Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

Advisory Group on Direct Provision
23 January 2020
Statement by Ms Heydi Foster Breslin,
Commission Member, Irish Human Rights and Equality Commission

Introduction

Advisory Group members, thank you for the invitation to meet with you today.

We welcome the establishment of this Advisory group and looking forward to the outcome of your work on the ongoing improvement of supports for asylum seekers.

The Irish Human Rights and Equality Commission was established in November 2014 as Ireland's national human rights institution and equality body. We have a mandate to protect and promote human rights and equality in Ireland. A crucial aspect of our composition is the principle of institutional independence in the conduct of our work. We are fully compliant with 'the Paris Principles' - the United Nations standards for independence in national human rights institutions.

In addition to the mandate consistent with any national human rights institution, the Commission has specific statutory functions to 'encourage the development of a culture of respect for human rights and equality, and intercultural understanding in the State'. This includes encouraging 'good practice in intercultural relations' and promoting 'tolerance and acceptance of diversity' in the State.

We are pleased to attend today's meeting, and to share some of the Commission's policy analysis and legal work on the Direct Provision system. I will begin with an overview of the

concerns that we have expressed regarding the degree to which the Direct Provision system protects the rights of applicants for international protection. I will then hand over to my colleague Michael O'Neill, head of our legal team, to discuss some of the Commission's legal casework relevant to this area.

IHREC and Direct Provision – 2014

The Direct Provision system has been the subject of particular interest and concern to the Commission since our establishment in 2014.

Our first programme of work in 2014 included a focus on Direct Provision, where we outlined a number of serious concerns and called for a review of the system.[1]

Amongst the recommendations made by the Commission at the time were:

- The introduction of a time limited period (of 6-9 months) after which any person who has not yet received a decision (on either first instance or appeal) should be able to leave Direct Provision, live independently, access relevant social welfare payments and employment.
- That families are moved out of Direct Provision Centres and enabled to access self-catering accommodation, at the earliest possible opportunity, and any new families are not accommodated in Direct Provision Centres.

We expressed the view that the system of Direct Provision is not in the best interests of children, negatively impacting educational attendance, engagement and experience. We raised concerns about the damaging impact of Direct Provision on the right to private and family life. The thrust of these concerns will be well known to the Advisory Group, and have been widely voiced at both a national, and at international level across the United Nations treaty system. Notably, the then Special Rapporteur for Children, Dr Geoffrey Shannon, expressed concerns that children living in Direct Provision are growing up in 'state sanctioned poverty'.

[1] IHREC, Policy Statement on the System of Direct Provision in Ireland, 2014.

The McMahon report, of course, reflected many of the concerns expressed by IHREC and others in 2014. While it introduced a range of very important adjustments to the system, the report did not address some of the more fundamental human rights and equality challenges that Direct Provision, and the policy of dispersal, present. This is even more the case in the current environment where additional factors – not least the housing and accommodation crisis – appear to present a very different context to the one in which the McMahon report was published.

We continue to have significant concerns about Ireland's international protection system, and we are of the view that the policy of Direct Provision does not adequately protect the rights of international protection applicants.

We are also concerned about its impact in practice on the State's obligations to prevent racial segregation under Article 3 of the UN Convention on the Elimination of Racial Discrimination, or CERD.

The Commission has welcomed the views of the UN CERD Committee that Ireland should develop an alternative reception model and take concrete steps to phase out the Direct Provision system.

Direct provision in 2020- Long term impact of the policy of dispersal on the rights of asylum seekers and refugees, including segregation

The negative long-term impact on the rights of individuals seeking international protection in Ireland has been well documented by national and international bodies. As I have mentioned, the Commission has highlighted the impact of Direct Provision on the right to family life, private life, and health in particular, as well as its impact on the rights of specific groups such as women and children.

While recent reforms have been introduced with the intention of reducing delays in the asylum application process, there remain significant delays in processing applications. As

such, the long term impact of Direct Provision on people's wellbeing remains a serious concern.

It has been stated that the rationale for the policy of dispersal was to 'spread the burden of education, medical, and other services across the State.' The remoteness of the location is not taken into consideration in the development of Direct Provision centres. However, the McMahon Report found that the location of centres, particularly in remote areas, 'can act as a barrier to residents' participation in activities in the area and access to legal, medical and other supports.' The McMahon Report also indicated that 'the isolated location of centres has a stigmatising effect that remains with residents even after they have been granted some form of status.' In our own consultations with Direct Provision residents, we also heard concerns about the stigma and isolation caused by placement in remote locations. Ireland's history of accommodating vulnerable groups in large and isolated centres, removed from participation as an integral member of a community, should give considerable pause when assessing how well the current system measures up.

The Commission has longstanding concerns that the system of dispersal is a major factor in the segregation and isolation of international protection applicants and may contribute to hostility in areas where centres are located – an increase in which we have witnessed in the past year.

Housing crisis

Direct provision centres are experiencing significant capacity and overcrowding issues, which are being added to the housing crisis.

