Uniting Voices For Children

CHILDREN'S RIGHTS ALLIANCE

Submission to the Expert Group on the Provision of Support, Including Accommodation, to Persons in the International Protection Process

April 2020

Founded in 1995, the Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

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Ag Eisteacht
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
ASH Ireland
AsIAm
Assoc. for Criminal Justice Research and Development (ACJRD)
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLonG To Youth Services
Care Leavers' Network
Catholic Guides of Ireland
Child Care Law Reporting Project
Childhood Development Initiative
Children in Hospital Ireland
COPE Galway
Cork Life Centre
Crosscare
Cybersafe
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Down Syndrome Ireland
Dublin Rape Crisis Centre
Early Childhood Ireland
Educate Together
EPIC
Extern Ireland
Focus Ireland
Foróige
Gaelscoileanna Teo
Good Shepherd Cork
Home-Start National Office
Immigrant Council of Ireland
Inclusion Ireland
Independent Hospitals Association of Ireland
Institute of Guidance Counsellors
Irish Aftercare Network
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Centre for Human Rights, NUI Galway
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation (IYF)
Jack & Jill Children's Foundation
Jesuit Centre for Faith and Justice
Jigsaw
Kids' Own Publishing Partnership
Lifestart National Office
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
Mounttown Neighbourhood Youth and Family Project
Museum of Childhood Project
Music Generation
My Mind
National Childhood Network
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Novas
One Family
One in Four
Parentstop
Pavee Point
Peter McVerry Trust
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag
Respond Housing
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children's Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
Sonas Domestic Violence Charity
Special Needs Parents Association
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
Step by Step Child & Family Project
Suas Educational Development
Teachers' Union of Ireland
Terenure Rugby Football Club
The Ark, A Cultural Centre for Children
The Prevention and Early Intervention Network
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Youngballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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Introduction

The Children's Rights Alliance welcomes opportunity to make a written submission on children's issues in direct provision and the international protection application process.

The Children's Rights Alliance unites over 100 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services. We identify problems for children. We develop solutions. We educate and provide information and legal advice on children's rights.

Background

Every child should be free to enjoy their rights without facing discrimination of any kind irrespective of their race, national or ethnic origin or other status.[1] Children outside their country of origin seeking refugee protection are entitled to appropriate protection regardless of whether or not they are accompanied by their parents/guardians.[2] In 2016, the UN Committee on the Rights of the Child called on the State to bring its 'asylum policy, procedures and practices into line with its international obligations' and ensure asylum seeking and refugee children have the 'same standards and access to support services as Irish children'.[3]

The 2018 European Union Regulations governing reception conditions in Ireland require that the best interests of the child is the primary consideration in decisions that impact on children including those made in relation to their accommodation and family situation.[4] This means that the possibility of family unity, the child's well-being and social development, safety and security considerations, including the risk of human trafficking, and their views in accordance with their age and maturity must be considered when making decisions about them.[5]

In 2019, there were 39 Direct Provision accommodation centres nationwide.[6] Of the 6,750 people in Direct Provision at end October 2019.[7] At any given time approximately 2,000 residents are children.[8] The position deteriorated in 2019, at the end of October as 1,433 asylum seekers were living in emergency accommodation, primarily in hotels.[9] In some instances, protests impeded the process of moving families into housing.[10]

The 2015 McMahon *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to*

1 UN Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 (UNCRC) Art 2(1).
2 ibid Art 22(1).
3 UNCRC 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 66
4 European Communities (Reception Conditions) Regulations 2018, SI 230/2018, s 9(1).
5 ibid s 9(2).
6 Committee of Public Accounts, *Periodic Report No. 7 April 2019 – July 2019* (Houses of the Oireachtas 2019).
7 ibid 18.
8 Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (House of the Oireachtas 2019) 37.
9 Committee of Public Accounts, Houses of the Oireachtas, *Periodic Report No. 7 April 2019 – July 2019* (2019) 18.
10 Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (House of the Oireachtas 2019) 27; Darina Daly, '27 asylum seekers to be housed in Co Leitrim', *RTÉ News,* 29 November 2019 <https://bit.ly/39nd2zN> accessed 14 January 2019.

