Nasc submissions to the Direct Provision Advisory Group

NOVEMBER 11

Nasc, the Migrant & Refugee Rights Centre

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Overview:

We welcome the opportunity to engage with the Advisory Group and provide a shortlist of the key issues Nasc believes should form part of the Advisory Group. A copy of Nasc's submissions to the Joint Oireachtas Committee which comprehensively sets out the main issues/challenges with the current process can be found here.

While this document contains short-term suggestions aimed at mitigating current defects in direct provision and overcoming accommodation shortages, it is our position that direct provision in its current form should end and we should begin to move to an alternative, sustainable model over a defined timetable. The challenges and recommendations offered in this paper are reflective of the issues we see in our legal service.

The Advisory Group has a unique opportunity to articulate, for the first time, the larger objectives of the Irish protection and reception systems. Is it simply to fulfil our legal obligations under the Refugee Convention, the International Protection Act 2015 and the recast Reception Conditions Directive or, is there scope to be more ambitious and frame the discussion of the Advisory Group around how we can best achieve the effective integration and social inclusion of asylum seekers from the date of arrival? We believe that this Advisory Group presents an opportunity to move beyond repairing what Nasc believes to be an unsustainable system, to creating a reception system designed with the needs, dignity and human rights of international protection applicants at its heart.

Ireland's current Migrant Integration Strategy excludes applicants for international protection. This results in the absence of a clear framework to achieve integration and social inclusion for people seeking asylum in Ireland. This policy position, by its very nature, excludes the role that local communities can play to effectively engage with asylum seekers and to support positive and effective integration. This, in our view is a fundamental flaw in our integration policy which creates a vacuum which creates a reactive as opposed to a proactive approach to integration. It embeds the notion that asylum seekers are outside of Irish society unless and until they receive a residence permission or refugee status.

We are also conscious that this Advisory Group has been constituted at a time when there is a crisis in accommodation for those entering our State to apply for protection. It is arguable that emergency accommodation and direct provision have never been so oversubscribed or so controversial. It is impossible to divorce consultations about the reform of our reception and protection systems from the real urgency to find short-term accommodation solutions however, it is imperative that this does not become the sole lodestar for this Advisory Group.

Short term challenges:

a. Community engagement/ liaison & opening new centres:

The present reliance on emergency accommodation has been exacerbated by the repeated failure in attempts to open direct provision centres in locations across the country. One frequently cited reason for local opposition has been the 'lack of engagement or consultation' with local communities prior to centres being formally announced or opened. Ignoring or poorly managing genuine concerns about infrastructure and resources including school places, medical care, dental care, employment and accommodation, can have a serious and sustained impact on the way in which both asylum seekers and direct provision centres are viewed. It is imperative that genuine and good faith concerns are listened to at the outset of the process, and reassurances about resources are provided.

There is potential to look at examples of good practice in combatting negative community responses in different sectors. One case in point is that of wind energy. In the face of costly and lengthy delays

arising from local opposition to proposed turbine farms, a Code of Practice was developed for community engagement. The project proposer is obliged to nominate a 'Community Liaison Officer' and the engagement with the community forms part of the planning process. During the engagement process a strong emphasis is also placed on the economic opportunities that development can bring.

"The promoter shall submit an annual report to the local authority of all communications and information provided, queries received, responses to same and recording if these are ongoing or resolved, which will be published on a dedicated register available online. A local Authority will take into consideration their performance of these obligations when deciding on new applications by the promoter elsewhere in the county or on repowering applications."[1]

A similar approach could be taken here with engagement with the local community required as part of the tendering process. Those who are considering tendering could be encouraged to talk to schools etc about resource needs, source supplies locally from local businesses, connect to local volunteer organisations etc. and build support from key local stakeholders in advance of a decision being made on the tender.

b. Combatting racism and challenging disinformation

It has become evident that there is now a 'playbook' for opposing new emergency or direct provision centres which has been refined over the past 12 months and is being replicated at each new proposed location. This type of organised anti-asylum seeker/migrant rhetoric is relatively new to Ireland and we need to examine how we can regain control of the narrative and actively prevent this disinformation from taking hold, particularly in local communities.

In the Reuters Digital News Report (Ireland) 2019[2], 37% of the sample "agree that immigration threatens our national culture." We cannot passively rely on the media to correct disinformation, given that an increasing number of young people rely on social media as their main form of news information. Currently, both the State and civil society are responding in an ad hoc, reactive manner and sometimes disjointed manner to this threat. Civil society needs to be adequately resourced to work with local communities in a proactive and comprehensive manner and to combat disinformation online. This may be through targeted digital media adverts, monitoring Facebook or other social media pages which promote hateful rhetoric. While this may not be within the scope of this Advisory Group, it necessarily forms part of the environment in which this discussion is taking place.

c. Emergency Accommodation:

The use of emergency accommodation is deeply problematic, and we welcome the government's commitment to ending the use of emergency accommodation as soon as possible. Emergency accommodation has proved to be costly in both financial and human terms. The stories that have emerged from emergency accommodation centres of asylum seekers being moved from their accommodation for weddings (see here) to anecdotal accounts of being segregated from hotel guests or patrons or having curfews imposed by management at the centres, have rightfully attracted widespread criticism.

For so long as emergency accommodation is being used, we need to ensure that before anyone is allocated accommodation in emergency accommodation, they have been issued with a Temporary

[1] Department of Communications, Climate Actions and Environment, Code of Practice for Wind Energy Development in Ireland, 21 December 2016 available at https://www.dccae.gov.ie/documents/Code%20of%20Practice%20community%20engagment.pdf

[2] Kirk, Culloty, Kearns, Suiter, Reuters Digital News Report (Ireland) 2019, June 2019 available at https://www.bai.ie/en/increase-in-number-of-irish-media-consumers-concerned-about-fake-news-on-the-internet-reuters-digital-news-report-2019-ireland/

Residence Card (TRC), a PPS number and ideally a medical card. Several cases have been brought to Nasc's attention of international protection applicants who have been not been issued with TRCs or PPS numbers prior to being moved and who have not been able to access their Daily Expenses allowance (weekly €38.80 allowance) or medical services. In one such case, the person contacting us was diabetic and did not have access to medication. If this were resolved, this would have a material impact on the experience of emergency accommodation.

It is worrying to us that the Department of Justice have been unable to provide data on the numbers of international protection applicants who have yet to receive TRCs or PPS numbers.

d. Failure to Implement the Vulnerability Assessment

Ireland is currently breaching its obligations under the recast Reception Conditions to conduct assessments to identify special reception needs for international protection applicants and assign accommodation and other resources accordingly. Currently, a basic medical needs assessment is carried out in some instances however it fails to encompass the scope of the assessment required under Article 21 of the recast Reception Conditions Directive. Nasc has been contacted by several international protection applicants who have been assigned accommodation that is inappropriate to their needs. These failures impact on the health and wellbeing of asylum seekers.

In one such instance, an applicant for international protection was moved from one accommodation centre where they had access to counselling for sexual violence to another centre which was far removed from any sexual violence services. In another case a pregnant woman who was under the care of perinatal psychiatrist for mental health difficulties and was required to attend at a maternity hospital regularly for scans due to other issues with the pregnancy was moved to a centre on the other side of the country where the nearest maternity hospital was an hour away and did not have a specialist perinatal mental health service.

The High Court has already shown its willingness to impose damages where the State has failed to meet the material reception needs of international protection applicants.[3]

e. National Standards for Direct Provision centres

For almost two decades now the direct provision system has operated without independent oversight and regulation. The current inspection regime is limited to an assessment of compliance with the providers' contractual arrangements e.g. food hygiene inspections. The quality of accommodation provided and the physical conditions in centres vary greatly from centre to centre. It varies from own door accommodation to several adults sharing bedrooms.

The National Standards, a key recommendation of the McMahon Report, have been published. The National Standards commit to the introduction of a national and independent inspectorate to carry out inspections against the National Standards. However, this has yet to occur. A clear roadmap for implementation is needed. NGOs have widely called for the Health Information and Quality Authority (HIQA) be given this remit and resourced accordingly. Legislation would be required to expand HIQA's remit.

f. Processing times for protection applications

The international protection process has contributed to the dysfunction in the reception system. At the time the International Protection Act 2015 was enacted, it was projected that first instance decisions would be issued within 9 months. However, although the average processing times have

[3] X & Anor v Minister for Justice and Equality [2019] IEHC 133

fallen in recent months, it remains significantly higher than the 9 month goal. We also continue to see significant delays, of six months and over, in the time between receiving a positive recommendation from the International Protection Office and a grant letter from the Minister. It is unclear why such delays are taking place, and it appears contrary to previous assurances by the Minister for Justice and Equality that these delays were being addressed.[4]

Long Term Challenges:

a. Decentralisation of the International Protection Office

The process of applying for international protection is an inherently stressful one for the applicant. The applicant has very little access to reliable information as access to legal advice through the Civil Legal Aid System is so heavily circumscribed because of funding restraints. Applicants have informed us that the logistics of having to travel to Dublin for interviews, to obtain TRC card renewals or to consult with legal representatives can be time-consuming and stressful. It may take several hours, or in some cases an overnight trip, to travel to Dublin for an interview. Applicants are often required to pay upfront for bus or train fares and then seek reimbursement on production of the used ticket. This is not always affordable particularly for those who need to travel multiple legs of a journey to get to their destination. The issue of finding appropriate childcare arises while attending intending interviews, particularly for single parents who need to overnight in Dublin.

We understand that the International Protection Office are holding interviews in decentralised locations including Cork and Tipperary already. We would recommend that this practice be rolled out further to more locations across the country. Two models that could be looked at here are the Residential Tenancies Board or the Social Welfare Appeals Office, which travel widely across the country on a very regular basis. There is no reason why this could not be replicated in protection process. There also appears to be no reason why TRCs could not be renewed and issued by post to people residing outside the Dublin area.

b. Alternatives to Direct Provision

As noted at the outset of this paper, Nasc believes that the system of direct provision should end. We understand that this may take time to achieve and any new system must be carefully designed to ensure we create a reception system designed with the needs, dignity and human rights of international protection applicants at its heart . A 'whole of government' approach is required to ensure that the needs of children, education needs, health and welfare needs etc are met.

Nasc believes that it is fundamental to the dignity of international protection applicants that they should have access to own-door accommodation, whether that is in a small residential setting or independent accommodation. It is important that it is acknowledged that there is no one size that will fit all in terms of accommodation needs. We also need to ensure that applicants for international protection have access to English language classes, medical services and other supports and that the location of accommodation should be decided assessed to ensure access to these services.

Under the recast Reception Conditions Directive, we need to be able to respond to the different needs of international protection applicants. In some circumstances, residential accommodation settings may be more appropriate. We hear from some elderly international protection applicants or international protection applicants who have disabilities that living in a residential setting with

[4] Minister for Justice and Equality, Deputy Charlie Flanagan, Parliamentary Questions, Written Answers, 08 May 2019, 499,

additional supports available would be optimal for them, particularly at the beginning of the process while they become accustomed to living in Ireland. We recommend a blended approach to accommodation based on the needs of international protection applicants.

The current model of procurement, which is weighted towards private, for-profit, large-scale accommodation providers should also be re-examined. We should incentivise not-for profit, housing providers to become involved in the provision of accommodation services and begin to move away large congregated settings. Between January and October 2019, the State spent in excess of €18 million on emergency accommodation for international protection applicants. However, we have yet to invest in providing alternative models of accommodation. Nasc recommends that consideration should be given to purpose-built state-owned accommodation, with requisite services and supports to be provided in partnership with expert bodies, both statutory and non-statutory.

c. Extension of the Right to Work

Nasc welcomed the decision by the Minister for Justice and Equality to introduce a broad right to work for international protection applicants following the NHV case[5]. The European Communities (Reception Conditions) Regulations 2018 represented a marked improvement on the restrictive provisions contained in the Interim Administrative Schemes of the 08 February 2018. Unfortunately, the Regulations did not contain any transitional provisions and excluded those who had already received a first instance decision as of 30 June 2018 and who had not applied for an International Protection Self-Employment Permission issued under the administrative self-employment scheme established on 9 February 2018. These provisions left hundreds of people, those who had been in the system often for several years and had experienced the worst of the delays with the transition from the old regime to the single application procedure, without access to the right to work. Many of these people remain in the protection system a year later and still do not have the right to work. Nasc recommends that the Regulations be amended to provide for a grandfather clause which would allow this cohort access to the labour market.

[5] NHV v Minister for Justice and Equality [2017] IESC 35

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Research Projects

Beyond McMahon – Reflections on the Future of Asylum Reception in Ireland

Nasc & CCJHR

December 2018

nasc Linking migrants to their rights

CCJHR

Centre for Criminal Justice & Human Rights

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CCJHR Research Projects

1. *Subsidiary Protection: Case Law Project*, Siobhán Mullally, Liam Thornton *et al*, 2007
2. *CCTV as a Crime Prevention Strategy: A Review of the Literature*, Dorothy Appelbe, 2009
3. *Access to Justice for People with Disabilities as Victims of Crime in Ireland,* Claire Edwards, Gillian Harold & Shane Kilcommins, School of Applied Social Studies & CCJHR, February 2012
4. *Migrant Domestic Workers in the United Kingdom: Exclusions, Exemptions and Rights*, Siobhán Mullally & Cliodhna Murphy, April 2012
5. *Racism and Hate Crime in Ireland: Is the legislative and policy framework adequate?*, Conference Summary, Nasc & CCJHR, October 2013
6. *Beyond McMahon – the Future of Asylum Reception in Ireland*, Conference Summary, Nasc & CCJHR, June 2018
7. *Beyond McMahon: Reflections on the Future of Asylum Reception in Ireland*, Nasc & CCJHR, December 2018

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

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Part I:

Conference Summary: 'Beyond McMahon – the Future of Asylum Reception in Ireland'

Participants[1]

- Dr Bryan McMahon, Former Chair of the Working Group on the Protection Process and Direct Provision, and retired High Court judge
- Sabir Zazai, Chief Executive, Scottish Refugee Council
- Teresa Mendes, Presidente, Conselho Portugues para os Refugiados (Portuguese Refugee Council)
- Eugene Banks, Principal Officer, Reception and Integration Agency, Department of Justice and Equality
- Stephen Ng'ang'a, Core Group of Asylum Seekers
- Luke Hamilton, Legal Officer, Irish Refugee Council
- Dr Liam Thornton, School of Law, University College Dublin
- Fiona Hurley, Legal Services Manager, Nasc
- Lucky Khambule, Movement of Asylum Seekers in Ireland (MASI)
- Adedeola Akinbote, Resident of Direct Provision
- Adebola Babalola, Resident of Direct Provision
- Dr Dug Cubie, School of Law, University College Cork
- Fiona Finn, CEO, Nasc
- Enda O'Neill, Head of Office, UNHCR Ireland
- Emily Logan, Chief Commissioner, Irish Human Rights and Equality Commission (IHREC)

I. Introduction

The conference 'Beyond McMahon – the Future of Asylum Reception in Ireland' took place on Wednesday 25th April 2018 in the Western Gateway Building in University College Cork (UCC). Organised jointly by Nasc, the Migrant and Refugee Support Centre, and UCC's Centre for Criminal Justice and Human Rights (CCJHR), the conference was generously funded by the Irish Human Rights and Equality Commission (IHREC).

The conference aimed to assess developments in the Irish asylum reception system ('direct provision') since the establishment of a Working Group on the Protection Process and Direct Provision, and its report, the 'McMahon Report' (2015). Using the Report and its recommendations as a starting point, this conference aimed to examine the future of, and possible alternatives to, direct provision in Ireland. To this end, the conference gathered experts from other European jurisdictions and individuals with experience of Ireland's current reception system, including – importantly – input from asylum seekers. Fiona Finn, CEO of Nasc, introduced the conference's goal succinctly: it aimed to catalyse a change in the current Irish reception system. This summary records some of the main ideas and concerns related by speakers and audience members at the conference, so that they may be used for future reference.

The conference agenda began with consecutive, individual keynote speakers (Dr Bryan McMahon, Teresa Mendes, Sabir Zazai, and Eugene Banks). A second group of individual speakers (Stephen Ng'ang'a, Dr Liam

[1] Please note, this summary is Nasc and the CCJHR's reflections on the outcomes of the day and does not seek to represent the views of our speakers.

Thornton, Luke Hamilton and Fiona Hurley) were followed by a question and answer session chaired by Enda O'Neill. Finally, Chief Commissioner of IHREC, Emily Logan, moderated a cross-panel discussion and a question and answer session that aimed to pull together points made throughout the conference and examine the future of the Irish asylum reception system.

II. Keynote Address: Dr Bryan McMahon on dignity, hospitality

Ultimately, the goal of the conference could be distilled into pursuing human dignity in asylum reception. So said Dr Bryan McMahon, Chair of the McMahon Working Group. Dr McMahon underscored three 'big ticket items' that still needed addressing since the publication of the McMahon Report. These included: workable access to the labour market for asylum seekers and protection applicants; delays in the application process; and direct provision accommodation standards.

Other significant issues that arose throughout the conference included community integration, accommodation tendering, the impact of the EU (recast) Reception Conditions Directive, legal caseload backlogs and inclusive consultation.

III. Other Jurisdictions: Scotland and Portugal

Two of the conference's speakers, Teresa Mendes, President of the Portuguese Refugee Council (CPR) and Sabir Zazai, Chief Executive of the Scottish Refugee Council (SRC) addressed the issues raised in Dr McMahon's opening remarks in describing their respective national models. Both posited their models as potentially workable alternatives to the Irish system. Although neither system was without its pitfalls, elements of both approaches compared favourably with Ireland.

(i) Portugal

Significantly, in Portugal's reception system, founded in 1991, protection applicants are provided with comprehensive supports including language courses, social and cultural activities and access to education. Teresa Mendes outlined the system (*Centro de Acolhimento para Refugiados* (CAR)) as centralised and state-run, and in active collaboration with NGOs acting on behalf of the UNHCR. Two stages of reception accommodation are provided: first, communal, temporary accommodation on an immediate, short-term basis; and, subsequently, private, urban accommodation for longer-term residents. Among other things, asylum seekers and protection applicants within the Portuguese system have access to the labour market and free legal advice throughout the application procedure.

