

OUTCOMES OF NGO FACILITATED SESSION ON ISSUES IN THE PROTECTION PROCESS AND DIRECT PROVISION

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Context:

Following the establishment of the Advisory Group on the Provision of Support including accommodation to Persons in the International Process in late 2019, a number of NGOs were contacted by the Department of Justice to nominate representatives to sit on the Group. MASI, Nasc and later the Irish Refugee Council were the nominated organisations.

To ensure that the views of the range of organisations were represented at the Group and to assist the Group in its work, the organisations met on 5th February 2020 to seek agreement on a number of critical issues in both the protection process and in Direct Provision. The following organisations were there on the day: Crosscare Migrant Project, Immigrant Council of Ireland, Spirasi, The Irish Refugee Council, Children's Rights Alliance, MASI, Doras Lumini and Nasc the Migrant and Refugee Rights Centre. The meeting was organised by Nasc and hosted by the Children's Rights Alliance. The session was facilitated by an independent facilitator Dr Anthony Finn.

Broad agreement was reached on the issues outlined below and on the potential solutions to the identified issues. Many of the potential agreed solutions are supported by a number of reports, institutions and in the Mc Mahon Report, all of which are outlined in the document.

***On the issue of the National Standards, MASI wish to note that** "while the idea of having standards of having standards is a good one, the standards for Direct Provision centres are 20 years too late and they fail to address many of the core problems with the system of Direct Provision. Apart from embracing the very idea of institutional living, they fail to vindicate fundamental human rights such as the right to privacy which includes private life, and the dignity that comes with having private living quarters (standard 4.3.3 speaks of applying for a single room after 9 months as there is no need for privacy before then. And has "in so far as it is possible" as a disclaimer for not providing a single bed after 15 months). MASI departs from the premise institutional living by design is problematic, and that every asylum seeker should have their fundamental human rights respected. That means under no circumstances will we accept people being forced to share intimate living spaces such as bathrooms and bedrooms with strangers. Our reading of the standards, particularly concerning living arrangements are problematic."

NUMBER	THEME	ISSUE	SOURCE	TEXT/Solution
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1	Alternatives to Direct Provision	Alternatives to Direct Provision /End Direct Provision	Special Rapporteur CERD Rapporteur Oireachtas	<p>Civil Society: 275 submissions, the vast majority of which are highly critical of the system and recommend radical change and ending the existing system.</p> <p>IHREC: The Commission is of the view that the policy of direct provision does not adequately protect the rights of International protection applicants. In the long term, the Commission recommends the complete phasing-out of direct provision.</p> <p>Rapporteur: As noted in numerous other Rapporteur reports, the system of Direct Provision for asylum seekers in Ireland should be abolished.</p> <p>CERD: The Committee urges the State party to develop an alternative reception model and take concrete steps to phase out the Direct Provision system</p> <p>Oireachtas: The Committee is strongly of the view that the current Direct Provision norm of shared, institutionalised living fails to fully respect the rights to privacy and human dignity of those placed in these centres. We must move away from institutional settings. ‘Own-door’ accommodation provision and the right to cook for oneself and one’s family must become standard for individuals and families within the system, while accepting it will not be suitable or appropriate in every case. The accommodation provided must be a mix of independent and supported living to cater for the needs of all applicants.</p> <p>RCPI: Families should have own-door accommodation with a private living space, as opposed to communal areas; All families should have access to self-catering facilities and culturally appropriate foods</p>
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2	Asylum procedure	Deadline for reaching decision: 6-month Procedures Directive	McMahon CERD	<p>McMahon: The State opt-in to all instruments of the Common European Asylum System, unless clear and objectively justifiable reasons can be advanced not to. (see also 3.175 "Officials of the Department of Justice and Equality clarified to the Working Group that the State's objection with respect to the latter provision [recast Procedures Directive] pertains, for practical reasons, only in the absence of a single procedure which will be remedied upon the enactment of the International Protection Bill.</p> <p>CERD: The Committee recommends that the State party: (a) Expedite the processing of applications with a view to delivering the decision within six months;</p>
3	Asylum procedure	Full legal aid up to final decision	Oireachtas Page 55, Rec 44 McMahon Page 118-119 Ch. 3, para 255	<p>Oireachtas: There is a need for a substantial increase in funding for the Legal Aid Board to allow a greater percentage of its budget to be spent on advice for international protection applicants. The Committee also recommends that an early legal advice model be implemented, allowing legal advice to be front-loaded to ensure applicants prepare applications accurately, thus allowing for more efficient decision-making overall.</p> <p>McMahon: Applicants should be clearly informed of the availability of early legal advice and advised to seek it at the earliest possible stage, particularly before they complete the questionnaire.</p>