Asylum Seekers[11] made 173 recommendations aimed at improving the international protection process and direct provision system.[12] In a December 2019 report, the Joint Committee on Justice and Equality noted that 'a number of recommendations have and continue to be implemented, but this process remains some way from completion'.[13]

This submission outlines some of the key changes we consider necessary to begin to transform the Direct Provision system for people seeking asylum and improve the protection process for children.

11 Department of Justice and Equality, *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (2015). The Working Group was established by the Government in October 2014 and was chaired by former High Court Judge, Dr Bryan McMahon. It comprised a number of representatives from government departments, agencies and non-governmental organisations.

12 ibid.

13 Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (House of the Oireachtas 2019) 15.

National Standards for Direct Provision

In August 2019, the DJE published the *National Standards for accommodation offered to people in the protection process*.[14] These Standards are essential in ensuring that refugee and asylum-seeking children receive a consistent standard of high-quality care in all accommodation centres irrespective of location. Several standards address the rights and needs of children and service providers are obliged to act in the best interests of the child.

Service providers are required to provide families with own-door accommodation with access to private living space, alongside additional sleeping quarters and a family bathroom.[15] Adequate and dedicated facilities to support the educational development of each child and young person must be put in place.[16] Service providers are required to respect children's rights by explaining their rights in an age-appropriate way, hearing and taking into consideration the views of the child in relation to services provided, including through consultation, and facilitating and supporting children to exercise their rights.[17] The Standards require that each centre provides access to cooking and storage facilities either in a self-contained unit or communal kitchen in tandem with catering options.[18] This issue was raised in 2016 by the UN Committee on the Rights of the Child which called on the State to 'allow for residents [of Direct Provision] to store and cook their own food' as far as possible.[19] In 2019, 50 per cent of centres had cooking facilities of variable quality.[20] The DJE aims to ensure that all residents will have cooking facilities by the middle of 2020.[21] It is essential that this target is met for families.

The Standards will be legally binding and subject to monitoring by January 2021. In the interim, contractors will be expected to carry out any mobilisation works required for compliance with the Standards. In November 2019, the Minister announced that a consultative group, which will advise on the implementation of the Standards, was in the process of being established. That group 'will also identify good practice in other European countries, examine international protection and migration trends and advise on developing positive relationships between local communities and the systems for supporting asylum seekers.'[22]

A robust monitoring system will be crucial to ensure compliance, and the Standards commit to the establishment of an independent inspectorate.[23] The Joint Committee on Justice and Equality

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14 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (Department of Justice and Equality 2019). The Standards were published alongside a spending review which noted an increase in expenditure on Direct Provision from €78 million in 2018 to an expected €120 million in 2019. The increase is due to a number of factors, one of which is improvement of accommodation standards. Department of Justice and Equality, *Direct Provision: Overview of current accommodation expenditure* (Department of Justice and Equality 2019) <https://bit.ly/38ktfpb> accessed 12 February 2020.

15 ibid, Theme 4: Accommodation.

16 ibid, Standard 4.6.

17 ibid, Standard 6.1.9.

18 ibid, Theme 5: Food, Cooking and Catering Facilities.

19 UN Committee on the Rights of the Child 'Concluding Observations: Ireland' (2016) UN Doc CRC/C/IRL/CO/3-4 para 66(c).

20 Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (House of the Oireachtas 2019) 24.

21 ibid.

22 Department of Justice and Equality, Statement by Minister for Justice and Equality on Provision of Accommodation and Ancillary Services to applicants for International Protection, Seanad Éireann – 27 November 2019 <https://bit.ly/2uBjQel> accessed 12 February 2020.