Ms. Mendes noted that the combination of these factors aided the integration of protection applicants from 'day one'. However, the system is not without its flaws, with accommodation shortages and a lack of resources leading to delays and periods of up to 6 months spent in communal reception accommodation, the latter often situated in isolated locations.

(ii) Scotland

Sabir Zazai also highlighted integration as a touchstone of the Scottish reception system. As a refugee from Afghanistan himself, he experienced the British asylum system first hand. Scotland differs slightly from Ireland or Portugal in that its Government is devolved. Asylum policy and the provision of asylum support and accommodation are under the jurisdiction of the UK Government. Upon arrival in the UK, asylum seekers are 'dispersed' to reception centres across the country, including Scotland. However, matters such as legal services, housing (excluding asylum accommodation) and health are devolved to the Scottish Government.

Focusing on these areas, Mr Zazai mirrored Dr McMahon's emphasis on human dignity and argued that residents themselves needed to have a say in the system they are navigating. Reflecting this, his presentation described the New Scots Refugee Integration Strategy (2018-22), which emphasises early onset, local integration. A cornerstone of the New Scots strategy is ongoing consultation with both asylum seekers and their local communities. This, Mr Zazai argued, could help to build social connections, encourage protection applicants to contribute to their community and foster a positive sense of belonging for all involved. Referencing the privatised tendering of asylum accommodation in the UK, Mr Zazai also warned against a private contractor-based model. He instead advocated for more community and governmental oversight of reception accommodation to displace profit-orientated approaches to reception accommodation.

IV. Application Processing Times and Delays

The length of application processing times in Ireland and quality of decision-making under the International Protection Office was a recurring topic throughout the conference. Speaking in the second half of the conference, Fiona Hurley, Legal Services Manager at Nasc, claimed that the 'direct provision' system, since its inception in 2000, had left a 'legacy of decay'. She noted that many in the protection process had experienced a form of limbo due to excessive waiting times for initial hearings and uncertain subsequent decisions.

Ms Hurley also added that, despite the introduction of the International Protection Act (2015), which aimed to expedite protection applications with a 'single procedure' application mechanism, waiting times for an initial hearing were now up to 19 months, and the number of undecided cases had increased from 1,550 to 5,100 between 2016-17. She argued that the single procedure needed to be more proactive and efficient, and that there needed to be increased resourcing for legal services.

Stephen Ng'ang'a agreed that a waiting time upwards of 19 months for the first interview was unacceptable. He echoed the McMahon Report when he proposed that individuals who had been in the protection application process for over 5 years should be granted protection and permission to remain. One of the primary concerns raised around excessive waiting times was the impact on protection applicants' mental health, particularly regarding minors and vulnerable applicants. Indeed, Lucky Khambule from MASI, who spent 3 years in reception accommodation, had witnessed depression among other residents. This was echoed in fellow speakers' and audience members' accounts.

However, in his presentation, Eugene Banks, from RIA, highlighted the changes implemented since the publication of the McMahon Report, noting the gradual installation of cooking facilities in centres and proactive consultation with NGOs. He argued that, although it has its flaws, the Irish reception system provides essential initial accommodation and subsistence for protection applicants and that no realistic alternative had been proposed to replace direct provision.

V. Future and Alternatives

(i) 'A Bridge to the Future': Building on the McMahon Report

During his presentation, Stephen Ng'ang'a reiterated some of the conference's most prominent themes, including accommodation availability, proactive consultation with asylum seekers and integration, and used the McMahon Report as a starting point. A former member of the Working Group, Mr Ng'ang'a claimed that the report was a 'bridge' to a better asylum reception system. He argued that, for one thing, the Working Group had proactively consulted protection applicants, which in turn helped to mobilise asylum seekers to

self-advocate. He hoped that proactive consultation would remain part of any future developments in the Irish asylum reception system. In this vein, he reiterated a point made in the morning panel of the need for 'integration from day one'. He claimed that this was harder than ever for direct provision residents, as well as Stamp 4 permit holders, who are increasingly facing barriers when establishing bank accounts or applying for driving licenses. Furthermore, despite the nominal right to work introduced earlier this year, Mr Ng'ang'a noted that the inability for most asylum seekers to access the labour market reinforced stereotypes of 'laziness', and limited integration prospects. For the future, Mr Ng'ang'a proposed looking beyond direct provision altogether. He suggested that an impact assessment of the asylum reception system since 2000 be carried out, and alternatives explored. He proposed more private accommodation, rather than communal reception centres, which would no longer be managed by RIA. At the core of reception system, he said, should be human dignity. This kind of systemic change required political will, he argued, but this could be stirred up by strong advocacy.

(ii) Accommodation

In relation to reception accommodation, Luke Hamilton, from the Irish Refugee Council, proposed several alternatives. Together with RIA and the Department of Justice and Equality, Mr Hamilton said the IRC was exploring different models, which would build on the McMahon Report. He suggested that Ireland could look to other countries, such as Sweden, which provides self-catering apartments and on-site transport within its reception facilities. Like Mr Zazai, Mr Hamilton pushed for a not-for-profit tendering model for future reception accommodation, as well as a dedicated housing body to oversee accommodation provision. Furthermore, Mr Hamilton said that it was essential to cater specifically for more vulnerable applicants, and for those with any special requirements. Overall, he envisioned a best practice model for reception accommodation in Ireland but admitted that this was still a work in progress. He highlighted a few roadblocks, including backlogs in case processing times and a national housing shortage.

Access to post-decision accommodation also featured as a concern throughout the conference. Numerous speakers with experience of the reception system, including Lucky Khambule and Adebola Babalola noted extreme difficulty in finding accommodation after having lived in institutionalised reception accommodation. Adedeola Akinbote said that the issue could be mitigated by easier access to establishing bank accounts and drivers' licenses; a more accessible work permit scheme, and overall better integration into the community, all of which would in turn make accommodation easier to access and to successfully apply for.

(iii) EU (recast) Receptions Condition Directive

Access to the workplace was highlighted, among other things, by Dr Liam Thornton, from the UCD School of Law. For his presentation, he assessed the European Union (recast) Reception Conditions Directive (2013), and its possible impacts on the future of Ireland's asylum reception system. The Directive would realign the minimum standard of conditions for protection applicants so that they would be able to access work and self-employment permits (albeit within the State's parameters); theoretically it should also set a better minimum standard of accommodation, especially in terms of provisions for vulnerable individuals. But Dr Thornton noted a continuing two-tier approach in the EU to 'basic' rights afforded to individuals depending on their residency status. For example, residents of Ireland generally enjoy rights guaranteed by the Irish government; however, non-EEA protection applicants are often subject to below-par rights guaranteed not by national governments, but by European law.

VI. Conclusion

(i) Closing statement

In his closing statement, Dr Bryan McMahon summarised what had been achieved since the publication of the McMahon Report in 2015; and how this could form a useful foundation for ongoing work. His summation was as follows:

- The Dáil and Seanad welcomed the Working Group Report's recommendations. RIA has implemented a number of these.
- The Working Group involved several NGOs and asylum-seekers, fostering a working relationship with government bodies such as INIS.
- The involvement of residents in direct provision has encouraged others to get involved.
- The report set out a set of standards, which RIA and the government can be held accountable to.
- Tangible changes *have* been made since the McMahon Report came into being. These include improved cooking facilities in residential centres; the introduction of an Ombudsman for Children and Adults; and the increase of both children's and adults' weekly allowances.
- The Working Group ran a feasibility assessment, which demonstrates that more dignified alternatives to the current system are practicable.

Judge McMahon left the conference on an optimistic note. In the three years since the publication of the report, he reminded the conference that significant advances had been made. These could be built on further, and frustration should catalyse proactive change.

Following the conference, Dr Dug Cubie and several of the keynote speakers also took part in a 2-hour Masterclass for students. This provided the students with an opportunity to explore in more depth some of the issues raised during the conference, such as the right to work for asylum seekers and alternatives to direct provision, as well as to present their own suggestions to the experts.

(ii) Summary

We would like to thank our guest speakers and audience members for contributing to an in-depth and thought-provoking discussion around the Irish asylum reception system and its future. Throughout the course of the conference many difficulties and issues inherent to the current reception system were raised and discussed. These included the quality of direct provision accommodation, the right to work, and delays in caseload processing and decision-making. Other speakers also emphasised the need for community-based integration, direct consultation with asylum seekers, and considered and sustainable approaches to accommodation tendering. There was not a unified consensus on what the future of the Irish asylum reception system should look like. Opinions ranged from improving the asylum reception system gradually and framing these improvements around the current model; to overhauling it entirely and considering options beyond direct provision. Input from the Scottish and Portuguese Refugee Councils proved to be particularly enlightening on this matter and helped to open up dialogue about possible alternatives. It is our hope that this conference is only the start of a productive and participatory conversation on what the future of asylum reception in Ireland could look like. Finally, we would like to thank Emily Logan and the Irish Human Rights and Equality Commission (IHREC) for providing the funding that made this event possible.

Part II:
The Future of Asylum Reception in Ireland

Beyond McMahon – The Future of Direct Provision – Accommodation and Related Services

Eugene Banks[1]

Context

Direct Provision is the system whereby State services in Ireland are offered and directly provided to international protection applicants through the relevant Government Department or Agency, hence the name 'Direct Provision'.

This system has been formally in place since April 2001 when the Reception and Integration Agency (RIA) was established. In that time some 60,000 protection applicants have been offered and accepted accommodation in a variety of accommodation centres around the country.

The McMahon report was published in 2015 and sets out a series of recommendations which include specific measures to improve the living conditions for persons in accommodation centres.

Since the transposition of the Reception Conditions Directive (Recast) into Irish law by way of SI 230 of 2018, the State has a statutory obligation to offer reception conditions – defined in the Directive – to persons who are in the protection process. This Directive places obligations on the State as a whole for the delivery of a suite of services only some of which are delivered by RIA. Others, e.g. medical and education services, are delivered by the HSE and Department of Education and Skills respectively.

While for RIA this moves our work from an administrative to a legal basis, our key role in providing accommodation and related services has not fundamentally altered.

Since the publication of the McMahon report a number of the recommendations have been and continue to be implemented. These include a single procedure for assessing a person's application for protection and an increase in the weekly allowance. The former has been delivered by the International Protection Act, 2015 and the latter will be increased to €38.80 per adult and to €29.80 per child in March 2019.

Specifically in relation to the services delivered by RIA the following is the updated position:

- Today almost 1,600 persons have a foodhall available to them at which they can obtain their own ethnically and culturally appropriate food. Meals are then prepared in residents own kitchens at a time of their choosing.
- An additional 1,300 persons have access to communal catering facilities with food provided by either the contractor or the residents themselves.

[1] Principal Officer, Reception and Integration Agency (RIA), Department of Justice and Equality.

- These improvements will continue to be implemented in the coming months with the roll out of public procurement competitions for all accommodation services around the country.
- In tandem with this, the Standards document has been developed and the public consultation has been completed. These will apply to all new contracts from early 2019.
- A new inspection process will follow to ensure these standards are being implemented and will also assess the degree of implementation.

The Reception Conditions Directive also provides a right to access the labour market for persons in the protection process who meet certain criteria – they have been in the process for at least nine months, they have cooperated with the process and they have not yet received a first instance decision on their application.

It follows that persons who are in the protection process and who are earning additional income, will be asked to make a contribution towards the costs of the services being provided to them and, where appropriate, their families.

We are also providing assistance to persons who have been granted a permission to remain in Ireland to move out of accommodation provided by RIA into permanent homes in communities around the country. Today there are some 600 persons who have a permission to remain in Ireland living in our accommodation. With the increasing numbers seeking international protection in Ireland, we need to ensure that we have sufficient accommodation available to us to provide for those persons.

Notwithstanding that the Department is undergoing its most significant restructuring in almost 100 years, the work of RIA will continue into the future. It will however, look quite different from what it is today with a different structure than to date.

The open procurement competitions for the provision of accommodation and related services will not specify exactly how these services are to be provided. We are open to any viable alternatives to the current model of congregated settings in former hotels, hostels etc. The key issue is that the services will continue to be delivered to those in the protection process.

We will continue to offer and deliver services to persons seeking international protection in Ireland. This is not just a legal commitment under various international conventions and Directives. It is also our moral and ethical duty to fellow human beings who find themselves in need of support and protection.

Developments in the Direct Provision system since the McMahon Report

Caroline Stephens[1]

In the three years since the publication of the McMahon Report,[2] much has changed for asylum-seekers in Ireland. Among the 173 recommendations set out in the report, a number of significant reforms have been implemented: asylum-seekers who have not received a first instance decision within nine months may now access the labour market with only limited restrictions; the Office of the Ombudsman and the Office of the Ombudsman for Children can now investigate complaints made by asylum-seekers living in Direct Provision (DP) centres; asylum-seekers living in DP centres will see an increase in their weekly allowance from the end of March 2019; while improvements to living conditions have also been introduced, including the provision of communal kitchens and self-catering accommodation in a number of centres.

The launch of draft National Standards for accommodation offered to people in the protection process in August 2018 is another significant development.[3] These new National Standards, when finalised and implemented, will improve the living conditions, supports and services provided to residents in centres. The standards will also ensure consistency across all centres by providing the commercial entities that operate and manage centres (service providers) on behalf of the Reception and Integration Agency (RIA) with a set of objective benchmarks to ensure that asylum-seekers receive quality accommodation and services whilst they are in the asylum procedure. Crucially, in order to ensure that the standards are effective, it is imperative that they are bolstered by the establishment of an independent inspectorate which is given the authority to inspect and monitor the 36 DP centres across 17 counties (as at the end of August 2018).[4]

Of course, challenges in the Irish reception system still remain. It is crucial that a robust system of vulnerability assessments is now implemented, as required by the Recast Reception Conditions Directive (Recast RCD)[5] and that sufficient resources are allocated to the International Protection Office (IPO) to ensure overall processing times for asylum applications are reduced.[6] Equally, in order to ensure that the State can respond effectively to capacity pressures, periodic fluctuations and increases in the number of asylum-seekers received, contingency and preparedness planning must be further developed.

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[1] Protection Associate, UNHCR Ireland. Any views expressed are the author's own.

[2] Government of Ireland, *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report*, June 2015, available at: www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf.

[3] Government of Ireland, *Draft national standards for National Standards for accommodation offered to people in the protection process*, August 2018, available at: www.justice.ie/en/JELR/Draft_National_Standards_for_accommodation_centres.pdf/Files/Draft_National_Standards_for_accommodation_centres.pdf.

[4] Reception and Integration Agency (RIA), *RIA Monthly Report*, August 2018, p.13, available at: www.ria.gov.ie/en/RIA/RIA%20Monthly%20Report%20August%202018.pdf/Files/RIA%20Monthly%20Report%20August%202018.pdf.

[5] European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L.180/96-105/32; 29.6.2013, 2013/33/EU, available at: www.refworld.org/docid/51d29db54.html.

[6] See: UN High Commissioner for Refugees (UNHCR), *UNHCR calls for action to cut Irish asylum waiting times,* 25 April 2018, available at: www.unhcr.org/en-ie/news/press/2018/4/5ae0228c4/unhcr-calls-for-action-to-cut-irish-asylum-waiting-times.html.

UNHCR and the Reception of Asylum-seekers

UNHCR has repeatedly highlighted that adequate and dignified reception conditions are a crucial prerequisite of a fair asylum procedure.[7] Reception standards for asylum-seekers must ensure that they are treated with dignity, humanity and sensitivity to their special situation and asylum-seekers must enjoy an adequate standard of living throughout the asylum procedure.[8]

Asylum-seekers whose basic needs for food, accommodation and medical care are not met cannot be expected to comprehensively engage with their asylum applications. A State may also contravene a number of fundamental rights if it does not provide asylum-seekers with adequate and dignified reception conditions.[9] This is why UNHCR has underlined the need in reception systems for: minimum standards,[10] an individual and independent complaints mechanism,[11] a mechanism to monitor conditions in reception and accommodation centres[12] and contingency and preparedness planning that can respond effectively to a significant increase in the number of asylum-seekers.[13]

UNHCR's governing Executive Committee (ExCom), which consists of representatives from UN Member States, including Ireland, meets annually to review and approve the organisation's programmes and budget and to advise on international protection. In 2002, an ExCom Conclusion issued on the reception of asylum-seekers (ExCom Conclusion No.93) which outlined a number of guiding principles.[14] It reiterated the need for reception arrangements for asylum-seekers to respect human dignity and to abide by international human rights law and standards. It also recommended, *inter alia,* that: the basic needs of asylum-seekers are met through the provision of food, clothing, accommodation and medical care; the privacy of asylum-seekers is respected; family members in the asylum procedure are accommodated together; and governments are cognisant of gender and age-sensitivities and the special reception needs of particular asylum-seekers when designing and implementing reception arrangements, standards and policies. Significantly, ExCom Conclusion No.93 also emphasised that reception arrangements can be mutually beneficial where they are premised on

[7] UN High Commissioner for Refugees (UNHCR), *Reception Standards for Asylum Seekers in the European Union*, July 2000, p.3, available at: www.refworld.org/docid/3ae6b3440.html, UN High Commissioner for Refugees (UNHCR), *UNHCR Annotated Comments on Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers*, July 2003, p.15, available at: www.refworld.org/docid/3f3770104.html and UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Defence for Children International (DCI) v. Belgium*, 13 July 2012, p.2, available at: www.refworld.org/docid/500419f32.html.

[8] UN High Commissioner for Refugees (UNHCR), *Reception Standards for Asylum Seekers in the European Union*, July 2000, p.3, available at: www.refworld.org/docid/3ae6b3440.html.

[9] UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Defence for Children International (DCI) v. Belgium*, 13 July 2012, p.5, available at: www.refworld.org/docid/500419f32.html.

[10] UN High Commissioner for Refugees (UNHCR), *Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems*, 4 September 2001, EC/GC/01/17, p.7, available at: www.refworld.org/docid/3bfa81864.html.