4	Asylum procedure	Interpreters and regulation	McMahon Page 123-124 Ch. 3 Para 275	<p>McMahon: The Working Group recommends that:</p> <ul style="list-style-type: none"> • More formal procedures be introduced to ensure appropriate training is provided to all interpreters and a register be maintained to indicate who has completed this training in order to be eligible to work. • A coordinated system of reforms be implemented on a phased basis to move to a system where all interpreters in the protection process have appropriately accredited qualifications. • A system of accreditation to be established and maintained. • The tendering process and terms of contracts for interpreting and translation firms should require them to prioritise or incentivise more those who have recognised accredited qualifications. Once the process of reform has been completed, accreditation to be a necessary requirement.
5	Asylum procedure	IT Solutions	Oireachtas Page 55, Rec 41	<p>The Committee also recommends that an online portal be developed by the IPO for the application process to allow applicants access to current information on the status of their case. At present, individuals must often wait for months, or even years, without an update on the status of their application. Greater transparency is necessary so that individuals have access to timeframes and information regarding their application at all stages of the process.</p>

6	Asylum procedure	Long-stayers (i)Schemes	McMahon Page 88 Chapter 3 Para 128 Also see McMahon Page 98 3 Para 166	<p>McMahon: All persons awaiting decisions at the protection process and leave to remain stages who have been in the system for five years or more from the date of initial application should be granted leave to remain or protection status as soon as possible and within a maximum of six months from the implementation start date subject to the three conditions set out below for persons awaiting a leave to remain decision. It is recommended that an implementation start and end date be set by the authorities as soon as possible.</p> <p>3.166 Once the single procedure has been enacted, to avoid a repeat of the circumstances which gave rise to the establishment of the Working Group, that the same principle and mechanisms aimed at addressing the situation of persons currently in the system for five years or more should apply for persons who have cooperated with the process in line with statutory obligations. This does not apply to the situation of persons with deportation orders, which is dealt with later in this chapter.</p> <ul style="list-style-type: none"> • As an additional safeguard, an annual review of the system with a view to making recommendations to guard against any future backlogs, e.g. failure to provide adequate resources to all decision-making bodies, should take place. • The review should also look at the option of reducing the five year mark in future years as appropriate.
7	Asylum procedure	Long Stayers: Oversight/prevention	Oireachtas Page 49 Rec 14	<p>Oireachtas: The Committee also recommends the establishment of a refugee advisory board, as recommended by the McMahon working group and as provided for in the Refugee Act 1996 (as amended). The board would provide oversight and monitoring of all matters relevant to the international protection application process and reception system, including the determination process and the services and supports provided to ensure the appropriate standard is maintained and that improvements are upheld in practice. Such a body will continuously evaluate the international protection system while reporting areas for improvement.</p>

8	Asylum procedure	Decentralisation of interviews	Oireachtas Page 54, recommendation 39* *Agreement within group that 'in person' interviews essential rather than video link	The Committee therefore recommends that the Department of Justice and Equality decentralise the work of the IPO and facilitate interviews at various regional centres to enable easier access for those living considerable distances from Dublin. It welcomes the fact that this is already being done on a limited, pilot-scheme basis, but is strongly of the view that it needs to be rolled out on an across the country basis and as the norm.
9	Asylum procedure	Delays between IPO & MDU - abolish role of MDU?	No agreement on abolishing role of MDU v legislating a deadline Oireachtas Page 54, recommendation 38	Evidence was also heard of delays in the issuing of the final letter from the Ministerial Decisions Unit that enables individuals to obtain a residency permit. Department of Justice and Equality Officials ought to be provided with additional resources, if necessary, to meet their stated target of issuing decision letters within ten days maximum . This timeframe should be rigidly adhered to.