23 Department of Justice and Equality, *National Standards for accommodation offered to people in the protection process* (Department of Justice and Equality 2019) 5.

emphasised that such a monitoring body must be independent of the International Protection Accommodation Service (IPAS) and have the authority to perform unannounced inspections.[24]

For the National Standards to have a real impact on families and children living in Direct Provision they must be accompanied by a robust, independent monitoring and inspection system. Without this, the Standards will lack the necessary oversight to achieve meaningful change. The combination of Standards and independent inspections will ensure that life improves for asylum seeking children across every Direct Provision centre as there will be a consistent level and quality of care. Inconsistencies can then be identified and addressed in a systematic manner.

The Health Information and Quality Authority (HIQA) is the most appropriate body to undertake the role of inspectorate for the following reasons:

Accountability: HIQA is an independent authority. Their findings and reports are publicly published. More importantly, HIQA is considered by Irish society as independent oversight body. As an inspection body, it carries significant credibility in the eyes of the public.

Consistency: The combination of standards and inspections will ensure that children receive a consistent quality of care across every Direct Provision centre. Inconsistencies can then be identified and addressed in a systematic manner.

Experience: HIQA has been monitoring the quality of residential care in designated centres for children, older people and people since 2007. They have the skills and expertise necessary to effectively monitor and review the implementation of standards.

Since 2017, their remit has been expanded to include new areas, which has involved them working extensively with service providers on what a new system means.

Cost Effective: HIQA already has the existing infrastructure and IT systems necessary to take on this job. We estimate that to undertake this work they would require four inspectors and two admin staff.

Equality: With HIQA as the inspectorate, we can ensure that children living in Direct Provision are treated equally and receive the same quality of care as children in every other residential setting in Ireland.

It is important to note that this would require a legislative amendment to the Health Act 2007.[25]

Recommendation

Appoint HIQA as the independent inspectorate to support the implementation of the National Standards, monitor compliance and, ensure that refugee children receive a consistent quality of care in reception accommodation centers. HIQA should be provided with the necessary resources and granted the necessary authority to monitor compliance with the standards through formal inspections.

[24] Joint Committee on Justice and Equality, *Report on Direct Provision and the International Protection Application Process* (House of the Oireachtas 2019) 47.

[25] Clarke notes in her paper that another option is that 'the functions of inspection of DP could be, by way of legislative change, be integrated into another organisation'.

The international protection process and child-friendly justice principles

Children and young people have highlighted the significant impact of long waiting periods on their emotional and psychological wellbeing.[26] The Council of Europe Guidelines on Child Friendly Justice state:

> In all proceedings involving children, the urgency principle should be applied to provide a speedy response and protect the best interests of the child, while respecting the rule of law.

The principle applies to access to the procedure and to the length of the decision-making process.[27] Delays in the processing of international protection applications not only contributes to anxiety and instability for children and young people[28] it also prolongs the amount of time that children spend in the Direct Provision system. Childhood is short: people spend an average of two years living in Direct Provision is two years, which is a quarter of an eight year old's life.

In 2017, the UN Committee on the Rights of the Child adopted a general comment on the rights of children in migration[29] which recommended the prioritisation of children in the protection process and ensuring the best interests of the child are 'taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases'.[30]

In 2019 the average processing time for new applications received under the International Protection Act 2015 was 10 months[31] despite additional resources being assigned to the International Protection Office[32] to reduce average waiting times for a first instance decision.

The McMahon report recommended adequate resources be provided to the protection determination bodies[33] and 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 recommendations to all decision-making bodies'.[34] The IPO requires adequate resources to ensure that applications are processed in a timely manner.

The UN Committee on the Rights of the Child recommends asylum seeking children are:

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26 Council of Europe, 'Child Friendly Information for children in Migration: what do children think?'(Council of Europe 2018) 14.

27 Council of Europe, 'How to Convey Child-friendly Information to Children in Migration: A Handbook for Frontline Professionals' (Council of Europe 2018) 36.