[11] UN High Commissioner for Refugees (UNHCR), *UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, April 2015, p.59 and 60, available at: www.refworld.org/docid/5541d4f24.html.

[12] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) – COM (2016) 465*, August 2017, p.17, available at: www.refworld.org/docid/59a6d6094.html.

[13] UN High Commissioner for Refugees (UNHCR), *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*, December 2016, p.8-9, available at: www.refworld.org/docid/58385d4e4.html

[14] UN High Commissioner for Refugees (UNHCR), *Conclusion on reception of asylum-seekers in the context of individual asylum systems*, 8 October 2002, No.93 (LIII)-2002, available at: www.unhcr.org/refworld/docid/3dafdd344.html.

the understanding that many asylum-seekers can attain a certain degree of self-reliance, if provided with the requisite opportunities.

Prior to the adoption of ExCom Conclusion No.93, the UNHCR Global Consultations explored this topic in detail and recommended that the conditions in reception centres for asylum-seekers should meet minimum standards, including the existence of basic facilities, as well as access to health care and education.[15] The UNHCR Global Consultations noted that reception centres may constitute an acceptable solution for a limited period following arrival and recommended asylum-seekers should have access to and the means for alternative accommodation arrangements when, *inter alia*, the asylum procedure becomes protracted.[16] It is also widely accepted that prolonged periods of stay in collective centres can lead to marginalization and dependency.[17]

The European Union (EU) and the reception of asylum-seekers

EU law also acknowledges that adequate reception conditions are a precondition in guaranteeing the right to seek asylum. This is pronounced in the Recast RCD, which clearly states in its recitals that asylum applicants should receive a dignified standard of living (Recital 11). Recital 35 of the Recast RCD also requires EU Member States to ensure full respect for human dignity and to promote the application of Article 1 (the right to human dignity) and Article 18 (the right to asylum) of the Charter of Fundamental Rights of the EU. The principles of the best interests of the child and of family unity as referenced in recital 9 of the Recast RCD also offer useful guidance for the design and implementation of reception arrangements, standards and policies.

Ireland and the reception of asylum-seekers

In Ireland, the DP system, which is coordinated by RIA, is the way in which the government meets its obligations to accommodate and support asylum-seekers whilst their asylum applications are being considered.[18] It was expected when the DP system was established in 2000 that asylum-seekers would spend no more than six months in centres.[19] As highlighted by the McMahon Report, this is not how things have emerged, with many asylum-seekers remaining in DP centres for protracted lengths of time.[20] At the end of July 2018, nearly 22 percent of asylum-seekers in DP centres had been there for 3 years or more.[21]

Recent developments in the asylum system in Ireland

Since the publication of the McMahon Report, UNHCR has observed a number of improvements to the physical conditions in DP centres, including the implementation of self or communal catering arrangements in several centres, the availability of independent living for families in some centres and the establishment of a number of dedicated communal rooms for teenagers.

[15] UNHCR, above n.10, p.7.
[16] Ibid.
[17] UN High Commissioner for Refugees (UNHCR), *A guide to international refugee protection and building state asylum systems*, 2017, Handbook for Parliamentarians N° 27, p.98, available at: www.refworld.org/docid/5a9d57554.html.
[18] Government of Ireland, above n.2, p.3.
[19] Ibid, p.14.
[20] Ibid.
[21] Reception and Integration Agency (RIA), *RIA Monthly Report*, July 2018, p.18, available at: www.ria.gov.ie/en/RIA/RIA%20Monthly%20Report%2007-2018.pdf/Files/RIA%20Monthly%20Report%2007-2018.pdf.

At the end of 2016, the Irish government introduced a new single procedure which meant Ireland joined other EU Member States in having a streamlined process for assessing asylum applications. Prior to the single procedure, asylum-seekers had to navigate a multi-layered process that led to long times spent in DP waiting for decisions. When the new single procedure system was introduced, it was expected that this would dramatically cut processing times and subsequently the length of time asylum-seekers spend in DP centres, but this has not been evident to date. According to figures provided to UNHCR by the Department of Justice and Equality, there were 6,035 asylum-seekers in the protection process at the end of 2017. This is up by more than 1,700 over the course of the previous 12 months. Efforts are ongoing to reduce waiting times at the IPO from 19 months to 12 months for non-prioritised applications, with a view to reduce this to nine months by the end of 2019.[22] Whether or not these targets are achieved will have a significant impact on the overall reception capacity required in Ireland over the coming years and on average waiting times in DP for asylum-seekers.

Since April 2017, asylum-seekers living in DP have had recourse to the Office of the Ombudsman and the Office of the Ombudsman for Children. This was a key recommendation of the McMahon Report and is a very welcome and significant development which ensures asylum-seekers living in DP now have access to a fair, independent and objective complaints process.

In June 2018, the Irish Government opted in to the Recast RCD which was also a very important and welcome development. Prior to opting into the Directive, reception arrangements in Ireland were primarily governed by administrative arrangements and more generally by a number of international and regional human rights obligations which offered a broad framework for standards of treatment of asylum-seekers in the area of reception.[23] However, since opting into the Recast RCD, the Irish government has transposed its obligations into law through a new Regulation (the Reception Conditions Regulation)[24] which means that asylum-seekers for the first time in Ireland now have clearly articulated and detailed rights set down in law.

Asylum-seekers now have access to the labour market (with some limited sectoral exceptions) after nine months if a first instance decision in their case has not been taken within that time. As outlined above, this can be mutually beneficial as it can help to reduce the cost on the State of supporting asylum-seekers and benefit the local economy.[25] In addition to the financial benefits, the right to work has many psychological benefits for asylum-seekers, particularly in the case of lengthy stays pending the outcome of the asylum procedure. It enhances an asylum-seeker's dignity, self-respect and integration prospects as well as alleviating social and economic exclusion, the loss of skills and vulnerability to exploitation.[26] In the context of return, the right to work can increase a failed asylum-seeker's chances of successful reintegration.[27]

[22] Joint Oireachtas Committee on Justice, Defence and Equality, *Immigrant Investor Programme and International Protection Applications: Discussion*, Wednesday 11 July 2018, available at: www.kildarestreet.com/committees/?id=2018-07-11a.912.

[23] See Ireland's obligations under the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the European Convention for the Protection of Human Rights (ECHR) and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

[24] Government of Ireland, *S.I. No.230 of 2018 European Communities (Reception Conditions) Regulations 2018*, 6 July 2018, available at: www.irishstatutebook.ie/eli/2018/si/230/made/en/pdf.

[25] UNHCR, above n.17, p.102.

[26] Ibid.

[27] Ibid.

Importantly, the Recast RCD requires Member States to: conduct a vulnerability assessment; offer corresponding supports; and provide for appropriate monitoring of their situation.[28] As noted above, gender and age awareness as well as cognisance of the special reception needs of particular asylum-seekers should be guiding principles for the design and implementation of reception arrangements, standards and policies. When vulnerability assessments commence in Ireland, they will inform dispersal decisions, room allocations and supports provided. The early identification of asylum-seekers with vulnerabilities and special needs will ensure their accommodation needs are met; it could also be an important tool in the asylum procedure by ensuring that the claims of vulnerable asylum-seekers are presented effectively.[29]

In October 2018, the government announced an increase to the daily expenses allowance (formerly the DP allowance) for asylum-seekers living in DP centres from €21.60 per week to €29.80 per week for children and €38.80 per week for adults, from the week commencing 25 March 2019.[30] These welcomed increases are in line with a clear recommendation of the McMahon Report. Whether or not these increases will be sufficient to provide an adequate standard of living to asylum-seekers which guarantees their subsistence and protects their physical and mental health, as required by Article 17(2) of the Recast RCD, remains to be seen.

The introduction of appeals on reception matters to the International Protection Appeals Tribunal (IPAT) is another significant new development. The IPAT now has an expanded jurisdiction to consider ten different appeal types under the Reception Conditions Regulation, including with respect to decisions to refuse to grant or to renew a labour market access permission, decisions to reduce or withdraw reception conditions and decisions to reduce or withdraw the daily expenses allowance.

Development of National Standards for the Irish reception system

The publication in August 2018 of draft National Standards for accommodation offered to people in the protection process is another significant and positive step that will enhance the reception system for asylum-seekers in Ireland.[31] During the consultation process undertaken by the McMahon Working Group, many residents consistently highlighted the variation in the quality of accommodation and services provided from one centre to another.[32] To improve the living conditions, supports and services provided to residents across all centres, the McMahon Report recommended the development of standards and the establishment of an inspection regime to monitor these standards.

The draft National Standards were developed by a Standards Advisory Group consisting of interdepartmental staff, NGOs, an asylum-seeker representative group and UNHCR. The Advisory Group attempted to build upon the McMahon Report by translating many of its recommendations into binding standards that will become the subject of contractual obligations. The purpose of the National Standards is to improve the living conditions, supports and services provided to residents in centres and ensure consistency across all centres.

[28] European Union, above n.5, Article 22.
[29] UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers*, July 2012, (COM (2011) 320 final, 1 June 2011), p.16, available at: www.refworld.org/docid/500560852.html and UN High Commissioner for Refugees (UNHCR), *UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, April 2015, available at: www.refworld.org/docid/5541d4f24.html.
[30] Department of Employment Affairs and Social Protection, *Budget 2019: Main social welfare changes and rates of payments*, October 2018, available at: www.welfare.ie/en/Pages/Budget-2019.aspx.
[31] Government of Ireland, above n.3.
[32] Government of Ireland, above n.2, p.21.

They will ensure dignified living conditions and provide high-quality services which meet the needs of asylum-seekers living in DP.

The National Standards will apply to all service providers subcontracted by RIA to operate and manage centres. It will provide a framework for what is expected of service providers. The National Standards will also provide residents with a guide as to what they should expect during their stay in a centre. Ultimately, the National Standards will provide a framework for independent inspections which will assess whether service providers are providing high-quality, safe and effective services and supports for residents.

The National Standards have taken a 'person centred' approach, which emphasises the rights, dignity, privacy and diversity of each asylum-seeker. Themes four to ten of the National Standards focus on the physical conditions in DP centres as well as the supports and services available to asylum-seekers. The standards under these themes will ensure that asylum-seekers receive adequate and dignified accommodation and that their needs are met. For instance, standard 4.4 is dedicated to the accommodation of families and this standard will see that all families in the DP system will have access to their own private living space in addition to a bathroom and sleeping quarters. Theme ten of the National Standards is dedicated to the special reception needs of asylum-seekers. These improvements to living conditions and supports will depend on the buy-in of staff and management as well as the availability of suitable personnel with appropriate skills and competencies to implement the changes. This is why there is a theme dedicated to the arrangements that service providers will need to put in place to ensure accountability, decision-making and risk management (theme one) and a theme devoted to the planning, recruitment and managing of staff with the necessary numbers, skills, competencies and training to respond to the needs of asylum-seekers (theme two). It is expected that these themes will go some way in changing the culture and atmosphere within DP centres.

Remaining priorities to improve the Irish reception system

UNHCR has called on the Irish government to move forward with the establishment of an independent inspectorate, as recommended by the McMahon Report.[33] A designated and independent body responsible for the oversight of reception conditions would be a significant step forward in the protection of the rights of asylum-seekers living in DP centres as it would instil confidence in the national standard and quality of services provided. It would also ensure consistency in the provision of accommodation and services to all asylum-seekers. A thorough and robust system of National Standards supported by a new system of independent inspections will ensure that the National Standards are thoroughly implemented in practice and that progress into the future is maintained.

Apart from a provision in the Reception Conditions Regulation that requires the Minister for Health and the Health Service Executive to provide the Minister for Justice and Equality with assistance in the vulnerability assessment procedure, there have been no concrete details about the practical implementation of this procedure since the Irish government opted in to the Recast RCD. As detailed in a 2007 European Commission Report, the "identification of vulnerable asylum-seekers is a core element without which the provisions of the RCD aimed at special treatment of these persons will loose [*sic*] any meaning".[34] As such, the commencement of vulnerability assessments must be prioritised by the Irish government. It must also

[33] UN High Commissioner for Refugees (UNHCR), *New Standards are an opportunity to significantly enhance accommodation system,* 16 August 2018, available at: www.unhcr.org/en-ie/news/press/2018/8/5b7584844/new-standards-are-an-opportunity-to-significantly-enhance-accommodation.html.

[34] European Commission, *Report from the Commission to the Council and the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, 26 November 2007, COM(2007) 745 final, p.9, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0745:FIN:EN:PDF.

contemplate how to monitor the situation of vulnerable asylum-seekers. Another matter that needs special consideration is the identification and attention to emerging vulnerabilities and special needs, as disclosure made at a later stage in the asylum procedure should not impede an asylum-seeker's access to any special accommodation, support measures or necessary treatment.[35] The draft National Standards have attempted to assist in the monitoring of vulnerable asylum-seekers' situations and management of later disclosures by requiring that each DP centre employs a suitably qualified and trained member of staff (called a reception officer) whose role will be to receive information arising from vulnerability assessments, liaise with relevant local services regarding the needs of the residents and to report to the appropriate authorities when a concern for a resident's health, wellbeing or safety arises within the DP centre.

Other challenges with the reception system in Ireland still remain. For instance, the length of time in the asylum procedure and consequently the length of stay in DP centres continues to be an issue, as outlined above. A more immediate challenge, however, is the capacity within the DP system. At the end of August 2018, there were only 47 available beds available for new applicants,[36] yet the average number of new asylum applications made in 2018 was 293 per month (as of 30 September).[37]

As the duration of the asylum procedure determines the length and conditions of stay in DP centres, the Irish government must ensure sufficient resources are allocated to the relevant determination bodies so that overall processing times can be decreased. An expeditious asylum procedure will not only promptly identify those in need of international protection and those who are not, but it will reduce protracted periods of uncertainty for asylum-seekers and decrease the overall costs and demands on the reception system.[38] This would be a very welcome improvement given the capacity issues in the reception system in Ireland. Protracted asylum procedures can also have significant and harmful effects on separated family members, particularly children,[39] preventing separated families from being reunited as quickly as possible, the process for which can typically only begin once they are recognised as refugees.

Conclusion

Much has changed since the publication of the McMahon Report, but more can be done to ensure asylum-seekers in Ireland receive an adequate and dignified standard of reception, enabling them to engage comprehensively with their asylum applications, and improving integration prospects, alleviating social and economic exclusion, the loss of skills and vulnerability to exploitation.

The finalisation, later this year, of National Standards for accommodation offered to people in the protection process and the establishment of an independent inspectorate to ensure their implementation in practice is critical. The commencement of vulnerability assessments, the monitoring of vulnerable asylum-seekers' situations and the management of vulnerabilities and special needs that emerge at a later stage in the asylum procedure also requires special attention. In light of recent capacity pressures and increasing numbers of asylum applications, the development of contingency and preparedness planning for the DP system also requires urgent and careful consideration. Finally, all necessary resources need to be allocated to the relevant determination bodies so that overall processing times for asylum applications can be reduced.

[35] UNHCR, above n.11.
[36] UNHCR, above n.4, p.13.
[37] International Protection Office (IPO), *IPO Statistics, September 2018*, available at: www.ipo.gov.ie/en/IPO/IPO%20monthly%20statistics%20September%202018.pdf/Files/IPO%20monthly%20statistics%20September%202018.pdf.
[38] UNHCR, above n.8, p.6.
[39] Ibid, p.16.

Ultimately, it is this last measure, more than any other, which is key to tackling the single most important issue identified in the McMahon Report, the overall length of time asylum-seekers typically spend in DP. Without progress in this area, the overall benefits of improvements in other areas will ultimately be limited in nature.

A Time for Hope? The European Communities (Reception Conditions) Regulations 2018

Liam Thornton[1]

1. Introduction

For those unfamiliar with the term, 'direct provision', it is shorthand for provisions that Ireland has in place for those seeking protection in Ireland. This includes provision of education to those up to Leaving Certificate level, availability of medical services to asylum seekers in the protection system, along with a range of accommodation supports, a weekly financial allowance and provision of food, or the ability to cook food. This system of direct provision has existed for almost nineteen years. There have been countless reports since the early 2000s urging Ireland to come in line with common European Union norms, but all these reports, had been ignored. Yet, only since 06 July 2018 have the rights, entitlements and obligations for asylum seekers been placed on any sort of legislative footing. In response to a decision of the Irish Supreme Court recognising the right to work for asylum seekers,[2] the Irish Government decided, after many years to become bound by European Union law, when it comes to the reception rights of asylum seekers.

International human rights law does recognise that States have duties to protect the social, economic and cultural rights of asylum seekers. The EU's Recast Reception Directive (RRD)[3] and its predecessor, the Reception Directive 2003 are unique,[4] in that a very basic standard of living has been set down from those considered outside the European polity – asylum seekers. International and European human rights law have attempted (albeit, in my view unsuccessfully[5]) to protect the socio-economic rights of asylum seekers in Europe. The key method and efforts for seeking protection of the dignity, inherent worth and socio-economic rights for asylum seekers should be focused on domestic rights regime, with international rights mechanisms supplementing socio-economic rights protection for asylum seekers.

Within EU law, the language of 'reception' of asylum seekers masks the reality of asylum seeker exclusion from human rights protections. Whether we like it or not, the EU Reception Conditions Directive is not wholly human rights based nor human rights compliant. Nevertheless, that said, the coming into force of the European Communities (Reception Conditions) Regulations 2018 is to be welcomed.[6] At this stage (November 2018), even with reservations on its total compliance with human rights norms and standards, there is I argue, the potential for further enhancing the rights and entitlements of asylum seekers in Ireland.

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[2] *N.H.V. v Minister for Justice and Equality and others* [2017] IESC 35, [2018] 1 I.R. 246 (SC).
[3] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L180/96.
[4] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [2003] OJ L31/18.
[5] Liam Thornton, 'EU Asylum Policy: Reception Conditions for Asylum Seekers' in T. Lewis, *Report on coherence of human rights policy making in EU Institutions and other EU agencies and bodies* (September 2014), pp.105-111., open access chapter available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685289.
[6] European Communities (Reception Conditions) Regulations 2018, SI 2018/230.