10	Asylum procedure	Commit to vulnerability assessment	Use broader vulnerability definition Standards page 15-16	<p>A vulnerable resident is a resident who has been assessed as having a special reception need in accordance with Regulation 8 of the European Communities (Reception Conditions) Regulations 2018 and includes:</p> <ul style="list-style-type: none"> • a person who is a minor, • an unaccompanied minor, • a person with a disability, • an elderly person, • a pregnant woman, • a single parent of a minor, • a victim of human trafficking, • a person with a serious illness, • a person with a mental disorder, and • a person who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence. <p>It may also include:</p> <ul style="list-style-type: none"> • An accompanied child, • An “aged out minor” or an age disputed minor, • A nursing mother, • The main carer of a dependent child, older person or a person with a disability, • A person at risk of domestic, sexual or gender based violence. • A person experiencing family violence, exploitation or abuse. • A person at risk of violence due to their sexual orientation and/or gender identity (LGBTI+: lesbian, gay, bisexual, transgender or intersex persons). • A person at risk of suicide. • A person with substance addiction. • A victim of trafficking in persons. <p>This is not an exhaustive list and vulnerability is best assessed using a person-centred and holistic approach. A person’s level of vulnerability and corresponding need for additional support is not fixed and may change in differing circumstances and over time. Some people will not be identified as falling within the above list but may still be assessed to have a special reception need.</p>
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11	Asylum procedure	Ongoing vulnerability assessment	Oireachtas Page 50 Recs 16-17	<p>...International protection applicants must have access to adequate mental health supports on an on-going basis, including clear referral pathways to mainstream service providers.</p> <p>17. Extensive training should be provided to all personnel working within the Direct Provision system, to include specialised training in dealing with the effects of trauma, sexual abuse and domestic violence, so as to allow for the continual assessment and detection of mental health issues amongst individuals living within the system.</p>
12	Reception conditions	Accommodation: Public Consultation	Oireachtas Rec 8	<p>Oireachtas: In identifying suitable locations for accommodation for applicants for international protection, it is essential that protocols be established and adhered to for consultation with local communities, together with public information initiatives to address misconceptions that exist in relation to the international protection system and the applicants.</p>
13	Reception conditions	Allocation of accommodation informed by vulnerability assessment	Standards Page 31 Standard 4.1 & indicators	<p>The service provider, in planning, designing and allocating accommodation within the centre, is informed by the identified needs and best interests of residents, and the best interests of the child.</p>
14	Reception conditions	Transport	Standards Page 52 Standard 7.2 & indicators	<p>7.2 The service provider ensures that public services, healthcare, education, community supports and leisure activities are accessible to residents, including children and young people, and where necessary through the provision of a dedicated and adequate transport.</p>

15	Reception conditions	Training for centre staff	Standards Pages 28-29 Standards 2.2 - 2.4 & indicators Standards Pages 66 Standard 10.4	<p>2.2 Staff have the required competencies to manage and deliver person-centred, effective and safe services to children and adults living in the centre.</p> <p>2.3 Staff are supported and supervised to carry out their duties to promote and protect the welfare of all children and adults living in the centre.</p> <p>2.4 Continuous training is provided to staff to improve the service provided for all children and adults living in the centre.</p> <p>10.4 The service provider makes available a dedicated Reception Officer, who is suitably trained to support all residents' especially those people with special reception needs both inside the accommodation centre and with outside agencies.</p>
16	Reception conditions	Independent complaints process	Standards Page 19 Indicator 1.2.15 McMahon Page 181 Ch. 4 Para .135	<p>Standards 1.2.15 The service provider has a system in place to hear complaints and maintains a record of all complaints. Residents are encouraged and supported to express any concerns safely. Residents are clearly informed about the complaints process including how and when feedback would be provided. The service provider ensures has a non-retaliation policy in place to ensure that there are no adverse consequences for raising an issue of concern, whether informally or through the formal complaints procedure.</p> <p>McMahon 4.135 In relation to its internal complaint procedure, RIA should:</p> <ul style="list-style-type: none"> – appoint a designated officer who is not involved in operational matters to handle complaints that are referred to it or are submitted to it directly, – review the complaints procedure to ensure that it is accessible to residents including children and young people, – engage in renewed efforts to build confidence and trust in the complaints procedures, including by ensuring that residents understand the House Rules, are aware of the complaints procedures and how to use it, and understand that it is impartial and that they will not be adversely affected by making a complaint, – engage in efforts to ensure that centre management buy into the