28 Council of Europe, 'Child Friendly Information for children in Migration: what do children think?'(Council of Europe 2018) 14.

29 Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (2017) UN Doc CMW/C/GC/3 – CRC/C/GC/22.

30 Ibid para 29.

31 Minister for Justice and Equality, Charles Flanagan TD, Parliamentary Questions, Written Answers, 27 June 2019 [27296/19]

32 ibid

33 Department of Justice and Equality, *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (2015) 114.

34 Ibid 98.

> … [p]rovided with all relevant information, in their own language, on their entitlements, the services available, including means of communication, and the immigration and asylum process, in order to make their voice heard and to be given due weight in the proceedings.[35]

For information to be child-friendly it should be provided in the child's primary language; use easy vocabulary, pictograms and colours; be provided in a range of formats both written and verbal; and include children in both the development and evaluation of the materials.[36]

The McMahon report recommended the development of child-friendly materials and special information services for children in the protection process.[37] The current provision of information is wholly inadequate for the needs of children particularly those who are making an application with their family.

Recommendations

The McMahon report proposals should be implemented including:

- **Good practice in relation to training and the provision of child-sensitive procedures be maintained and developed further, particularly under a future single procedure.**
- **Inter-agency co-operation be maintained and further promoted in order to ensure that the principle of the best interests of the child can be effectively implemented.[38]**
- **An inter-agency review of procedures and practices relating to children occur regularly to ensure that procedures do not fall short and that best practice is maintained.[39]**
- **ORAC, the Department of Justice, the Legal Aid Board and the RAT provide child- friendly materials containing relevant legal information for children. [40]**
- **Initiatives to make information about the protection process more accessible to children should be supported by the relevant agencies. [41]**
- **In order to ensure that children have access to the protection process, where an accompanied child has not made an application/has not been included in a protection application by their parent/guardian, the law should be amended to provide that the child be deemed to be an applicant for protection. [42]**
- **A presumption that children are included in their parent/guardian's application should apply, but in all cases the State and the applicant's legal adviser/ representative should assess whether this presumption is appropriate. If not, the child should be deemed to have made an application in their own name. A child who is incapable of expressing his or her own views should have access to the assistance of a representative. [43]**

Beyond the current Direct Provision system: Better models or alternatives

35 UNCRC General Comment on the Right of the Child to be Heard (2009) UN Doc CRC/C/GC/12 para 124.

36 Council of Europe, 'How to Convey Child-friendly Information to Children in Migration: A Handbook for Frontline Professionals' (Council of Europe 2018) 23.

37 ibid 120.

38 Department of Justice and Equality, *Working Group to Report to Government Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* (2015) 3.2.60.

39 ibid.

40 ibid.

41 ibid.

42 ibid 3.2.67.

43 ibid.

Ensuring a sufficient supply of appropriate accommodation is challenging in the context of the broader housing crisis.[44] Nevertheless, alternatives to direct provision should be prioritised, given the unsuitability of emergency accommodation and the need to integrate families in their communities. For instance, government procurement processes could be reformed to enable approved housing bodies to provide purpose-built accommodation[45] and the community sponsorship model could be extended. The Joint Committee has recommended the establishment of an expert group to review and report on best practices from other jurisdictions.[46]

The current Direct Provision system needs to be radically transformed if we are to end the institutionalisation of children and families. Both the Ombudsman,[47] the Ombudsman for Children[48] and Professor Geoffrey Shannon, Special Rapporteur on the Protection of Children[49] have stated that the current system of Direct Provision accommodation is not appropriate for children as a long term accommodation option. Ireland can and should do better for refugee and asylum seeking children.

The *National Standards for accommodation offered to people in the protection process* aim to improve the quality of care and accommodation provided to children and families living in Direct Provision centres.[50]

First and foremost, protection applications must be processed in a timely manner to limit the amount of time children and young people spend in the protection process, however children and families will always require temporary reception accommodation following their arrival in the State. This accommodation should consist of 'own door' child-friendly accommodation that respects and promotes family and community life and informed by the child's best interests.