2. Is the EU Reception Directive Important?

The decision of the Irish Government to become bound by European Union norms and standards, in my view is significant. It has signalled a turn away from a wholly administratively based, non-legislative system that had existed from 10 April 2000 until 06 July 2018.[7] This, in my view, enhances the concept of the rule of law. I may not feel that the 2018 Regulations are wholly human rights compliant, nor do they in my view fully conform with Ireland's obligations under international human rights law, however, for the first time in a generation, the Oireachtas (incidentally) have stated clearly what the reception rights of asylum seekers should be.[8] Prior to this, we had to rely on Freedom of Information requests to try and decipher why the system of direct provision came into being, and why changes may have been made to that system. At a minimum, we now have the Oireachtas taking clear and unequivocal control over the issue of rights and obligations for asylum seekers. That this could not have been done on 10 April 2000 (when the administrative direct provision system started to be implemented), speaks volumes as regards the desire of certain civil servants, and some Government ministers, to keep the rights and entitlements of asylum seekers outside the purview of the Oireachtas. However, this is only part of the struggle for seeking the continuous improvement of reception rights for asylum seekers. Now that EU law applies in Ireland, we also have to deal with some of the legal realities, that even with the direct provision system having a legislative basis, that does not automatically mean significant improvements for the rights of asylum seekers. Nevertheless, it would be remiss of me not to acknowledge that several significant improvements have emerged prior to and since Ireland bound itself to EU law.

3. The Reality of Rights under the EU Reception Directive: Shelter, Allowances and Work

The 2018 Regulations, as well as confirming asylum seekers right to medical assistance, right to education, right to enhanced protection for vulnerable persons, and appeals mechanisms should a protection applicant be denied a reception right, nevertheless allow (but do not mandate) the continuation of direct provision accommodation.

(a) Shelter apart from communities

The highly-institutionalised nature of direct provision accommodation centres, coupled with the significant length of time asylum seekers will be in these centres, has caused concern for over 18 years (see here). In essence the right to live a life how each individual deems fit, encompasses the system of direct provision accommodation in Ireland. Article 7 of the 2018 Regulations permits the Minister for Justice to provide accommodation centres (and other forms of shelter) which exclusively house asylum seekers. Once accommodation centres are provided, then other obligations begin to arise. Under, Article 18(2) of the Reception Directive, Member States must ensure that the accommodation centre "ensure[s] protection for family life", as well as permitting visitors, guests, legal advisors and others may meet an asylum seeker in their accommodation centre. In Article 7 of the 2018 Regulations, Ireland only protects the latter, not the former.

[7] See further, Liam Thornton, 'Social Welfare Law and Asylum Seekers in Ireland: An Anatomy of Exclusion' (2013) 20(2) *Journal of Social Security Law* 66-88. Open access article available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685033.

[8] Dáil Deb 23 January 2018; Sen Deb 25 January 2018.

In relation to the protection of family life, the words of MacEochaidh J. in C.A. decision may in future prove instructive to lawyers challenging direct provision centres as not protecting family life now that the Reception Directive has become part of Irish law:[9]

> Though the Court has heard submissions in respect of the abnormal circumstances in which the minor applicant has been reared, it seems to me that much more should have been done to persuade the Court as to the negative psychological effects of such an environment. It places the Court in an impossible position to invite it to conclude that there is some serious deficiency in the environment in Eglinton when I have no evidence other than the mere assertion of Ms. A and the submission of lawyers that this is so. Though my instinct tells me that 'direct provision' is not an ideal environment for rearing children, I cannot assume the skill and knowledge of a psychologist to make conclusions about the suitability of 'direct provision' for children. Therefore, again, because of a failure of proof, the contention that the respondents are responsible for creating a negative atmosphere in which the second named applicant is being reared, in breach of relevant ECHR and Constitutional rights must fail.

(b) The right to be self-sufficient

Article 15 of the EU's Reception Directive provides a very limited right to work for asylum seekers.[10] Articles 11 to 16 of the 2018 Regulations go beyond the minimum standards established under EU law, and arguably provides greater rights for asylum seekers to access the labour market in Ireland. This is not an absolute right to work, and again does not appear to conform with Ireland's freely accepted human rights legal obligations.[11]

Once an asylum applicant has not received a decision on her protection claim within eight months, she may apply to the Minister for Justice to exercise her right to work. Assuming there is no decision on her protection claim in the meantime, from the first day of her ninth month in Ireland, she may exercise her right to work.

In essence, the EU Reception Directive permits national legal measures that employers have to first seek to hire EU/EEA citizens and legally resident non-EU citizens, before they can hire asylum seekers.

While the right to work for asylum seekers under Articles 11 to 16 of the 2018 Regulations is not absolute, there is a nine month waiting period, there are various job restrictions, the current measures on the right to work,[12] there is some cause for optimism at this time. While no doubt significant work may need to occur

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[9] *C.A. and T.A. v Minister for Justice and Equality & ors* [2014] IEHC 532, para. 9.19. For a summary of this decision, see Liam Thornton, 'C.A. and T.A.: The Direct Provision Case' [2014] 17(4) *Irish Journal of Family Law* 117. Open access article available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2684843.

[10] For an elaboration on this point, see Liam Thornton, *Blog Symposium 3: The Right to Work for Asylum Seekers & the EU Reception Directive* (09 January 2018), available at: https://liamthornton.ie/2018/01/09/blog-symposium-the-right-to-work-for-asylum-seekers/.

[11] Take for example the UN Committee on the Elimination of Racial Discrimination, and their examining of Belgium's system for protecting the right of asylum seekers to enter the labour market, CERD, Concluding observations on the sixteenth to nineteenth periodic reports of Belgium UN Doc. CERD/C/BEL/CO/16-19 (14 March 2014). See further, Liam Thornton, 'Socio-Economic Rights and Ireland' in Suzanne Egan (ed.) International Human Rights: Perspectives from Ireland (Bloomsbury, 2015), pp.179-207. Open access version available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2686542.

[12] Discussed in more detail in, Liam Thornton, *Putting wrong to rights (almost…): Asylum seekers and freedom to work in Ireland Part II* (27 July 2018), available at: https://liamthornton.ie/2018/06/27/putting-wrong-to-rights-almost-asylum-seekers-and-freedom-to-work-in-ireland-part-ii/.

explaining this new reality to employers and business organisations, some 330 asylum seekers are now working in Ireland.[13] The right to work is not a panacea to all the ills in direct provision, but it is a good start.

(c) The promise of the daily expenses allowance

Comparing financial assistance payments for asylum seekers across the European Union can give rise to difficulties. In some countries, the financial allowances must cover food, housing, clothing, heating and other material reception conditions. In other countries (such as Ireland), accommodation and food is provided, and a low level of financial allowance is granted to asylum seekers. One commonality within all EU Member States is that financial allowances for asylum seekers are generally lesser than minimum social assistance/social welfare rates for citizens and those with a secure residency status within the State.

The payment formerly known as direct provision allowance or DPA, since 9th October 2018 has been known as the 'daily expenses allowance', which is paid weekly. Under Article 2 of the 2018 Regulations, a 'daily expenses allowance' is defined as (my emphasis):

> "… part of the material reception conditions that constitutes a weekly payment made, under a scheme administered by the Minister for Employment Affairs and Social Protection, to a recipient **in order for the recipient to meet incidental, personal expenses.**"

Article 17(5) of the EU Reception Directive states that *where* Member States provide financial allowances or vouchers, this *shall* be determined with reference to the levels of financial support, levels that are set down in law or by practice, which may be set at rates provided to a Member State's own nationals. However, nothing prevents Member States, including Ireland, from providing applicants for international protection with lesser allowances/voucher levels, in comparison to nationals of the Member States.

That from the years 2000 to 2016, the rate of direct provision allowance remained at €19.10 per adult and €9.60 per child was a scandal. There were two raises in direct provision allowance. The first, by the then Minister for Social Protection, one month before a general election, raised payments to child asylum seekers only to €15.60. The second raise occurred in equally questionable circumstances, with Leo Varadkar orchestrating a rise of direct provision allowance to children and adults at the rate of €21.60 during his campaign to become Taoiseach.[14]

The Court of Justice of the European Union noted that the level of financial allowances under the 2003 Reception Directive:[15]

> *… must be sufficient to ensure a dignified standard of living adequate for the health of applicants and capable of ensuring their subsistence.*

In addition, the level of financial allowances must preserve family unity and protect the best interests of the child. The question of best interests of the child and direct provision allowance is one potential avenue, at least in the political sphere, for challenging the rates of direct provision allowance in Ireland.

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[13] Ciara Ní Bhroin, '330 asylum seekers secure work under new rules' RTÉ News, 22 October 2018, available at: www.rte.ie/news/2018/1022/1005825-asylum-seekers/.

[14] For further information on why I make this claim, see Liam Thornton, *Understanding the Increases in Direct Provision Allowance for Asylum Seekers* (17 July 2017), available at: https://liamthornton.ie/2017/07/17/understanding-the-increases-in-direct-provision-allowance-for-asylum-seekers/.

[15] Case C-79/13, *Federaal agentschap voor de opvang van asielzoekers v Selver Saciri* ECLI:EU:C:2014:103, para. 37.

In Budget 2019, the now Minister for Employment Affairs and Social Protection, Regina Doherty, provided the biggest raise in direct provision allowance. The adult payment (from March 2019) will now become €38.80, with the child allowance becoming €29.80.[16] What caused such a significant raise in the payment? And why was this not leaked like so much of the other Budget 2019 measures? To the absolute credit of Regina Doherty, there was no fanfare, there was no grandiose statements or announcements. Just quietly hidden away in the Budget 2019 documents was this significant rise in direct provision allowance, now called a daily expenses allowance. That this increase came so close to the placement of direct provision on a legislative footing, is, in my view, no coincidence. It may have been the case, that in light of EU legal norms and standards, the Government/Minister felt they had to increase the payment. Whatever the reason, the increase is welcome – even if we now need to discuss re-introducing child benefit for children trapped within direct provision. In my own view, the key benchmark for determining rates of daily expenses allowance should be with reference to the standards of Irish society, and rates of payment that may be needed to ensure inclusivity within Irish society.

4. A New Dawn in Ireland?

The fact that the EU Reception Conditions Directive is not wholly rights based must be acknowledged. However, even the limited rights protected, and their incorporation into secondary legislation is welcome. There may be avenues to further enhance the social and economic rights of asylum seekers now that the Reception Directive is transposed into Irish law. In the arena of financial allowances, accommodation provision and the right to work there are some tentative signs of change (although painfully slow). The Irish Government is on notice, we are watching and waiting to see that EU legal rights must be protected. At a minimum, we must demand a generous interpretation and application of these rights. The incorporation of EU law into Irish law, in my view opens up more avenues to further enhance the social and economic rights of all asylum seekers in Ireland.

[16] Liam Thornton, *Enhancing the rights of asylum seekers in Budget 2019* (10 October 2018), available at: https://liamthornton.ie/2018/10/10/enhancing-the-rights-of-asylum-seekers-in-budget-2019/.

Part III:
International Perspectives

Community Dispersal *vs* Direct Provision: A View from Scotland

Sabir Zazai[1]

Introduction

I had the privilege to be invited to speak at the "Beyond McMahon" conference in Cork. The conference was organised by Nasc in conjunction with University College Cork and was funded by the Irish Human Rights and Equality Commission. It was a timely conversation that brought together stakeholders from across the spectrum, ranging from representatives from Department for Justice and Equality to those still in the asylum system and those with direct experiences of the asylum process. The overall aim of the conference was to review the current arrangements of asylum reception in Ireland.

Ireland since year 2000 adopts a system of 'direct provision' which means all newly arrived asylum seekers who arrive in Ireland are housed in accommodation 35 privately owned accommodation centres across the country instead of asylum dispersal, the model the UK adopts, that is to accommodate refugees in local communities.

I started off with reflecting on my own journey of dispersal and living in asylum accommodation, highlighting examples of asylum seekers arriving from conflicts in Iraq, Afghanistan and the Balkans, who were housed alongside me in Coventry and how each and every one of us played an active role to enrich our adopted homes, despite the obvious challenges of asylum accommodation and support.

It is interesting that the views are divided across Europe on the best way to receive new asylum seekers. In some countries such as France and Sweden NGOs take pride in their system of reception centres accommodating all new asylum seekers. Whereas in the UK we take equal pride in our dispersed system of asylum accommodation allowing early integration into the host community.

New Scots Refugee Integration Strategy

In Scotland for instance we have taken a more proactive approach to integration and have partnered with the Scottish Government, Consortia of Scottish Local Authorities and a range of other partner agencies to develop '**New Scots'**, Scotland's national refugee integration strategy.[2] The New Scots strategy is part of a range of policies, which aims to make Scotland a fair and safe country for everyone. It has led to creating a community of practice across Scotland that works together to support refugees, asylum seekers and the communities in which they are integrating.

[1] Chief Executive, Scottish Refugee Council.

[2] Scottish Government, *New Scots Refugee Integration Strategy 2018 – 2022* (10 January 2018), available at: www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022/

The strategy helps in setting the tone for welcoming refugees and the strong and consistent leadership of the Scottish Government in this process means that communities are prepared and celebrate the unique gifts, skills and vibrant cultures refugees bring with them to Scotland. It sets the vision for a welcoming Scotland where refugees and asylum seekers are able to rebuild their lives from the day they arrive.

Background to asylum dispersal in the UK

The Immigration and Asylum Act 1999 allows for newly arrived asylum seekers to be dispersed to asylum accommodation across the UK. The aim of this policy was to reduce the pressure and impact of arrival on the southwest region. The Nationality, Immigration and Asylum Act 2002 has provisions for accommodation centres, however the UK government has continued with the dispersal as the preferred model.

Critics have long argued that the community dispersal model is not equitable across the UK, the system is cost driven and is not needs driven and that increased privatisation, de-investment in advice and support services and lack of oversight from local authorities has led to further doubts in the effectiveness and efficiency of this approach.

Community Dispersal *vs* Direct Provision

There are some benefits, it can be argued, in accommodating all asylum seekers together so that they can share the same experiences and offer peer support to one another. It could also be a more conducive environment for particularly young male asylum seekers. Yet it could also be argued that such centres present very difficult living environments for young families and single women. However, with the right support and protection such reception centres can be a useful and welcome induction into the new country.

On the other hand, there are however clear benefits in dispersing asylum seekers to live in accommodation in the community. Dispersal helps refugees build social connections, play an active role, develop cultural experiences of life in their adopted society, make contribution and develop a sense of belonging. If one believes that integration is a two-way process and it should start from day one, as we do in New Scots, then such a dispersed and integrated form of accommodation is vital. Yet the experience of asylum dispersal since year 2000 in the UK has shown that whilst in theory it can be the ideal arrangement without proper preparation and support this practice can have really unfortunate consequences. Early experience of asylum dispersal to such parts of the UK as the north-east of England proved very detrimental to those early asylum seekers as the host community had just not been prepared for the arrival of these newcomers.

For asylum dispersal to work there has to be proper integration support for new arrivals and time spent preparing the established local community to receive and understand these new arrivals.

It is also worth noting the vital role that refugee community organisations play in receiving new asylum seekers and helping them both to bridge and then to bond with the new community. With the experience of asylum dispersal in the UK from the April 2000 it became very clear that the lack of refugee community organisations in these new parts of the country was a major obstacle to the effective integration of this new asylum seekers in these parts of the UK.

So whilst dispersal into the community may seem to be the ideal arrangement for the early integration of asylum seekers, it is vital that there are proper support services in place to assist the new arrivals, that the established community are helped to understand precisely why these newcomers are arriving in their area, and there is some consideration given to the need to support and build capacity for local refugee community

organisations. The salient point is that asylum dispersal into the community will not succeed by itself. There has to be a rigorous strategy such as New Scots in place to support both asylum seekers and the established local community so that there is a realistic chance of this arrangement succeeding in the local community.

It should also be noted that any such strategies for supporting asylum seekers should be based upon the needs and wishes of the asylum seekers themselves, and it may be that by listening to asylum seekers one might see the need to develop a hybrid system for providing asylum support where there are truly welcoming initial reception centres for the initial arrival of asylum seekers where they can be inducted into the new community before they are then dispersed into a local community which has been prepared for their arrival. And maybe even we could offer them some say in the direction of their dispersal and integration similar to New Scots, where over 700 refugees and 2,000 people overall were consulted.

The UK system is far from perfect but surely the basis for any long term successful asylum reception arrangement has to be grounded in the local community, wishes and hopes of refugees themselves.

Finally, it is important to note that refugees aren't a homogenous group. Their needs, experiences and aspirations vary enormously even between people arriving from a similar conflict. Treating them as one group and accommodating them in one place for long periods of time is not good for refugees and for the communities in which they want to integrate. Most importantly the world is in the grip of its largest refugee displacement since World War II but the asylum application rate in the UK and Ireland is all time low. Asylum decisions are slow particularly in Ireland where the initial interview takes up to 20 months. We also continue to detain and deport those seeking our protection. Whether it is direct provision or community dispersal, we need to ensure that the reception approaches are based on human rights and allow refugees to live fulfilling lives in their adopted homes. We have many recent examples where bureaucracy and policy have overshadowed the human element of migration. It is therefore important to constantly question ourselves how would we want our children, parents, friends and family to be treated should they end up in another country. We should and can all do more to better welcome, protect and integrate refugees and there is no better time than now for the UK and other European nations to show leadership on this issue.

Reception Conditions for Refugees in Portugal

Maria Teresa Tito de Morais Mendes[1]

The world is experiencing unparalleled high numbers in forcibly displaced persons as a result of persecution, violence, or human right violations. The United Nations High Commission for Refugees (UNHCR), in its 2017 Global Trends,[2] revealed that in the end of 2017, the number of forcibly displaced persons reached 68.5 million. Some 58% of the forcibly displaced (40 million) are internally displaced, while close to 42% (28.5 million) are displaced outside their country, either as refugees (25.4 million), or asylum-seekers (3.1 million).

UNHCR also reports that the past decade has seen substantial growth in the global population of forcibly displaced people. In 2007, this population numbered 42.7 million; over the last 10 years, this figure has increased by over 50 per cent.

If we compare with the numbers in Portugal, there is also an increase seen in the number of asylum requests presented in that time frame: 200 requests were filed in 2007 and in 2017, the number of requests augmented to 1,010, 405% more.

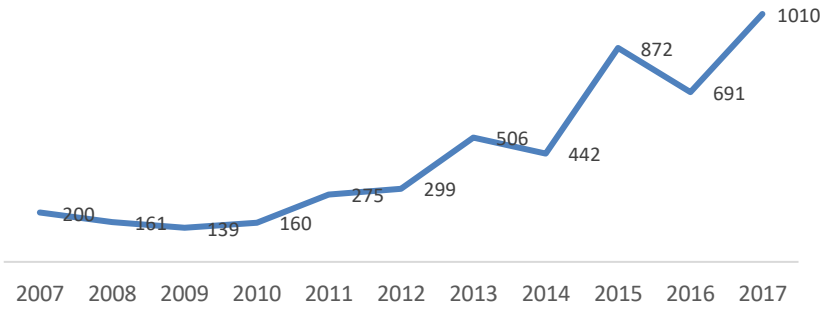


Figure 1 – Spontaneous international protection applications filed in Portugal between 2007 and 2017

Thus, Portugal's role in the reception of asylum seekers and refugees has increased in the past few years, receiving not only persons arriving spontaneously at border points or national territory, but also persons arriving under solidarity mechanisms, such as relocation and resettlement.

This significant increase in recent years impacted the national asylum system, and caused overcrowding of reception facilities, as will be shown further on.

The present reflection is based on a handful of issues that came out of the Working Group Report regarding reception conditions and in relation to which Portugal had a somewhat different approach from Ireland – this includes, in particular, the intertwine between the structure of the asylum procedure and the modalities of accommodation; as well as the supports available to those in the reception system in areas such as material reception conditions, access to the labour market, education, linkages to the local community and separated children.

[1] Board President of the Portuguese Refugee Council – CPR. This article is based on the author's speech presented at the conference 'Beyond McMahon – the Future of Asylum Reception in Ireland' (Cork, Ireland) on 25th April 2018.
[2] UN High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2017*, 19 June 2017, available at: www.refworld.org/docid/5b2d1a867.html.

The present analysis will also address the ongoing efforts conducted by CPR in the framework of intra EU relocation and resettlement to promote new partnerships and methodologies to increase reception capacity at local level.

Starting with the Portuguese Asylum System and CPR's intervention, in accordance to the Asylum Act, this Council is entitled to be informed of key developments in individual asylum procedures upon consent of the applicant, and to present its observations at any time during the procedure as an organisation acting on behalf of UNHCR. Furthermore, the CPR provides free legal assistance to asylum seekers at all stages of the asylum procedure – in 2017 these consisted of 885 asylum seekers (87.6% of the total number of applicants).

Regarding reception, CPR's Reception Centre for Refugees (CAR) in Bobadela provides initial accommodation to isolated asylum seekers and families while the Refugee Children Reception Centre in Lisbon (CACR) accommodates unaccompanied children.

CPR's Reception Centres – CAR and CACR

In 2017, CPR provided accommodation to 327 asylum seekers at CAR (and 301 in alternative private accommodation due to capacity constraints) while the CACR accommodated a total of 56 unaccompanied children. CPR also provides other reception and integration services to asylum seekers, such as social and financial support, kindergarten services, Portuguese language training, social-cultural activities and professional orientation support.

An innovative feature of CPR's CAR is that it has services available to the local community, such us the employment service and the kindergarten. CAR's public spaces like the undercover sports field and the auditorium are also open to the community, thus promoting a positive interaction between those who arrive and the residents.

In the case of intra-EU relocation,[3] following the EU Agenda for Migration, Portugal has established a dedicated Working Group on Migration (Order No. 10041-A / 2015 and Resolution of the Council of Ministers no. 5/2016). At technical level, the Working Group is coordinated by the Portuguese Immigration Service (SEF) and the High Commissioner for Migration (ACM).

The Portuguese Civil Society and local authorities played a decisive role in the reception of relocated refugees, by expressing their willingness to welcome and help integrating such vulnerable people.

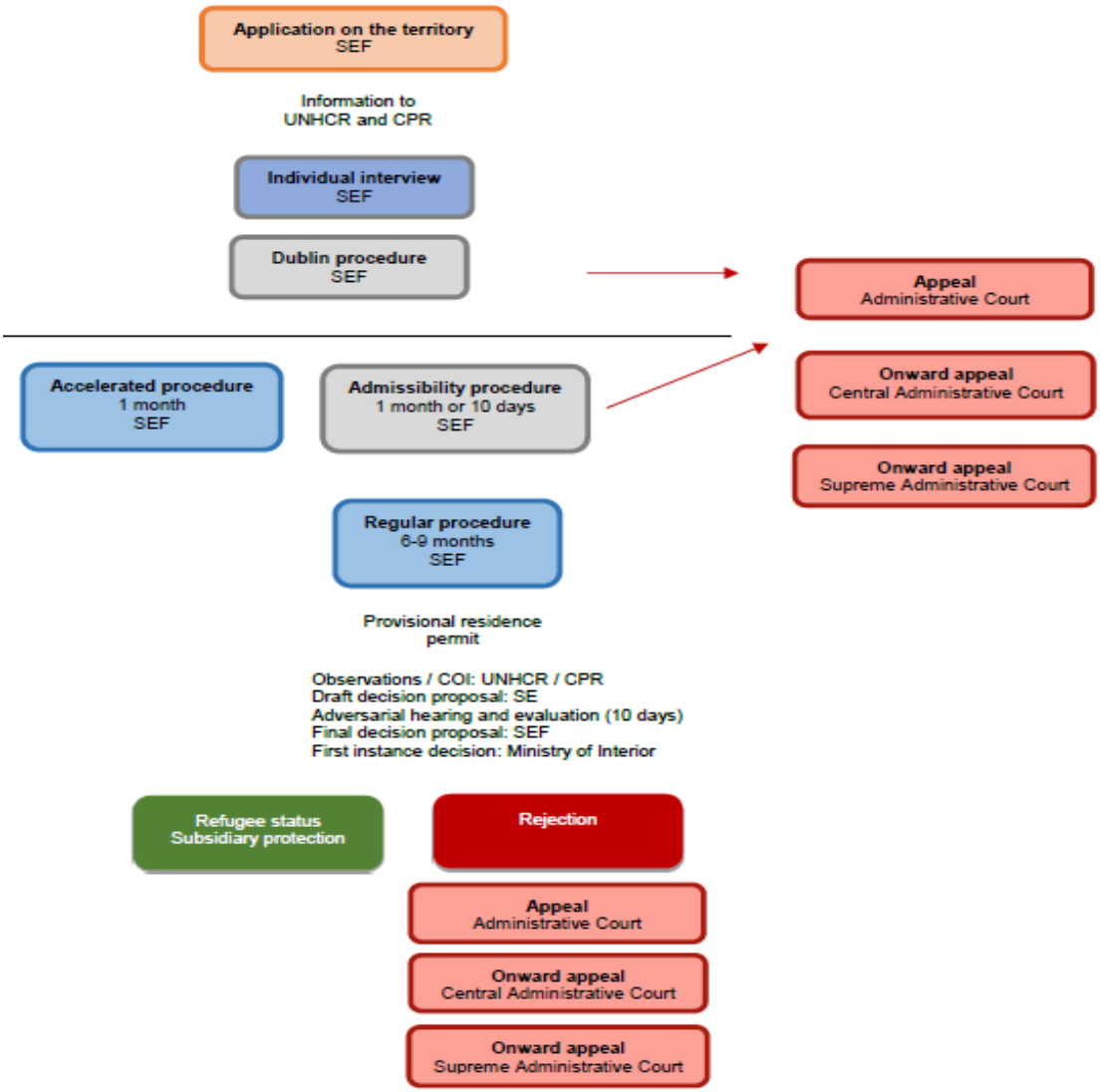
[3] Relocation is a solidarity programme, with the purpose of releasing pressure on individual member states, particularly those located on the external borders of the EU. This tool involves relocating individuals in need of protection from one member state of the European Union to another member state. The bases for relocation programmes are joint decisions of European Union member states. Within this programme, Portugal received 1,548 persons until July 2018 (More information in https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf).

In the Portuguese Council for Refugees, we always advocate decentralization and greater involvement of local authorities in the reception and integration of refugees, as more opportunities can be found for labour integration and help to combat desertification of the interior; At the same time, decentralization will made possible to raise awareness at national level about the situation of refugees, allowing the deconstruction of some myths and stereotypes about this population and their reception.

Hence, CPR has further engaged in partnerships with 19 municipalities and institutions across the country throughout 2016 and 2017 for the reception of up to 400 persons[4], that for the most part benefited from private accommodation throughout their asylum procedure.

Returning to the situation of persons in regular procedure, two structural traits of the current Portuguese reception system that are of interest to this reflection is the amount of time asylum seekers spend in collective accommodation, which is linked to the structure of the asylum procedure; and the second trait is related to the conditions provided in collective accommodation, notably the attempts to promote autonomy and family conducive conditions.

The following flow chart shows the fragmented and complex nature of the asylum procedure in Portugal. It can roughly be divided into admissibility procedures, accelerated procedures and the regular procedure.



[4] As of September 2018.

The practical framework for the reception of spontaneous asylum seekers in Portugal currently stems from both bilateral agreements, and a multilateral agreement between relevant stakeholders which is coordinated by a Steering Commission presided by the Institute of Social Security (ISS).

The Memoranda provide for an overall responsibility-sharing mechanism among stakeholders according to which different entities provide reception conditions depending on the type and stage of the procedure, or the profile of the applicant.

In the case of collective accommodation provided by CPR at CAR, it is generally limited to isolated adults and families during admissibility and accelerated procedures which according to the Asylum Act have a maximum duration of 30 days. Once the asylum seeker is admitted to the regular procedure or appeals, Social Security services throughout the country or SCML in the area of Lisbon take over by providing funding for private housing. In 2017, the number of asylum seekers and beneficiaries of international protection assisted by the ISS and SCML for the provision of housing in private accommodation reached 1,293 people.

However, it should be noted that this system, while limiting the average stay of asylum seekers in collective accommodation, is not without its flaws. In 2017, bureaucratic delays in transitions and difficulties faced by asylum seekers in finding private housing contributed to stays in CPR's CAR of up to 6 months. At the end of April, CPR informed the Steering Commission of a suspension of new arrivals due to overcrowding that lasted two months, as at the time the CAR was offering accommodation to 102 persons.

Bearing in mind the relevance given by the Working Group's report to personal autonomy and conditions tailored to the specific needs of families, the second trait of the Portuguese reception system that is worth mention is related to the conditions provided in CPR's collective accommodation.

Indeed, the CAR and the CACR are purpose-built infrastructures found in central and well-connected locations. They are composed of shared rooms with dedicated bathrooms / toilets and equipped to accommodate asylum seekers with mobility constraints. At CAR the residents are expected to cook their own meals in a communal kitchen and have access to common fridges and cupboards, while at CACR a resident cook is responsible for the provision of meals in line with the nutritional needs of children, but children are on occasion allowed to cook their own meals under supervision.

The centres are also equipped with a laundry service and a playground, and the CAR offers a day-care / kindergarten for resident and local community children. The residents are expected to cooperate in the cleaning of their room and common areas.

Furthermore, the centres provide psychosocial and legal assistance, Portuguese language training, socio-cultural activities as well as job search support.

The chronic overcrowding of CPR's reception facilities these last years following an increase in asylum applications and the challenges of transition into private housing that were mentioned in this reflection has put pressure on the living conditions and access to services at CPR's reception centres.

This includes conflicts in the use of the common kitchen and storing spaces, petty thefts and tensions with other residents, delayed access to services such as social and legal assistance and complaints regarding insufficient socio-cultural activities.

To address these challenges, a decision was taken to develop a new reception centre with the financial support of the Council of Europe Development Bank and in partnership with the Ministry of Internal Administration. The new reception centre will have a maximum capacity of 90 places, will include dedicated rooms and common kitchen for families and is expected to become operational in the end of 2018.

New reception centre for refugees in São João da Talha, Loures Parish

As a concluding remark, it is important to stress that reception is the first (and extremely important) step to integration. It is the first step of journey that hopefully will lead to the reconstruction of the lives of persons seeking protection. Thus, the investment that States make in reception now will surely have positive results in the future – and everyone wins. The refugees, which have the possibility to rebuild their lives with dignity, and the receiving communities, that gain new skills, knowledge and resources.

Lastly, one must not forget that "Seeking asylum is not only a universal human right – it's also a political principle that has guided nations for thousands of years and is at the very foundation of the values upon which modern Europe was built", as stated by the UN General Secretary and former UN Refugee Chief, Antonio Guterres.

Welcoming, with dignity, people fleeing persecution is not only a legal obligation, is also a moral imperative.

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Beyond McMahon: What Can Ireland Learn from the Scottish and Portuguese Models of Integration?

Claire Dorrity[1]

Introduction

Human rights and human security are keenly observed in the development of targeted United Nations strategies dealing with human development, migration, integration and resettlement (UN Development Programme (1994), UN General Assembly (2012), UN Development Programme (2013). This approach takes its starting point in seeking to promote rights-based approaches and rights-respecting policies as central to the reception and integration of persons seeking asylum (Dorrity, 2018). Human security draws on a broad range of circumstances, including access to education, health, personal autonomy and the distribution of resources, all of which, impact on a persons' capabilities and life opportunities (International Institute of Social Studies, 2018). Security, in this sense, is about achieving human dignity and integration and is considered the basis for greater participation within society. Providing human security is understood as inextricably linked with social, political, civil and cultural rights, emphasising both respecting and protecting human rights (Elliot, 2015; UN Development Programme, 1994). This perspective takes into account the root causes of insecurities, through incorporating a broad range of actors, including local communities, international organizations, civil society actors and the state (United Nations Trust Fund for Human Security, 2009).

While human security approaches are central to UN strategies for integration, such approaches have continued to remain under-represented in the political responses of a number of EU member states. To the contrary, policy administration relating to the reception of asylum seekers has been tied up with restricting mobility and forms of containment, witnessed in the routine procedures, securitisation practices and endless control mechanisms that protection applicants are subjected to while awaiting decisions on their asylum claims (Conlon and Gill, 2013). Few countries have explicitly endorsed strong human security measures. Portugal, Scotland and Sweden have been the exception in this regard (Dorrity, 2018).

The Migration Integration Policy Index

In 2014, the Migration Integration Policy Index (MIPEX) identified Portugal as ranking as one of highest of 38 developed countries in their investment in equal opportunities for newcomers, with respect to labour market, health, education, participation, permanent residence, family reunification and anti-discrimination practices (Sunderland, 2016; Huddleston, Bilgili, Joki and Vankova, 2015). Scotland has also taken a lead in placing the inclusion of asylum seekers as central to its integration policy, recognising culture, personal fulfilment and wellbeing as key factors influencing successful integration (Scottish Government, 2018). Within both the Portuguese and Scottish models of integration, participation is viewed as a core element of good practice. Scotland's progressive approach has secured it as top amongst European countries polled in 2016 on public confidence in refugees and successful integration into new communities (European Council on Refugees and Exiles, 2018). In contrast to Portuguese and Scottish models, Ireland has opted for a much more restrictive and punitive approach to administering asylum policy. This is reflected in the fact that Ireland rates 19th out of the 38 countries surveyed by MIPEX (Huddleston, Bilgili, Joki and Vankova, 2015). While Ireland recently launched its Migrant Integration Strategy (2016) with the aim of improving integration, its integration policy towards asylum seekers continues to remain weak and punitive (Lentin, 2012; FLAC, 2010).

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Significant, however to the Migrant Integration Strategy 2016, is its emphasis on participation, paying particular attention to the role of migrant NGOs and their involvement in decision-making processes at a political level. However, the strategy falls short of addressing the integration of asylum seekers stating that the strategy is only intended to cover "EEA and non-EEA nationals, including economic migrants, refugees and those with legal status to remain in Ireland" (The Migrant Integration Strategy, 2016). Asylum seekers are included as a specific target group.

Ireland: Asylum Policy and Access to Integration

Contrary to human security approaches, what is witnessed in Irish asylum policy formation is the privileging of technocratic over more collaborative and participative approaches, coupled with state sanctioned exclusionary practices as a preferred response to dealing with asylum and protection. In 2000, the 'Direct Provision and Dispersal' scheme was officially established, by way of the state's system of housing asylum seekers. The Direct Provision system is presided over by the Reception and Integration Agency (RIA). It makes provision for asylum seekers to live in designated accommodation centres while awaiting a decision on their asylum claim (Stapleton, 2012). It was initially proposed as a six month stop-gap for asylum seekers while claims were being processed. Problems consistently highlighted by both migrant NGOs and academics relate to the protracted lengths of stay within these centres, the denial of rights and freedoms, social and economic exclusion and the lack of dignity and respect associated with such a system (Stapleton, 2014, Conlon, Waters and Berg, 2012, Fanning, 2007).

The system of Direct Provision (DP) has been widely criticised for its failure to consult with asylum seekers and migrant NGOs prior to its implementation, coinciding with the exclusionary and restrictive nature of the system and its negative impact on the daily lives of asylum seekers (O'Connor, 2003; Healy, 2007; Lentin 2012). Furthermore, while the European Union introduced a Council Directive 2003/9/EC of 27 January 2003 (revised in 2013), putting in place minimum standards for the reception of asylum seekers, the Irish state opted out of this directive. This has allowed Ireland to continue administering the system of DP at a policy level. The system grants little recourse to those living within DP accommodation (Irish Refugee Council, 2011). In 2012, the Irish Refugee Council published a document entitled 'State Sanctioned Child Poverty and Exclusion', addressing issues relating to child poverty in the DP system. It highlighted issues regarding 'unsuitable living conditions, malnourishment, poverty, exclusion and lack of play space' (Arnold, 2012: 21). The report highlighted both child poverty, child protection issues and the impact of Direct provision on parents and families. It stated:

> The Special Rapporteur on Child Protection, Geoffrey Shannon, has raised concerns about the detrimental effect of Direct Provision accommodation on children and on parents' ability to provide adequate care. He describes the system as amounting to institutionalised poverty (2012:21).

The Irish Human Rights and Equality Commission have also repeatedly expressed concern about the human rights of residents in DP (Irish Human Rights and Equality Commission, 2014). Both NGOs and academic commentators have criticised the system, highlighting the injustice of the system and the challenges that DP presents for integration (Irish Refugee Council, 2012; FLAC, 2010; Nasc 2007; Fanning 2002).

Breen (2008) identifies potential violations of international and domestic law, which are violated by Ireland's system of Direct Provision, including "the rights to an adequate standard of living, adequate housing, and dignity" Breen, 2008: 636). Furthermore, she argues that Ireland's Direct Provision policy also "violates the right to equal treatment" (2008: 636). Breen argues that by virtue of Ireland's ratification of its human rights treaties, the state has an obligation to respect and ensure the rights of asylum seekers. She argues that the system of Direct provision as it currently is administered breeches the right "to be treated with dignity, the

right to equality and non-discrimination, the right to respect for private and family life, to adequate food, and to the highest attainable standard of physical and mental health" (2008: 636). Such limitations, as currently observed in the system of Direct Provision, are both rights restricting and discriminatory and have been highlighted by the Irish Refugee Council as failing to promote integration (Irish Refugee Council, 2011).

Exploring Portuguese and Scottish Models of Integration as Frameworks for Shaping New Integration Possibilities in Ireland

In contrast to Ireland's restrictive model of integration for asylum seekers, Portugal and Scotland have successfully provided explicit human rights and human security frameworks that put comprehensive supports in place for asylum seekers from the date of arrival in the host country. Underpinning both models is a distinct holistic and inclusive approach and recognition of the many complex factors affecting a person's life when seeking asylum. Both models place a strong focus on improving social cohesion through integration. The impact of exclusion on health, education, housing, employment and wellbeing are strongly acknowledged. What also marks these models apart from other more restrictive models is the willingness of state institutions to embrace collective approaches to integration, which emphasise strong values of solidarity, human dignity and social justice (Scottish Government, 2018; Cruz Beja Orrico Horta, and Gonçalves de Oliveira, 2014). While acknowledging the marginalising effects of economic exclusion, the Scottish and Portuguese models also highlight the importance of addressing social, cultural, and psychological factors and how these interact with the welfare and political representation of asylum seekers (Scottish Government, 2018; Huddleston, Bilgili, Joki and Vankova, 2015) Robustly emphasised, are the roles played by civil society actors, public administrators, state institutions and asylum seekers in the policy making process.

The Portuguese Model

Portugal is one of the few countries to adopt a National Action Plan for Integration. The institution responsible for the implementation of the National Action Plan liaises regularly with researchers and academics in the field of migration while also promoting dialogue with policy makers (WHO, 2014). In 1995 Portugal established its High Commission for Immigrant and Ethnic Minorities (Alto Comissário para a Imigração e Minorias Étnicas – ACIME) with a primary aim of promoting the integration of migrants and the co-ordination of the participation of the different bodies representing the interests of migrants including migrant organisations, local municipalities, various government bodies and other civil society organisations. ACIME acts as a political mediator between the government and the immigrant associations (Sardinha, 2007). The emphasis is on the participation of migrants through their representative organisations, creating space for them to become "social and institutional partners in delineating integration policies" (Sardinha, 2007:14). The Portuguese system is exemplary in this regard, prioritising knowledge sharing and promoting policy debate and shared decision making.

In addition to promoting participative approaches, Portugal specifically focuses on health, security, housing, racism, education, employment and integration (Juzwiak, 2014). An extensive range of activities and supports have been put in place to promote integration, including non-discriminatory strategies, access to jobs and training, language supports, access to public education, social support, access to health, access to family reunification, and freedom of movement within Portugal (Portuguese Refugee Council (CPR), 2018). Most importantly, it places an emphasis on a wide dissemination of facts that highlight the importance of immigrants to Portuguese society (Palmer and Zapata-Barrero, 2017).

The Scottish Model

Scotland pursues an all-encompassing view of integration, evident in the provision of extensive supports in legal services, health, education and integration. In particular, it focuses on human dignity, human potential and human rights. As such, it extends supports to asylum seekers, taking into consideration the multiple layers of exclusion experienced. Similar to Portugal, Scotland places a strong emphasis on participatory frameworks to allow the voice for asylum seekers to be included in decision-making processes, even while navigating their way in the system (The Scottish Government, 2016).

The New Scots Refugee Integration Strategy (2018-22) prioritises early interventions, local integration and a comprehensive set of supports to allow asylum seekers to integrate into Scottish society (The Scottish Government, 2018). Similar to the Portuguese model, the Scottish integration strategy embeds social solidarity measures and social cohesion strategies. Scotland's progressive approach to refugee integration promotes accessible and supportive services, prioritising housing, healthcare education and employment. In this way, models of resettlement take into account the complexities experienced by asylum seekers and provide a range of initiatives to help promote access to rights (The Scottish Government, 2016).

Concluding Remarks: Alternatives Models Reflecting the Portuguese and Scottish Approach to Integration

In evaluating both the Portuguese and Scottish models, potentially workable solutions for Ireland can be identified. In 2013, the Irish Refugee Council (IRC) highlighted the Portuguese model as one that Ireland could benefit greatly from, drawing specifically on its participative and integrative structures. Emphasising the similarities in political structures between Ireland and Portugal, the IRC argued that the Portuguese model provides avenues for new thinking into how Ireland might better respond to the integration of asylum seekers (Irish Refugee Council, 2013). Similarly, Nasc, the Irish Immigrant Support Centre (2018) highlights the need for Ireland to draw on models such as the Portuguese and Scottish models of integration as a way of developing more person-centred and compassionate responses to those seeking protection (Nasc, 2018).

What is clear, in a comparative context, is that Portugal and Scotland have introduced routes to integration that move away from top-down technocratic approaches. In contrast to Ireland, they promote deliberative democratic approaches that create spaces for all representative parties to be involved in decision-making processes. What is made explicit in both the Portuguese and Scottish models is the view that asylum seekers are a crucial part of the policy process. The evidence from both models indicate that asylum seekers are not simply considered passive actors that are unable to participate politically, but are viewed as important actors in this process.

Ireland: Possibilities for Change

While it is evident that state centric approaches are deeply entrenched in Ireland, this does not mean there are not possibilities for change. This however, will involve joined up thinking and new ways of working to resolve issues and bring about change. What is important in bringing about processes of change, is the recognition that asylum seekers do mobilise, they do have rights, they know their rights, and are willing to stand up to be recognised as important interlocutors (Morea, 2012). This is evident in the many grass-roots activities that are often initiated by migrant and migrant-led organisations. There is a transformative opportunity if collectively migrant organisations can capitalize on this potential. Creating such a space would allow asylum seekers to claim spaces of intervention and work together with migrant NGOs and state institutions in creating a much more robust platform for bringing about change in state practices.

Political representation is paramount if progress is to occur. It is one of the most crucial avenues to democratic processes of representation (Pitkin, 1967). It establishes the legitimacy of democratic institutions, while also creating institutional incentives for state bodies to respond (Dovi, 2017). Political representation is an important means to providing voice through assigning meaning to the manner in which groups are represented and importing significant issues and their relevance into the body politic (Young, 2000). This requires demanding more responsiveness and accountability from state institutions. This is most likely to occur when other participatory mechanisms are present (Rocha Menocal, 2014). In this context, developing more inclusive representative structures and fostering strong mechanisms of inclusion is highly significant to making asylum seekers and asylum issues more visible in Ireland.

The conference 'Beyond McMahon – the future of asylum reception in Ireland', which took place in University College Cork earlier this year, facilitated taking steps towards inclusive dialogue between a number of representative parties. It provided an interactive space that included the participation of state and non-state actors, along with a range of participants working directly or indirectly with asylum seekers. Most refreshing, it included the voices of asylum seekers. Lucky Khambule, a spokesperson from MASI (Movement of Asylum Seekers in Ireland) gave a poignant contribution, highlighting key concerns for asylum seekers and the daily injustice they face while accommodated in the DP system.

'Beyond McMahon' provided important international perspectives from both Teresa Mendes, Director of the Portuguese Refugee Council and Sabir Zazai, Chief Executive of the Scottish Refugee Council, which prompted interesting discussions on alternatives to the system of DP. These discussions made explicit the vital supports required for asylum seekers and the supports that are required upon entry into the host country. The contributions from Teresa Mendes and Sabir Zazai highlighted the important role asylum seekers play in their own agency and the enriching and positive contributions they make to the host society. In both contributions, the right to work was highlighted as playing a crucial role in supporting asylum seekers to integrate into community life. Promoting autonomy within the asylum seeking community was also viewed as a key factor in ensuring successful and inclusive participation and integration. These inclusive and supportive systems of reception illustrate how the Scottish and Portuguese models emphasise human security as central to their approach. It also highlights how such approaches can assist in resolving some of the tensions and challenges faced by the host population.

Endorsing such approaches in Ireland will require a more coordinated approach to asylum policy that does not involve punitive measures or prolonged periods of time in DP. This will mean prioritising rights and dignity. It will also require a willingness from all representative parties to accept that the current system is not fit for purpose and is failing asylum seekers socially, financially, culturally and politically. Bringing together all parties will prove challenging, but what the conference highlighted was the importance of building better working relationships, promoting inclusive dialogue and opening up spaces for inclusive and participative engagement. Enhancing working relationships must place asylum seekers at the forefront of this process. This will require new and different approaches, one that treats asylum seekers in a more humane and dignified way and as people with agency who can make a valuable contribution to Irish society if given the opportunity to do so.

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Part IV:
Alternative Approaches to Direct Provision

Residents' Perspectives on the Future of Asylum Reception in Ireland: Reception Centre Consultations – June/July 2018

Maria Bateson[1]

Introduction

What progress has been made since the publication of the 'McMahon' Working Group Report (2015) on improvements to the protection process? And what could the future of asylum reception in Ireland look like beyond 'Direct Provision'?

Here we draw from group consultations conducted by Nasc with residents of five different reception accommodation ('Direct Provision') centres in Ireland, carried out in June and July 2018. During these conversations, we asked the residents to consider the present and future of asylum reception in Ireland, following a conference on the same topic, co-hosted by UCC's Centre for Criminal Justice and Human Rights and Nasc in April.

First, before looking to the future, it is important to consider what has come before. The Working Group ('McMahon') Report (2015) on improvements to the protection process laid the groundwork for this project. Emerging from a nationwide consultation with residents of Irish reception accommodation centres, the Working Group recommended 173 changes to the Irish protection process to the Government. Since then, the Department of Justice has issued three follow-up progress reports. The last, published in July 2017, indicated that 98% of the Working Group's recommendations had either been fully or partially implemented.[2]

However, Nasc subsequently challenged this figure based on an extensive audit of the implementation process, arguing that the stated 98% figure was considerably overblown. Progress since 2015 had, in fact, been glacial and piecemeal across several government departments.[3] This contention forms the backdrop to the following account, in which residents echo many of the same issues raised in the McMahon Report, signalling an absence of fundamental progress since 2015.

This piece aims to highlight some of the key issues around the protection process raised by the residents we spoke to. However, this is by no means an exhaustive account of the topics we discussed; nor does it attempt to address all of the pitfalls present in the Irish protection process today.[4]

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[1] Nasc, the Migrant and Refugee Rights Centre.

[2] Report of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports for Asylum Seekers, *3rd and Final Progress Report on the Implementation of the Report's Recommendations* (June 2017), available at: www.justice.ie/en/JELR/3rd_WG_Progress_Report_-_July_2017.pdf/Files/3rd_WG_Progress_Report_-_July_2017.pdf

[3] Nasc, *Working Paper on the Progress of Implementation of the McMahon Report* (December 2017), available at: www.nascireland.org/latest-news/nasc-publish-working-paper-governments-progress-mcmahon-report/

[4] For further information, please refer to the full report on Nasc's website: www.nascireland.org.

The following themes were selected as the most pressing. First, length of time remained the most prominent issue. Secondly, especially given the length of time, access to education and the labour market were key concerns. Finally, reception conditions and alternatives were also important.

Application Processing

Wait-times and processing

Notably, wait-times for first interviews and decisions in the Irish protection process are increasing, with a recent report citing an average of 18-20 month period between submitting an initial asylum application and receiving a first interview.[5] This is despite the commencement of the International Protection Act (IPA) in late December 2016, whose 'single procedure' mechanism actually aimed to significantly expedite the protection process.[6]

Those we interviewed appealed for a significant reduction in wait times, some proposing a 3-6-month upper limit between application submission and first interview. Indeed, several residents described the negative psychological effects of an indefinite application process:

> "You know, when you've got so much time on your hands, you think a lot. And when you think a lot, the stress just builds up, and at the end of the day, you get depressed. You just look around, we're crying in our rooms. Close the door and just cry the whole day, because you don't have anything better to do."

"You know, when you've got so much time on your hands, you think a lot. And when you think a lot, the stress just builds up, and at the end of the day, you get depressed."

International Protection Office (IPO) decisions

A possible contributor to excessive wait times, the quality of IPO assessments was also a source of concern for applicants. One resident's case, for example, had been researched through a search engine:

> "I met my interviewer first time. I got refused and they said they couldn't find my specific problem in the Google."

Other comments further signalled a lack of trust in the IPO's decision-making ability. These included claims that IPO staff 'don't have any experience', and that if a protection applicant failed to 'tick (the) boxes' then they would be 'out'.

Information provision

Even allowing for current wait times, we asked whether known time limits for each stage of the protection process would make it more tolerable. The answer was unanimously yes. As one resident affirmed:

[5] https://www.esri.ie/publications/irelands-response-to-recent-trends-in-international-protection-applications/

[6] International Protection Act (2015), Article 39(5) – an aim of 6 months between the lodgment of a protection application and a first instance recommendation is listed.

> "I think that (known time limits/guidelines for application process) would be helpful. It's not nice to be waiting in a limbo. Not knowing whether you're going or you're coming. … So, I would prefer … knowing than not knowing. If it's gonna take three years, let me know, then I know."

"It's not nice to be waiting in a limbo. Not knowing whether you're going or you're coming. You don't know, you don't have a direction. So, I would prefer … knowing than not knowing."

In addition, better and more frequent departmental communication was requested by many:

> "We should have access to information as well, you know. We should have people coming in, telling us what's going on, you know ..."

Several noted that this information did not necessarily need to be significant; it would simply assure applicants that they hadn't been 'forgotten'. Such information could include clarification of how particular cases are prioritised, which appeared to generate tension among applicants. One resident proposed a simple solution – an online application tracker:

> "… whereby … you can go online, put in your personal ID and stages provided – (for example) red, green, yellow …"

Access to Education

Access to third-level education was also a large concern for the individuals we spoke to. Younger residents noted that, after finishing secondary education, there was little or no financial provision to pursue further training or studies. As one person described it:

"They want to go to college. They want to study more. And now they don't know what's the next step."

> "(T)here are plenty of children that are going to school and … they're finishing (the) Leaving Cert, and now don't know what to do. … See? They want to go to college. They want to study more. And now they don't know what's the next step … what should be the next."

For others, access to education was key to maintaining positive mental health and skills. One woman described the current system as 'suppressing', and noted that, "If you know you can fend for yourself, you know you can contribute something, you feel more human …". The inverse – an inability to attain further education – was described by another as 'heart-breaking':

> "... we all have qualifications, but we can't do anything. We all must forget what we already know, and what we are capable of doing, because of the length of time."

Right to Work and Direct Provision Allowance

In the same vein, universal access to the labour market was considered an essential step towards a more humane reception system. Work, like education, not only enables economic self-sufficiency, but helps to retain key skills while waiting for a decision:

> "Even if you're still working, we don't know what the decision is, whether it's negative or positive, but you know that you've achieved something."

"If you know you can fend for yourself, you know you can contribute something, you feel more human …"

In fact, new right to work provisions for asylum seekers under the EU (recast) Reception Conditions Directive 2013/33/EU emerged during the consultation process. However, a number of people expressed doubts around the new provisions. One challenged the income-assessed 'rent' levels cited for Direct Provision accommodation:

> "They say, you have to pay rent. It's … nine hundred and something a month!"[7]

Others noted the structural difficulties in attaining certain jobs, and questioned the six-month mandatory renewal period for continued access to the labour market.

Additionally, the weekly Direct Provision Allowance of €21.60, was unsurprisingly considered to be too low and unworkable. One resident we spoke to said:

> "(I) don't know their calculations, but from our own calculations, if we can raise it up to like 50, or even 60 (euro), because at the end of the day they might think that we don't have to spend money. Of course we need … to spend money …"

Reception Conditions

Although decision processing and access to education and work are understandably priorities for many, a humane and rights-based protection process equally hinges on reception conditions. During the consultations, residents discussed the biggest pitfalls of current Direct Provision accommodation (space and institutionalisation being particularly significant); and described preferable alternatives.

Space allocation

"(In) a small room like this, if she has to study, we have to start moving things around. Take the chair, put it in under the table. Then she has to go in under the table …"

The centres we visited during this process encompassed the 'three broad types' of asylum reception accommodation as laid out in the McMahon Report: that is individual rooms allocated to families, with shared communal space; rooms allocated to single people, also with shared communal space; and self-contained units.[8]

The latter, self-contained units, represented a minority in the centres we visited, but where they existed were viewed as beneficial. As one resident observed:

> "… you know, before it was, like, … everything, in one apartment, more people. Now they're providing one apartment (for) ... each family. So it's nice. A nice change …"

[7] http://www.inis.gov.ie/en/INIS/form-LMA7.pdf/Files/form-LMA7.pdf
[8] Working Group Report (2015): 152.

However, in communal accommodation residents noted inadequate personal living space. Some shared bedrooms with their children, and as a result both children and parents found it difficult to study, work or achieve any degree of privacy.

One woman described the ordeal she and her daughter routinely faced in order for her daughter to study in their bedroom:

> "(In) a small room like this, if she has to study, we have to start moving things around. Take the chair, put it in under the table. Then she has to go in under the table like this (*imitates ducking under desk*) so she can go … The space is so small. I have asked them to give me a better room for me and my child. Let alone privacy. I don't know privacy."

In another centre, which accommodates single people in multi-occupancy rooms, some rooms house up to six people. Other residents there said they were sharing with two or three others, although one of these rooms 'was supposed to be just for one'. One resident added:

> "... It's like, it's not comfy. And people are around us, you can hardly (move) …"

We also heard concerns around shared bathrooms, with up to eight people sharing a single bathroom. This, as the McMahon Report notes, can aggravate issues around personal identity and privacy.[9] Indeed, one woman recalled recently having to share a bathroom with male residents, something that distressed her considerably.

Food and cooking facilities

As in 2015, food also presented a major challenge to many of the people we consulted. The centres we visited included both full board and self-catered facilities. In the former, where three meals are provided daily, tightly regulated eating hours were symptomatic of broader institutionalisation. One man said, "We don't have choices here. It's like I'm a baby, I'm a prisoner." A resident of a different centre agreed:

> "(I)t has some kind of impact on psychology, you know. You know in the morning, you wake up, you go in the line. … It's like … a prison, going for food."

Furthermore, the meals provided were described by several people as culturally inappropriate and generally of poor quality. One woman explained why the food was a personal challenge:

> "Because at the end of the day, we are people from different nationalities, different backgrounds, cultures and everything. They are doing their best. The best they can. But what they're cooking is not our food."

Indeed, certain centres, despite having a kitchen for use by residents, did not have shops with points-based systems, despite McMahon recommendations. Purchasing food without a shop on the premises was understandably considered unfeasible on a weekly allowance of €21.60 per person. One resident in a full board centre accordingly argued the case for a shop and cooking facilities:

"They are doing their best. The best they can. But what they're cooking is not our food."

[9] Working Group Report (2015), Article 4.203: 195.

> "Without provision of points on card … we cannot get our food stores, go to the kitchen, cook our stores once in a while. I think it would help us, it would be better …"

However, where present, the shops in certain centres presented their own challenges – namely, inexplicable point/price mark-ups and an insufficient allocation of points, especially for children and infants.

Despite this and other shortfalls such as inadequate provision of cooking utensils, independent cooking facilities were considered to be vastly superior to full board accommodation. Indeed, as another resident testified:

> "(P)reparing meals for ourselves … that's what is great. Someone can prepare anything they like, because usually they (centre kitchen staff) prepare things that we're not used to or things that you don't like, so if the (preparation is) to ourselves, that is great."

"Preparing meals for ourselves … that's what is great."

Post-decision Accommodation

When considering alternatives to reception accommodation, it is important to be aware of the difficulties faced by those granted status or permission and searching for social or market housing. One woman described her predicament:

> "I got my papers since about three years now … I'm still in this situation. I (don't) know how I will get the house … Because this is three years now, and I'm not feeling fine. I'm not feeling fine. Sometimes I get angry."

She wasn't alone. Another resident, who had been searching exhaustively, said "they know we're asylum seekers, so they don't want to give us."

Worryingly, this was a problem identified three years ago in the McMahon Report. It speaks of structural as well as well-publicised infrastructural barriers to housing; and could also go some way to explaining bottlenecks in the provision of asylum reception accommodation.

Alternatives

Having discussed where things had – and, realistically, hadn't – improved, we broached the bigger question: what should an alternative to Direct Provision accommodation look like?

Communal hostel-like accommodation was considered by some to be viable as an immediate, short-term measure, but one that should be swiftly replaced by more private, self-contained accommodation. One resident acknowledged that reception centres had their place in helping to orientate newcomers:

> "(W)hen you get into a place, you don't know where the shop is, you don't know where the doctor is, you know. So it's ok for me to come and stay here, but for a limited amount of time."

However, on a long-term basis, the main preference was for self-contained accommodation:

> "... to be quite honest, I want to be independent. What you're talking about, for me, I think I've heard about, it's called self-contained, or self-accommodation. You have your kitchen, your bathroom inside one room and everything. It's lovely, it's a good idea, I would love it if it's plausible … I would."

For some, own-door accommodation was also important for integrating into the local community, while institutional accommodation tended to 'other'. For example, one resident noted that:

> "When our kids are going to school, the people know these kids like the '(Centre) kids', (Centre) people. They don't have their own names, they don't have their own personalities here."

"When our kids are going to school, the people know these kids like the '(Centre) kids', (Centre) people. They don't have their own names, they don't have their own personalities here."

Indeed, as another resident summarised, "If we had that (private accommodation), you wouldn't even think that I was an asylum seeker."

Conclusion

The above account has significantly condensed a series of much broader discussions. Nevertheless, in selecting the key themes raised, it serves to highlight that asylum reception conditions since McMahon remain largely unchanged.

Indeed, as in 2015, processing and length of time remained the primary concerns for asylum seekers. However, the mechanics of the IPO are a new strand since McMahon, wherein questionable decision-making and backlogs remain a cause for concern. Other key structural barriers limit access to education and work. While the provisions around the access to the labour market improved over the course of this consultation process, the inability of most asylum seekers to access free third level education remains a pressing concern. The three combined – access to education, work and wait times – arguably overshadow reception conditions. However, the institutional and cramped nature of Direct Provision centres, shortage of facilities and full-board food provision remain key issues. Indeed, the two – reception conditions and administrative processes – are correlative; if one is improved, the other may be more tolerable, at least in the short term.

Overall, the persistence of the same or similar structural and reception-related problems as in 2015 indicates a need for an ambitious, systemic and, importantly, accountable overhaul of the asylum reception system. Such an overhaul, although looking beyond Direct Provision, should nevertheless be informed by the voices of those who have experienced, or are experiencing, the protection process in Ireland as it stands. Indeed, the above voices are a reminder that establishing a genuinely humane system should be the guiding principle of any future asylum reception system.

We would like to thank all the residents who shared their experiences with us and the Irish Human Rights and Equality Commission for their generous support throughout this project.

McMahon Recommendations – A Bridge to the Future Reception System in Ireland

Stephen Ng'ang'a[1]

Introduction

In this paper, I will present the McMahon recommendations as the bridge to the future asylum reception system in Ireland. I will draw comparisons of the past and recent developments within both the asylum system and other unrelated areas to build a case for a better system looking into the future. I will make an analogy between the historical rail public transport infrastructural developments especially in Dublin city in last century and the formation of Direct Provision (DP) in the last two decades.

Although the comparison is more observational than scientific, it probes the reasoning behind use of public resources, protection of asylum seekers' respect and dignity, whether taxpayers get value for their contributions and whether developments cited make sense for the common good of society like the formation of DP centres in 2000. These observations also place me within the unfolding developments as a Dublin resident, a Direct Provision resident and as a member of the Working Group on protection process, hence my bias and choice of the use of McMahon recommendations as a "bridge" to the future reception system in Ireland. I will back my observations with some references from the McMahon Report and other sources, which I believe will reduce the bias mentioned to make this paper balanced in its general outlook.

The tram analogy

O'Connell Street – Dublin in 1916
(Notice Tram Tracks)

O'Connell Street – Dublin in 2000s
(No Tram Tracks)

O'Connell Street – Dublin in 2018
(Tram is Back)

As Ireland celebrated its centenary since the Easter Rising in 1916, pictures of Dublin of 100 years ago were displayed and exhibited in museums and libraries across Ireland. These pictures told the stories of the struggle towards freedom and liberation. The 1916 Proclamation was also displayed and promoted, it was an eye catcher. The words in the Proclamation were profound, very forward looking and filled with empowerment and resolve. Particularly, some of the words like "*The Republic guarantees religious and civil liberty, equal rights and equal opportunities to all its citizens, and declares its resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all of the children of the nation equally…"* are striking and prompt the question of whether Ireland as a nation is living up to the expectations of their forefathers.

[1] Core Group of Asylum Seekers and member of McMahon Working Group on the Protection Process and Direct Provision.

Trams were in operation in 1916. You could see pictures of a busy O'Connell Street with trams moving up and down ferrying people to various destinations. The tram tracks disappeared over the years just to reappear as recently as 2017 on O'Connell Street. Prior to 2000, asylum seekers were allowed to work and seek employment. They lived within the community and it was easy for them to integrate into the wider society. The introduction of Direct Provision (DP) denied them the freedom to independence. Their living conditions worsened, they were pushed into poverty, child poverty became a reality for children in DP and asylum cases took years on end to resolve.

Having made the comparison, I wondered what was happening because I could see two un-matching scenarios with the same characteristics of retrogression rather than development. Are these scenarios perhaps a proper example of double standards or experiences that we should probe further using social tools to understand them better? Why were the tram tracks removed in the first place only to be reintroduced recently? In addition, why was DP introduced and now we have started going through the process of giving people back a level of independence? The right to work is given on paper but is very restrictive in nature, introduction of cooking facilities and some level of independence though all curtailed in some way. I wondered if this was engrained in the Irish psyche and way of doing things. What might have happened that this scenario seems glaring in the areas mentioned and were proper decisions made in the use of resources. Was it not easier to leave the tram infrastructure intact and upgrade as time progressed? Was it not easier to develop the asylum system around the existing framework then rather than introduce DP, which would curtail people's freedoms? I am sure there is more than meets the eye to these situations as simplistic as they may seem.

The McMahon Working Group (WG) and the 1916 Proclamation

The McMahon recommendations came on the foot of eminent conflict and tensions between asylum seekers and government. Inhumane living conditions within many Direct Provision (DP) centres, inconsistent services and generally a very toxic environment of abhorrence of human rights including children's rights and the use of the asylum system as a weapon of denying people the right to work, access to education and other basic services just because they did not have a legal status in Ireland.

After 14 years of DP's existence without any proper review, in 2014 the then Minister of Justice, Frances Fitzgerald convened a Working Group under the commendable stewardship of Judge Bryan McMahon. The group was to report to government recommendations that would, firstly improve existing arrangements in the processing of protection applications, and secondly show greater respect for the dignity of persons in the system and improve their quality of life by enhancing the support and services currently available to them.

While ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer would be reduced or remain within, or close to, current levels and that existing border controls and immigration procedures would not be compromised (WG Report, p.27). The group was divided into three thematic groups (WG Report, p.29): (1) Suggest improvements to DP; (2) Suggest improvements to the supports; and (3) Suggest improvements to the protection process.

The spirit and tone of the terms of reference, especially those with the aim of showing greater respect for the dignity of persons in the system and improving their quality of life, were in line with the ideals of the 1916 Proclamation regarding equal rights and equal opportunities for all. However, there were criticisms of the TOR in relation to the composition of the group and the need for more asylum seekers' voices at the negotiation table – following the "wearer of the shoe" adage. In addition, it was felt that the terms of reference should have been a bit radical and rather than simply improving the system of DP, there should

have been an opportunity for the members to seek an alternative and more effective reception system that could replace DP.

Even with these limited TORs, the WG convened and came up with 173 recommendations, which strongly uphold the values of 1916 with regard to equal rights and equal opportunities. Members of the group agreed that a focus would be maintained on children throughout all substantive discussions at the plenary and sub-group level (WG Report, p.30), which was entirely in line with the Proclamation ideal of "cherishing all our children equally."

Unique to the process was the manner of consultation. All asylum seekers had the opportunity to contribute their views through various representative groups to participate; hence making up for the lack of numbers at the plenary. It involved written submissions from DP residents, regional sessions with residents and visits by WG members to centres for first hand consultation with residents, consultations with particular groups of persons for instance victims of torture, victims of trafficking or sexual violence and members of the LGBT community. It also allowed selected participants to make oral submissions to one of the WG's plenary sessions.

To me the consultation process was a unique opportunity for asylum seekers to raise concerns about the situation they were living in and to recommend possible solutions. I asked some of the participants about their views of the process. Some were sceptical and lacked the conviction that their voices would be heard and that their views would be respected through the implementation of the report. It is over 3 years since the report was published and they say that although their views were articulated in the report, most of the recommendations have not been implemented in full, leading them to believe that their initial scepticism was, in fact, justified.

Some Recommendations and Chart of Comparisons

As earlier mentioned**,** the WG made 173 recommendations; among the major ones were the long stayers solution, the right to work and increment to the DP allowance. Ireland until recently did not allow asylum seekers to work. Many of the human costs associated with the ban on access to employment are similar to the negative impacts of living long-term in Direct Provision. For instance, boredom, isolation and social exclusion, obsolescence of skills, creation of dependency, negative impacts on physical, emotional and mental health. (WG Report, p.210)

The Working Group considered all these factors and in the course of the consultation, asylum seekers raised their strong desire to work in order to support themselves and their children. They also profoundly recounted the negative effects of not being allowed to work upon their sense of self-worth, their health, and their future prospects, including those of their children.

The WG recommended that: "*Provision for access to the labour market for protection applicants who are awaiting a first instance decision for nine months or more ... should be included in the International Protection Bill and should be commenced when the single procedure is operating efficiently."* (WG Report, p.211)

This recommendation would restore dignity and would be a step further in the eradication of extreme poverty among asylum seekers and their children. It would give equal opportunity to those seeking protection to have the independence of determining their future and that of their children. Of course, the right to work is not necessarily limited to accessing the labour market. It can also entail job-creation through innovation and the starting-up of businesses. Many asylum-seekers are endowed with both innovative and entrepreneurial skills. Perhaps this wider perception of accessing the right to work should be considered

when discussing this issue. Although the right to work was granted recently in 2018, there are more barriers for asylum seekers to make it a meaningful reality. There are those who cannot access this right because the right came in too late after they had already gone through first interviews.

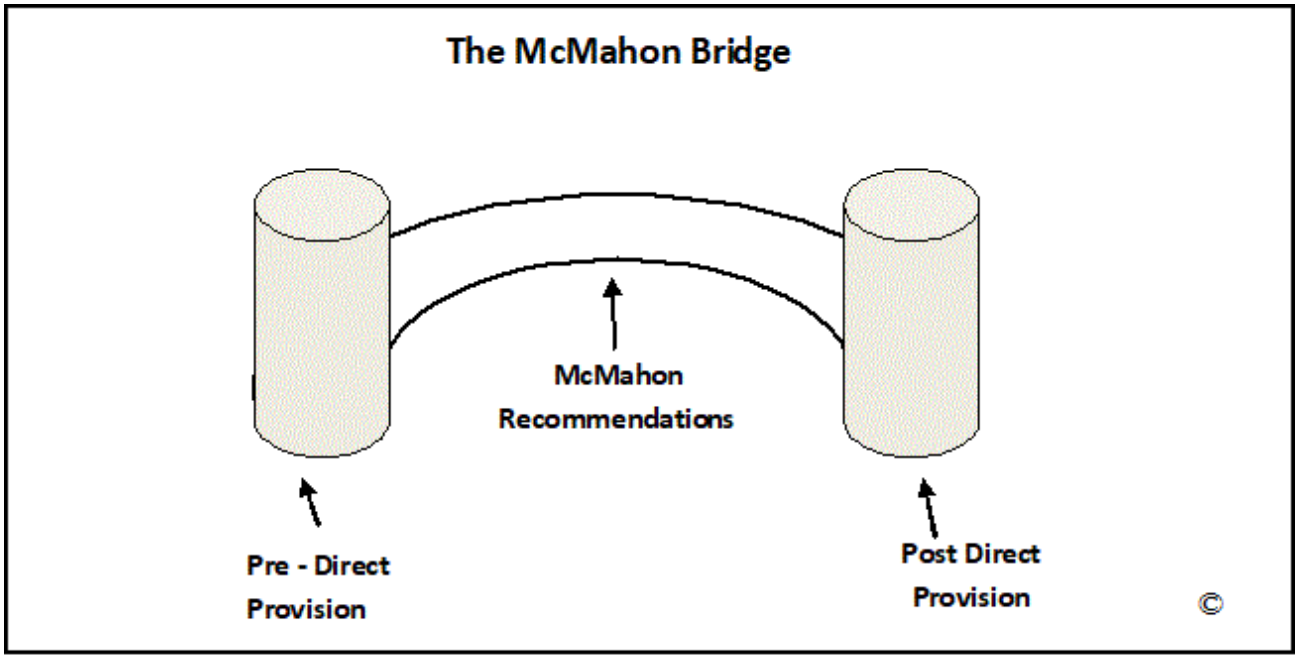
Since the creation of the DP system in 2000, adult asylum seekers were entitled to a €19.10 (recently changed to €21.60) weekly allowance and until January 2016, children were getting €9.60 per week. The Children's Allowance was increased to €15.60. The WG researched into the history of the allowance as a "comfort payment" and noted that it had not increased in line with other Social Welfare Payments and did not meet its ratio of 20.83%. Child Benefit had been discontinued in 2004, and a prescription charge introduced in 2013 of the same amount. The group also consulted with asylum seekers and was convinced that an increment to this allowance would go some way towards restoring dignity and improving people's lives. Although there were other proposals, the group agreed that: "*The Direct Provision weekly allowance for adults should be increased from €19.10 to €38.74 for adults and from €9.60 to €29.80 for children."* (WG Report, p.208)

Asylum seekers in DP are living below the poverty line with their children pushed further into extreme poverty. The increment of €6.00 does not reflect the Working Group recommendation; it does not meet the Qualifying Child (QC) threshold and does not reflect the ideals of the 1916 Proclamation.

Although in the recent past the government has hinted it will be increasing the allowances this is yet to become a reality. It is my hope that these recommendations will be implemented in full. The chart below shows analysis of the developments within the asylum system so far and looking into the possibilities of further developments into the future.