These capacity issues have meant that residents who have been granted refugee status are often unable to leave. There are currently approximately 850 people with an international protection status or permission to remain still living in Direct Provision

Emergency Accommodation

The State has been providing emergency accommodation to international protection applicants in hotels and guesthouses since September 2018 because of the capacity issues. The Commission is of the view that emergency accommodation does not adequately protect the rights of international protection applicants and that its use should cease as soon as possible.

The Commission is concerned about reports of inadequate living conditions in emergency accommodation and the failure to ensure that asylum seekers are assessed before being placed in the centres. The Commission staff met with protection applicants living in emergency accommodation in February 2019, and is of the view that this type of accommodation is incompatible with the rights of protection applicants.[2]

Although this accommodation had been described as an 'emergency' measure, the Commission is concerned that Government officials have stated that this system is now a long term measure with some individuals living in this type of accommodation for nine months.[3] Recalling the Commission's broader concerns about the normalisation of emergency accommodation in the context of the housing crisis,[4] we recommend that emergency accommodation only be used for the shortest possible amount of time. We are also of the view that the current use of emergency accommodation does not meet the minimum material reception conditions required by the European Communities (Reception Conditions) Regulations 2018.[5]

Special reception needs

Amongst other standards, the recast Reception Conditions Directive obliges the State to conduct assessments of the special reception needs of vulnerable persons. The State indicated that plans were underway to institute vulnerability assessment procedures

[2] CERD 2019, P.114.
[3] Joint Oireachtas Committee on Justice and Equality (19 June 2019), *Direct Provision and the International Protection Application Process: Discussion (Resumed)*.
[4] IHREC (2017), *The Provision of Emergency Accommodation to Families Experiencing Homelessness*.
[5] CERD 2019, p.115.

in advance of opting into the Directive. However, the Commission is concerned that, as of yet, a vulnerability assessment process does not appear to have been created. The Directive includes disabled people within its definition of vulnerable persons and requires States to take their specific needs into account. The Reception and Integration Agency does not maintain statistics on the number of people with a disability residing in Direct Provision but does advise that it tries 'to ensure that any special accommodation arrangements are in place.'[6]

Following consultation with women living in Direct Provision in 2016, we reported that some women had been subjected to harassment. This can be exacerbated by the fact that some centres are located in rural areas where women are easily identified.[7]

The Commission notes that the new national standards for accommodation offered to people in the protection process require service providers to make a Reception Officer available in each centre. The main duties of this Officer are to receive information arising from vulnerability assessments, proactively identify the special reception needs of residents on an ongoing basis, and liaise with the relevant services and authorities.[8]

Public Sector Equality and Human Rights Duty

Finally, I turn to the matter of the Public Sector Equality and Human Rights Duty. The Irish Human Rights and Equality Commission Act 2014 places a statutory obligation on public bodies to actively promote equality, protect human rights, and eliminate discrimination in the performance of their functions. This duty is unique across Europe in that it encompasses both equality and human rights within its scope. It is an important mechanism through which the implementation of international human rights norms, including the Committee's Concluding Observations, can be progressed by public bodies at a national level.

[6] Dáil Éireann (27 March 2019), '*Direct provision data*'.
[7] CERD 2019, p.116.
[8] Department of Justice and Equality, *National Standards for Accommodation Centres*, standards 10.3.2 and 10.4.

The assessment provided for under the duty supports a public body to identify service delivery and workplace policies, procedures, and practices that may need to be adapted to eliminate discrimination and promote equality for people from minority ethnic groups. Such an assessment should include consultation with staff and service users from minority ethnic groups to identify priority actions and monitor progress.

The Commission has expressed its concerns that accountability mechanisms can be weakened where the State delivers its functions through private, non-State actors, as in the case of Direct Provision and emergency accommodation. We have recommended that when the State subcontracts its functions to non-State actors, compliance with the Public Sector Equality and Human Rights Duty should be included as a requirement in all procurement processes and service level agreements.[9]

Conclusion

I thank you for the invitation to address the Advisory Group today. I will now hand you over to my colleague, Michael O'Neill, Head of our legal team.

Both of us will be happy to answer any questions you may have afterwards.

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[9] CERD 2019, pp.16-17

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Published Policy Commentary of the Irish Human Rights and Equality Commission on Direct Provision

2014

- Policy Statement on the System of Direct Provision in Ireland (December 2014)[1]

2015

- Submission to the UN Committee on Economic, Social and Cultural Rights (ICESCR) on Ireland's 3rd periodic review (May 2015)[2]
- Recommendations on the General Scheme of the International Protection Bill (June 2015)[3]
- Submission to the Human Rights Council under the Universal Periodic Review for Ireland (September 2015)[4]
- Submission to the UN Committee on the Elimination of Discrimination Against Women (UN CEDAW) on the List of Issues Prior to Reporting on Ireland's combined 6th and 7th periodic reports (October 2015)[5]
- Submission to UN Committee on the Rights of the Child (UN CRC) on Ireland's combined 3rd and 4th period reports (December 2015)[6]