There are a number of Housing Bodies in Ireland that have the experience and social work expertise to deliver alternatives to the current accommodation system. The current procurement model may prevent alternative providers with significant experience in developing and delivering services for vulnerable cohorts from tendering for contracts. To encourage alternative providers to tender there needs to be longer-lead in times for procurement, longer contracts, and funding for capital and conversion costs. Current requests for tender request applicants to provide 50 or more beds, many alternative providers consider this to be too many people in a communal setting as it contributes to the institutionalisation of residents.

In parallel with the revision of the procurement process consideration should be given to identifying and supporting an approved housing body to pilot an alternative model in the near future to inform best practice and framework agreements between the State and providers into the future.

Recommendations

- Introduce own door child friendly accommodation that respects and promotes family and community life informed by the child's best interests.
- To encourage alternative providers to tender for the provision of reception accommodation allow longer lead in times for procurement; offer longer contracts; provide funding for capital and conversion costs and reduce the minimum number of residents per setting to 30.

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44 Council of Europe, 'How to Convey Child-friendly Information to Children in Migration: A Handbook for Frontline Professionals' (Council of Europe 2018) 26.

45 ibid 24-25.

46 ibid 55.

47 Office of the Ombudsman, *Annual Report 2018: Delivering Outcomes* (Office of the Ombudsman 2018) 15.

48 Ombudsman for Children, '20 years later Direct Provision, a temporary solution, continues – Ombudsman for Children' (*Ombudsman for Children*, 13 March 2019) < https://bit.ly/2HI6fFI> accessed 25 May 2019.

49 Professor Geoffrey Shannon, *Eleventh Report of the Special Rapporteur on Child Protection* (DCYA 2018)

50 Department of Justice and Equality, *National Standards,* http://www.justice.ie/en/JELR/Pages/PR19000215 accessed 21 January 2020.

- Identify and support an approved housing body to pilot an alternative model in the near future to inform best practice and framework agreements between the State and providers into the future.

Supports in the community

The Children's Rights Alliance commissioned a scoping study on the needs of children and young people coming to Ireland under IRRP.[51] The *Safe Haven* report, published in September 2019, involved research with stakeholders and families from Syria. It outlines the impact of experiences before their arrival in Ireland on children's mental health, as well as their post-migratory experiences of resettlement. The report contains several recommendations aimed at ensuring that such children and their families are further supported. It suggests, for example, that an implementation framework for community integration, which includes comprehensive evaluation mechanisms could capture best practice and identify areas for improvement. Staff in EROCs should receive appropriate cultural awareness and anti-racism training prior to commencing their work and have access to Continuous Professional Development (CPD). It further suggests that consideration should be given to resettling families directly into communities upon arrival as happens under community sponsorship.

Schools and existing youth services were identified as key sites for engaging in youth work to support integration of young refugees. Barriers to carrying out such work in schools included the perceived rigidity of the schooling system and the demands on school staff which prevents them from engaging with youth work services. Establishing relationships with time-pressed resettlement support workers, who may have limited knowledge of available youth work services, was also seen as a challenge. Ensuring a representative from youth work services sits on each county's Interagency Working Group might assist in identifying and addressing these barriers. An education stakeholder recommended that a representative from the local Children and Young Persons Service Committee (CYPSC) sit on each Interagency Working Group.

Recommendations

- To facilitate access to youth services for young refugees both during their time in EROCs and following resettlement. Ensure that a representative of youth work services is included on the various Interagency Working Groups/Committees.

[51] Muireann Ní Raghallaigh, Karen Smith and Jennifer Scholtz, *Safe Haven. The Needs of Refugee Children Arriving in Ireland through the Irish Refugee Protection Programme: An Exploratory Study* (Children's Rights Alliance 2019).