				importance of ensuring an open culture that is conducive to residents making complaints.
17	Reception conditions	Prioritise families for own-door accommodation	Standards, Page 35, Standard 4.4 & indicators Oireachtas, Page 47, Rec 2	<p>Standard 4.4 The privacy and dignity of family units is protected and promoted in accommodation centres. Children and their care-givers are provided with child friendly accommodation which respects and promotes family life and is informed by the best interests of the child.</p> <p>Rec 2: The Committee is strongly of the view that the current Direct Provision norm of shared, institutionalised living fails to fully respect the rights to privacy and human dignity of those placed in these centres. We must move away from institutional settings. 'Own-door' accommodation provision and the right to cook for oneself and one's family must become standard for individuals and families within the system, while accepting it will not be suitable or appropriate in every case.</p>

18	Reception conditions	Implementation of standards	Oireachtas, Page 28, comment Oireachtas, Page 47, Rec 1 *Agreement that State should not use standards as an alternative	"While the national standards are an important step towards improving conditions within Direct Provision centres as an interim measure, Committee Members emphasised the need for a working group to review potential alternative models that could be applied in Ireland." Rec 1: The Committee welcomes the recent publication of the National Standards for accommodation offered to people in the international protection process and urges the Department of Justice and Equality to ensure their full implementation as a matter of urgency and that any new centres contracted meet these conditions. The National Standards will undoubtedly improve conditions in Direct Provision centres.
19	Reception conditions	Standards Inspection - HIQA	Oireachtas Page 47 Rec 1	There is a need for regular, unannounced monitoring and inspections of Direct Provision centres, possibly by extending the remit of the Health Information and Quality Authority (HIQA) into this area. In order to be effective, such oversight mechanisms must be designed so that applicants for international protection are able to engage with them privately and in confidence. <ul style="list-style-type: none"> • All parties should ensure in the selection of an interpreter that there is no potential conflict of interests or potential breaches of confidentiality. • Mechanisms should be put in place to carry out randomised independent assessments of the standards of interpreting to ensure they meet appropriate standards.
20	Integration	Child benefit payment	No clear recommendations but see Oireachtas Page 52 Rec 28	Evidence was also heard of the high costs associated with primary and secondary school education, and the strain this places on parents in Direct Provision. It is clear that, even with the increase in the daily expenses allowance, it is still far from adequate to meet the costs associated with school-going children, and an additional allowance ought to be provided to such parents.

21	Integration	Third Level Education - fees etc	Royal College of Physicians in Ireland	RCPI: Access to third level education is essentially non-existent for international protection applicants and the current Post Leaving Certificate (PLC) scheme is very restrictive and disqualifies students that haven't been in the Irish education system for more than 3 years. We would recommend that no waiting period is imposed on the PLC schemes for children completing secondary school wishing to pursue third level education. We also recommend that the non-EU fees that international protection applicants are subjected to should be waived.
22	Integration	Child benefit payment	No clear recommendations but see Oireachtas Page 52 Rec 28	Evidence was also heard of the high costs associated with primary and secondary school education, and the strain this places on parents in Direct Provision. It is clear that, even with the increase in the daily expenses allowance, it is still far from adequate to meet the costs associated with school-going children, and an additional allowance ought to be provided to such parents.
23	Integration	Right to Work time limit reduced	Oireachtas Page 51 Rec 19	Oireachtas: The Committee strongly believes this waiting period should be significantly reduced, and that consideration ought to be given to removing it entirely CERD: Reduce the waiting period for the application of a work permit Spending Review: If the time limit of nine months before allowing international protection applicants to apply for work was reduced, this could potentially lead to savings in a number of areas. More international protection applicants would have the opportunity to find employment and contribute towards the cost of their accommodation. If an international protection applicant is already employed when their application is successful, it may also be easier to afford to move out of accommodation centres.
24	Integration	Right to Work: Include those on appeal & grandfather mechanism	Oireachtas Page 51 Rec 20	Oireachtas: At present, many individuals are still denied the right to work whilst they await the outcome of appeals of first instance refusals of international protection or subsidiary protection. This process can often take years. The Committee recommends that the right to work be broadened to applicants who are currently awaiting the outcome of appeals.

25	Integration	RTW: Extend permit to 12 months	Oireachtas Page 51 Rec 23	Evidence presented suggests that the six-month limit of the labour market access permit for international protection applicants is a significant deterrent to employers. The Committee therefore recommends that consideration be given to extending the six-month limit to at least one year for those who are eligible to work.
26	Integration	RTW: Awareness raising with employers/employer bodies	Oireachtas Page 51 Rec 21	The Committee heard evidence that many employers are still uninformed in relation to recent changes to the law enhancing the right of access of asylum applicants to the labour market and that this is acting as a barrier to employment. This needs to be addressed through a national information campaign informing employers of the rights of asylum applicants to work and of how to comply with the legal requirements when employing individuals who are in the Direct Provision system.
27	Accommodation location	Accommodation: Guidelines on location		
28	Accommodation location	Accommodation: Public Consultation	Oireachtas Rec 8	In identifying suitable locations for accommodation for applicants for international protection, it is essential that protocols be established and adhered to for consultation with local communities, together with public information initiatives to address misconceptions that exist in relation to the international protection system and the applicants.

29	Children	Children who turn 18 in Tusla's care	Oireachtas, Page 52, Recs 29 & 30	<p>Rec 29: The Committee is of the view that children who arrive in Ireland unaccompanied are particularly vulnerable and should not be transferred automatically to the Direct Provision system on reaching the age of 18. So-called 'aged-out minors' should remain under the responsibility of Tusla, retaining their supports, until their applications for asylum have reached a conclusion.</p> <p>30. Witnesses highlighted the importance of lodging applications as early as possible in the protection process. A crucial point is that if a child turns 18 and then goes through the asylum process and gets permission at or after the age of 18, he or she loses all rights to family reunification under current legislation; whereas, had the application been lodged and status granted prior to this, the unaccompanied minor is entitled to application for reunification. The Committee therefore recommends that it be made a legal requirement for social workers assigned to such minors to seek prior legal advice on a protection application as soon as possible after the minor becomes the responsibility of Tusla, and before completing and lodging applications.</p>
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SOURCE KEY	AUTHOR	TITLE AND LINK	DATE
CERD	Committee on the Elimination of Racial Discrimination	Concluding observations on the combined fifth to ninth reports of Ireland	December 2019
Civil Society	Submissions received by the Joint Oirechtas Committee on Justice and Equality	Joint Committee on Justice and Equality Report on Direct Provision and the International Protection Application Process, December 2019, 32/JAE/47 Volume 2, Submissions Received	December 2019
IHREC	Irish Human Rights and Equality Commission	Ireland and the Convention on the Elimination of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report	December 2020
McMahon	Department of Justice and Equality	Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers	June 2015
Oireachtas	Joint Oirechtas Committee on Justice and Equality	Report on Direct Provision and the International Protection Application Process	December 2019
RCPI	Royal College of Physicians in Ireland	Children in Direct Provision	December 2019
Special Rapporteur	Special Rapporteur on Child Protection	Special Rapporteur on Child Protection 12th Report	September 2019

Spending Review	Department of Justice and Equality	Direct Provision: Overview of current accommodation expenditure	August 2019
Standards	Department of Justice	National Standards	August 2019