[1] See: https://www.ihrec.ie/app/uploads/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf
[2] See Sections 6.2 on Right to Work (p. 40); 7.1 on Right to Social Security (p.46); 9.2 on Right to Adequate Standard of Living (p.66). Available at: https://www.ihrec.ie/documents/ireland-and-the-ireland-and-the-international-covenant-on-economic-social-and-cultural-rights/
[3] See: https://www.ihrec.ie/app/uploads/download/pdf/ihrec_recs_general_scheme_internation_protection_bill_26_june_2015.pdf
[4] See Section 11 on Direct Provision and the Rights of Asylum Seekers (p. 7). Available at: https://www.ihrec.ie/documents/ihrec-submission-to-the-human-rights-council-under-the-universal-periodic-review-for-ireland-september-2015/
[5] See Section 6.6 on the Accommodation of Victims of Trafficking in Direct Provision (p.18) Available at: https://www.ihrec.ie/documents/ihrec-submission-to-the-un-cedaw-on-the-list-of-issues-prior-to-reporting-on-irelands-combined-6th-and-7th-report-under-cedaw-october-2015/
[6] See Section 6.4 on Children Seeking International Protection (p. 36). Available at: https://www.ihrec.ie/documents/ireland-and-the-united-nations-convention-on-the-rights-of-the-child-ihrec-submission-to-the-un-crc-december-2015/

2016

- Submission to the Council of Europe Group of Experts on Action against Trafficking in Human Beings ('GRETA') in advance of its 2nd Evaluation Round of Ireland (December 2016)[7]

2017

- Submission to the United Nations Committee on the Elimination of Discrimination Against Women (UN CEDAW) on Ireland's combined 6th and 7th periodic reports (January 2017)[8]
- What is life like for women in Ireland in 2016? (January 2017)[9]
- Comments on Ireland's 14th National Report on the Implementation of the European Social Charter[10]
- Submission to the UN Committee on the Convention against Torture (CAT) on Ireland's 2nd periodic report (July 2017)[11]
- Murray and Steinerte, *Ireland and the Optional Protocol to the UN Convention against Torture* (October 2017)[12]

2018

- Policy Statement: *Access to the labour market for applicants for international protection* (May 2018)[13]

[7] See Section 4.2.7 on Accommodation of victims of trafficking in direct provision centres. Available at https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-GRETA-2016.pdf
[8] See Section 13.4 on Asylum-Seeking and Refugee Women in Direct Provision (p.114) Available at https://www.ihrec.ie/documents/ireland-convention-elimination-forms-discrimination-women/.
[9] See https://www.ihrec.ie/publications/?filtered=y&years=2016&paged=2
[10] See Article 13.4 on Specific emergency assistance for non-residents: Asylum Seekers in Direct Provision (p. 16). Available at: https://www.ihrec.ie/app/uploads/2017/04/F1-IHREC-Comments-on-Irelands-14th-Report-on-European-Social-Charter_April-2017-002.pdf
[11] See Treatment of persons seeking asylum (p. 17). Available at: https://www.ihrec.ie/app/uploads/2017/07/Ireland-and-the-Convention-against-Torture.pdf
[12] See Chapter 4: Places of detention not currently monitored (p. 30). Available at: https://www.ihrec.ie/app/uploads/2017/09/Ireland-and-the-Optional-Protocol-to-the-UN-Convention-against-Torture.pdf
[13] See https://www.ihrec.ie/app/uploads/2018/05/Access-to-the-labour-market-for-applicants-for-international-protection.pdf

2019

- Comments on Ireland's 16th National Report on the Implementation of the European Social Charter (April 2019)[14]
- Policy Statement on the Istanbul Convention (July 2019)[15]
- Submission to the UN Committee on the Elimination of Racial Discrimination (UN CERD) on the List of Themes for the Examination of Ireland on its Combined 5th to 9th Report (July 2019)[16]
- Submission to the UN Committee on the Elimination of Racial Discrimination (UN CERD) on Ireland's Combined 5th to 9th Report (October 2019)[17]
    - *Section on International Protection- see page 109*
    - Access to and participation in education – see page 63
    - Access to the labour market for asylum seekers – see page 74
    - Access to healthcare services and health outcomes, including in the area of mental health – see pages 83-85, 89-90
    - Violence against women and girls – see page 105
    - Accommodation of victims of trafficking in direct provision centres – see page 133

[14] See Article 7, para 10 & Article 17, para 1(b): The special protection of children against abuse and exploitation: Unaccompanied minors (p.8); Article 19, para 6: Family reunification (p. 44); Article 17, para 2: Children's right to education: Children living in Direct Provision and homeless accommodation (p. 35). Available at: https://www.ihrec.ie/app/uploads/2019/05/Comments-on-16th-National-Report-on-the-Implementation-of-the-European-Social-Charter-May-2019-1.pdf

[15] See Access to Specialist Support Services (p.6). Available at: https://www.ihrec.ie/app/uploads/2019/06/Statement-on-Ratification-of-CoE-Convention-on-Preventing-and-Comating-Violence-Against-Women-and-Domestic-Violence.pdf

[16] See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fIFN%2fIRL%2f36996&Lang=en.

[17] See https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf.