed decision may imperil life or liberty, a special responsibility lies on those making the decisions. Decisions of such import require 'anxious scrutiny', and, it is essential that the time required for fair, rigorous and just decisions is allowed.
5. I would submit that any reform of the asylum determination system should seek to create decision-making and appellate structures that operate to reasonable timeframes, capable of being met by all those involved. Speed should not be the goal of a good decision-making process: reasonable speed is rather the consequence of procedures that are fair and effective.

### Sexual Violence, Gender Related Asylum Claims and Asylum Procedures

6. Disclosure and reporting of gender and sexual orientation related harms, particularly sexual violence, requires a 'leap of faith' on the part of the asylum applicant. It requires a safe, non-judgmental environment, in which there is a possibility of trust and the potential of refuge. Such trust can be difficult to secure in the asylum context.
7. The UN High Commissioner for Refugees reminds us that discrimination, hatred and violence in all its forms can greatly diminish the capacity of an LGBTI individual to present a claim, for example. The impact of feelings of shame, internalized homophobia and trauma delay the possibility of speaking freely about the persecution endured. Reforms of the asylum determination process must take account of the impact of such trauma, and the time and scrutiny needed to properly adjudicate on such a claim.
8. Recent reports from Asylum Aid in the UK have documented the particularly harsh impact of accelerated asylum procedures on women asylum seekers, and on the adjudication of gender related asylum claims. The consequences of flawed decision making is a backlog of hundreds of cases before the courts, last-minute settlements by the state, lives in limbo and lives at risk. Given that Ireland was to the fore in specifically recognising gender based persecution as a

ground for seeking asylum, it is essential that procedural reforms now introduced recognise the specific needs linked to the adjudication of such claims.

#### *Lack of regulatory oversight: complaints and inspection mechanisms*

9. The system of Direct Provision was introduced by means of administrative fiat, and has continue to operate with limited regulatory oversight. Such a lack of oversight by the State has led to significant human rights abuses in the past, and ultimately to censure by the European Court of Human Rights and UN human rights bodies, most recently in *O'Keeffe v Ireland*, and in the Concluding Observations of the UN Human Rights Committee. Given this lack of oversight by the State, the risks of abuse, exploitation and violence are great.
10. Currently there is no independent complaints mechanism, and insufficient monitoring of the treatment of asylum seekers by those contracted to manage DP centres, and to cater for the needs of vulnerable and often traumatised persons. Such a regulatory failure must be urgently remedied, with the provision of an independent complaints mechanism, and an effective robust inspection and monitoring system of DP centres.

#### *Duration of stay in Direct Provision centres: Time limits*

11. Time limits are required to ensure that families with children do not stay for extended periods of time in DP centres that do not provide self-catering facilities, and that limit the possibilities for private family life that safeguards the best interests of children.

#### *Accommodation and support services for victims of SGBV*

12. In line with UNHCR guidelines, and Ireland's commitment to supporting victims of SGBV, reception facilities must be made available to support particularly vulnerable groups of asylum seekers, with appropriately trained staff and where desirable, gender segregated accommodation.

#### *Assistance to victims of THB and accommodation centres*

13. In the First National Report on Ireland, 2013, the Council of Europe monitoring body (GRETA) urges the Irish authorities to review the policy of accommodating suspected victims of trafficking in accommodation centres for asylum seekers and to consider setting up specialised shelters for victims of THB, with the involvement of NGOs as support providers. (para. 189) In addition, GRETA urges the State to:

[...] ensure that the services available are adapted to the specific needs of trafficking victims and that minimum standards are guaranteed across the country when victims of trafficking are accommodated in structures not specifically designed for them. Particular care should be taken to ensure the victim care plans, which set out specific medical, psychological and social needs and risk assessment, are implemented in order to minimise further trauma and re-trafficking.