Conditions Pre-2000	Direct Provision	McMahon	Future
Right to work Availed	Right to work Abolished	Recommends Right to work	Easy access to work without restrictions
Child Benefit was given to all children	Child benefit Abolished – increased Child Poverty	Recommends increase of child allowance in accordance to QC	All children treated the same in Ireland – important for integration
Housing available within community	Restricted space and designated centres	Self-catering and cooking space – More space for everyone including children and adults	More houses availed that people will not be restricted to centres
Integration – people felt part of community	Exclusion and isolation, designated hostels, easy to be preyed on by racists	Transition support	Part of society
"Welcome" – people felt welcomed	Push and pull factors cited – Restrictions, Deportations	Decriminalisation of failed asylum seekers – 5 years no deportation upon review of criminal records	Less time to process applications to avoid escalation of depression, desperation etc
Access to education	EU fees payments expected	Access for children transitioning to third level	Full access to education

The McMahon Bridge



As I have mentioned throughout this paper, I believe the McMahon recommendations gave asylum seekers greater dignity and respect. These recommendations created a bridge for future action that will strengthen dignity and respect for asylum seekers. The responsibility of implementation lies in the hands of the government. So far, the implemented recommendations continue to have positive results in the asylum system. We need to remind ourselves that:

- ✓ The pre-2000 system was more robust. It was efficient, facilitated integration, minimised racism, segregation, right to work was accessible, and children allowance included child benefit. Children in DP are not as cherished as they should be – they are caught up in the net of extreme poverty because of the lack of equality accorded to them.
- ✓ The reason government created the McMahon WG was because DP was a broken system. It was failing to address human rights, respect dignity and other issues like long stay in DP, poverty with no change to allowances, child benefits, deportations, living conditions, and no consistency in standards across the system. The contractors of DP services are there to make profits and operate on business models.
- ✓ Looking into the future, if all recommendations were implemented to the letter and no politics involved we could see meaningful integration, economic challenges and hardships minimised, stereotypes and racisms reduced, inclusion in communities, participation in community life including politics.

However, there are a number of considerations we need to make to fortify the bridge for a better reception system for the future,

1. Integration policy needs to thoroughly consider issues around housing, access to education, access to health care and equal opportunities to employment in both the public and private sectors.
2. Creation of active citizenship forums to involve former DP residents. These forums will promote participation in activism and advocacy to make sure people are treated with dignity in reception centres.

3. Political will is needed to make sure resources are used effectively and allocated in the implementation of reports like the McMahon working group recommendations they should be on priority lists for government programmes.
4. National dialogue on how refugees and asylum seekers are welcomed and integrated into the society; there are no special refugees – all require to be treated with respect and dignity.
5. There are other alternatives to DP, which are cost effective and efficient. There is need to invest in a system that is more robust in addressing human rights and human dignity.
6. Rolling basis for particular recommendations like the 5-year long stayers solution should be implemented indefinitely. This will reduce the current backlogs in the system.
7. Respect of human rights to privacy, movement, right to work with no restriction and other fundamental rights should be at the heart of any policies on asylum seekers and refugees.
8. Impact Assessment should be constantly conducted especially if the services are tendered to private contractors who are interested in profits.

Conclusion

I believe the McMahon WG operated within its remit and upheld some of the ideals of the 1916 Proclamation, in the areas of fairness and justice. All the recommendations created a bridge for the restoration of human rights and dignity among asylum-seekers living in DP.

Some of the aspirations of the 1916 Proclamation can be achieved if all children in Direct Provision are treated equally like their counterparts and given the benefits that should be accorded to all children in Ireland. These include child benefit and the right to family life, inclusive of seeing their parents preparing meals for the family and enough space to grow and blossom to their full potential. Asylum seekers want to participate in the economy through paying taxes. They want to feel part of the Irish society. A system that provides these opportunities is what was envisioned in the McMahon recommendations.

The system of DP does not encourage inclusion, yet inclusivity is a strong message in the 1916 Proclamation. There is an alternative to the system – perhaps even reverting to the pre-DP system where asylum seekers were allowed to work and lived within the community without exclusion. The bridge has been created through the recommendations – now it is up to the government to implement all the recommendations for a better reception system looking into the future.

The Life in Direct Provision Beyond the McMahon Report

Lucky Khambule[1]

Feedback from MASI-Movement of asylum seekers in Ireland on direct provision

Before this conference in Cork earlier in 2018, we from MASI were asked for a feedback from some of the different centres in the country as what their lives were three years after the report from the working group was announced. Indeed we got some feedback from individuals and groups from the centres. The general feedback from these centres was actually similar. The general feeling was that there has been no change to the lives of the people living at the centres at all. The living conditions are still just as terrible. The treatment and the attitude from the staff leave a lot to be desired. The most common strategy used by management, as they say, is the divide and rule to keep residents separated and not even trust each other.

1. Fear and Victimisation

The fear that is imposed on the residents is such that they are unable to address problems they encounter during their stay without being victimised. The introduction of the office of the ombudsman to direct provision has not helped either, because the management still have things their own ways anyway. There is that fear that you complain some staff even threaten people about reporting them to the IPO. This freezes people of saying anything they do not agree with.

Residents are still facing oppression from RIA as they are still being threatened with evictions every time they are away from the centre for various reasons, especially education. Some centres force residents to report every time they step out of the centre noting where they are going to. This is not with regard to the three day absents based on the house rules. Some centres make their own rules just to make sure that they have a control over residents.

2. Education

Education is not being considered for a resident who happen to find a school miles away from the centre. This means that residents are given written final warning should they be absent from the centre. Some residents ended up dropping out from school out of fear of losing their beds. This is putting undue pressure on a person who wants to further their studies, but then must commute to and fro with cost supplement given for transport. Centres that are in remote areas are mostly affected by this strict rule. RIA makes it clear as a matter of policy that education is voluntary and they do not consider any transfer requests under those reasons.

3. NGOs Coming Together

We also made a point at the conference for the need for the NGOs to find a way to work together in collaboration in addresses all the issues of migrants and asylum seeking. Most NGOs have the influence and the resources in dealing with migrant's issues. The fact that they do not speak in one voice themselves does not make things easy for applicants. Until such time that NGOs unite and also fight together especially on policy issues could go a long way to make a change, even on small issues in the centres.

[1] MASI – Movement of Asylum Seekers in Ireland.

4. Lack of Implementation

Since the announcement of the report in 2015, there has been a very slow progress in term of implementation of those recommendations. Even though from the government's point of view the pronouncement is that a lot has been done, but from the residents' point of view, there is little or no obvious evidence that this effect. Judge McMahon recommended that the state should opt for the EU directive in his report in 2015, but it was not until May 2017 (Re- Court case) that the government had to look into it.

- Effectively not until June 2018 when the official announcement was made.
- Even then there are numerous challenges the current scheme imposes on applicants.
- The fact that the rule is based on the first instance refusal is problematic, taking to account the refusal rate at refugee application which is an average of 90%.
- This meant that those who had stayed longer in the system still do not have the right to work.
- Lack of driver licenses.
- Unable to open bank accounts.

5. Deportations

This is still a big problem with applicants who live in fear of being deported everyday especially after living in the state for a long time. We have seen the rise in the numbers of those refused to land since the introduction of the International Protect Act of 2015.

- In 2017 alone, 147 deportees were forcefully removed from the state.
- The cost of this number is €346,412.00.
- Between February and August 2018, 102 people were deported already.
- The approved grant up to December 2018 to carry out deportations is €393,369.00
- Expenditure for 2017 on IOM assistance was €230,399.00 (These are just voluntary returnees).
- For this year up to August 2018, the amount already paid is €198,684.00 and it is for 41 people assisted.
- 2017 departmental expenditure on flights (commercial) was approximately €530,000.00.
- 2018 expenditure up to end of July is over €400,000.00 already.

The state is spending so much money to deport people who have already established their lives in the country and integrated with society, they should be set up to succeed rather and contribute to the state.

6. Deaths and mental health issues

We have seen the sudden rise of deaths in direct provision this year alone. These deaths can be attributed to the results of the frustrations and mental health issues that are not visible and not even spoken about in direct provision. The more we see people still walking, the assumption is that people are well and fine – not knowing that they are actually suffering and dying from the inside. Mental health issues need to be addressed as a matter of urgency. The lack of activities and lack of support consistently of residents on issues like education, housing and social activities is what leads to these mental health issues in direct provision.

7. Conclusion

One can conclude that the proper lack of implementation of some of the key elements of the McMahon report by the Department of Justice and Equality means that people continue to suffer as they continue to stay longer in direct provision. If everyone could be given a proper right to work, somehow this would go a long way to make sure that people do not suffer from boredom and are not dependent on the state for a very long time. It is then very hard to get the mindset right when the time to live independently comes.

Envisioning Best Practice for International Protection Reception Conditions in Ireland: The value of a not-for-profit model

***Luke Hamilton*[1]**

1. Introduction

Ireland's system of accommodation and providing basic subsistence for asylum seekers while their applications for international protection are assessed, commonly known as Direct Provision, turned 18 this year. In the nearly two decades since its inception, Direct Provision has been subject to on-going scrutiny at the international, regional and national level. The Irish Refugee Council (IRC), together with many other organisations and individuals, has long been calling for a more humane approach to the accommodation of asylum seekers. Countless recommendations have been put forward over the years as to how some of the particularly problematic elements of the system might be improved.[2]

However, originally envisaged as a temporary measure to meet an immediate accommodation need, the current state of play with respect to Direct Provision remains by and large unchanged. Recent developments would only seem to reinforce the enduring belief that the Irish reception system, which operates on a reactive rather than proactive basis to meet the needs of the State rather than protection applicants, is unfit for purpose and in need of a radical overhaul. One consequence of the reactionary nature of providing accommodation for asylum seekers in Ireland is that the current system has reached full capacity. This problem can partly be attributed to a lack of foresight on the part of the State, as the numbers of new arrivals are not dramatically different than seen in previous years. The IRC is particularly concerned at recent reports of people being put under pressure to leave Direct Provision, as well as new arrivals being refused accommodation, with no alternative shelter being offered.[3] The need to consider alternative, sustainable and above all, humane approaches to reception conditions in Ireland has never been more pressing.

Despite these stark developments, recent legal and policy developments have laid the foundation upon which meaningful reform of the reception system in Ireland can be achieved. Ireland recently transposed the EU recast Reception Conditions Directive, which sets out minimum standards for accommodating people seeking international protection, into domestic law.[4] This brings Ireland in line with its EU counterparts, and

[1] Legal Officer, Irish Refugee Council. This article is a summary of research conducted by the Irish Refugee Council and presented in brief at the Beyond McMahon Conference held in April 2018. The overall aim of the research is to assess the feasibility of and sketch out a concept for a not-for-profit model of accommodation for people applying for international protection in Ireland. Drawing from consultations with Direct Provision residents, examples of European best practice and feedback from Irish experts, this summary article sets out an initial snapshot of what a not-for-profit accommodation model might look like in the Irish context and challenges to its realization. While the contents may not reflect the final product of the research and do not purport to offer a definitive solution to problems in the Irish reception system, this article ultimately aims to stimulate debate and inspire further research on the development of a best practice reception model in Ireland.

[2] See, e.g. Irish Refugee Council, *Recommendations on the Transposition of the EU recast Reception Conditions Directive (2013/33/EU)*, March 2018; 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 – Final Report*, June 2015; Irish Human Rights and Equality Commission, *Policy Statement on Direct Provision*, December 2014; Irish Refugee Council, *Direct Provision: Framing an alternative reception system for people seeking international protection,* 2013.

[3] Irish Refugee Council, '*Irish Refugee Council calls for Government to urgently address issue of people seeking asylum being made homeless'*, 20 September 2018.

[4] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013 L180/96.

adds an additional layer of accountability in national legislation with which advocates can push for adequate living standards. Further, the ongoing development of National Standards for Direct Provision[5] should go some way towards improving consistency and quality of living conditions across the Direct Provision estate, provided that accompanying measures are put in place to ensure implementation of those standards. In acknowledging the need for a different approach to accommodation of asylum seekers, the State has announced that a number of new calls for tenders for running reception centres will be rolled out throughout 2018 and 2019 and has encouraged NGO involvement in the tendering process.[6] Engaging civil society in dialogue on the development of Irish reception policy, with a view to finally stepping away from the current value-for-money model is a crucial step if meaningful reform is to be achieved.

The IRC believes that there is scope for collaboration between civil society, the State and other stakeholders in working together to push for a best practice model for reception conditions that is driven by human rights principles, rather than profit margins. With a view to taking advantage of these opportunities, the IRC convened a stakeholder roundtable in November 2017, including housing bodies and other civil society organisations, to explore how the tendering process might be approached from a not-for-profit perspective that puts human rights at the core. It was agreed that before any proactive steps towards engaging with the tendering process could be taken, it would be important to outline first what a not-for-profit model for asylum seeker reception that reflects best practice standards could look like on the basis of research and input from key stakeholders such as Direct Provision residents, partners in other countries where good practice was identified and experts on the Irish housing environment. This article summarises the findings of that research, setting out the basic components of what a not-for-profit model should encompass and flagging existing challenges that will need to be overcome before such a model can be adopted.

2. Beyond the Working Group: Identifying solutions through consultations with Direct Provision residents

The starting point for any consideration of change in a system should lie with those for whom that change will have the most impact. The IRC considered it a matter of priority to first approach people living in Direct Provision to obtain their perspective on what they felt could improve their quality of living while in the international protection process. The discussions were held across four focus group sessions with different target groups: women, LGBT people, young people and one general group, consisting of a mixture of men and women from various backgrounds and family make-ups. The target groups were identified on the basis of patterns and issues emerging from the IRC's Direct Support casework. While many of the suggestions for change raised by participants during the sessions were particular to needs of specific groups, a number of the key recommendations were flagged as priority issues common to all four groups. The participants' suggestions can be divided across three core thematic categories where they feel fundamental change is required in the Irish reception system:

- the **physical space** and location of the reception centre, and material needs of the residents;
- the need for reception facilities that promote **personal wellbeing and development**;
- recommendations that cut across **both the physical and personal** dimensions of accommodation and reception needs.

[5] UNHCR Ireland, '*New Standards are an opportunity to significantly enhance accommodation system*', August 2018.
[6] Seanad Statements on Direct Provision, *Opening Statement by the Minister for Justice and Equality, Charlie Flanagan TD*, 4 October 2017.

2.1 The Physical Space

Much of the criticism of Direct Provision accommodation focuses on the inadequacy of the physical structure, centre locations and the inadequacy of material provisions to suit the basic needs of residents. Almost three years on from the publishing of the Working Group Report, subsequent media coverage, independent research and reviews by international monitoring bodies indicate that little has been done to give effect to the Working Group's key recommendations with respect to the physical space people in which people are provided accommodation.[7] Indeed, discussions with focus group participants for this research indicate that core issues such as overcrowding, lack of privacy, lack of child-friendly facilities, poor food quality and isolation of residents due to the remote geographic locations of some centres remain pervasive sources of distress and are high on the list of issues that people in the Irish asylum process feel require addressing as a matter of urgency.

People participating in each of the four focus groups referred to the detrimental impact on personal well-being caused by prolonged periods of time spent living in **overcrowded environments** with little to no privacy. Scenarios were described in which rooms are being shared by 4-8 single adults at a time in different centres. Many participants flagged the effect that the lack of adequate living space has on privacy and safety in particular for individuals who may be vulnerable or have special accommodation needs that are not taken into account, such as victims of gender-based violence, victims of torture, LGBT people and people with psychological difficulties. The participants agreed that these problems could be alleviated by ensuring that reception centres are structurally fit-for-purpose by ensuring no more than two single adults per room and that families have entirely private accommodation. Additionally, residents indicated that the authorities should consider the personal preferences and particular needs of individuals prior to dispersal to long-term accommodation in centres around the country.

The value-for-money focus of the process by which Direct Provision centres are procured means that most centres are located in old hotels, holiday resorts and repurposed properties in rural parts of the country, rather than purpose-built facilities. **Themes of isolation** recurred throughout the focus group sessions, making clear that recommendations of the Working Group on the issue of isolation have not been addressed in the slightest. Participants described the knock-on effect that dispersal to remote parts of the country has on access to key support services, general mental health and integration and engagement with the local Irish community. Participants flagged practical solutions to these problems by either ensuring that future reception centres are located geographically within reach of population centres and key services, and by facilitating movement to and from reception centres by providing regular transport services or financial support in kind, by way of a travel card, for example.

Focus group participants described feelings of disempowerment directly linked to the restrictive living environments. Single adults, in particular, criticised the **lack of personal autonomy** stemming from a combination of arbitrary centre rules, inability to provide for themselves or their children due to effective poverty and no facilities for cooking or preparing their own meals. The participants agreed that self-catering facilities should be uniformly available in all centres, and not just for families or specific centres.

The suitability of Direct Provision accommodation for **children and young people** remains a key area of concern. Many of the participants in this research, including single mothers and young people themselves,

[7] Nasc, *Working Paper on Progress of Implementation of the McMahon Report*, December 2017; Department of Children and Youth Affairs, *Report of DCYA consultations with children and young people living in Direct Provision*, July 2017; Irish Human Rights and Equality Committee, *Submission to the United Nations Committee on the Elimination of Discrimination against Women on Ireland's combined sixth and seventh periodic reports*, January 2017, pp.114-118.

highlighted worrying instances of pregnant women sharing crowded rooms, parents and children sharing a single room acting as an entire living space, and young people sharing rooms with up to 7 other adults of varying ages and cultural backgrounds. Lack of suitable spaces for recreation, play and study for children and young people also remains a prevalent issue, according to the people the IRC consulted with. The participants agreed that accommodation should, at a bare minimum, be suited to the particular needs of children and young people, including ample recreational space and respect for the privacy and safety of young people by ensuring that they share rooms with similarly aged people.

2.2 Improving Personal Wellbeing and Development

The Irish State's obligation to provide a humane and dignified standard of living for people in the international protection process extends beyond simply providing applicants with a roof over their head. Asylum seekers are often fleeing traumatic and egregious human rights violations and national authorities have clear obligations to ensure that applicants are accommodated in conditions amenable to their rehabilitation and ongoing personal and professional development.

Many participants reflected on the lack of emphasis in State policy on facilitating **integration** of new arrivals within their host Irish communities from day one, noting that integration becomes exponentially more difficult after several years spent idle and isolated in Direct Provision. Feedback from the focus group sessions indicates that the value of integration is two-fold: it is closely linked to one's quality of living while in the asylum procedure but also enhances prospects for transitioning out of that system. Participants unanimously agreed that the process of integration should not begin once people are granted status but should be an ongoing process from the moment of arrival in the State. The youth and LGBT focus groups in particular described feeling invisible within Irish society and called for asylum seekers to be included in integration strategies targeting their particular cohorts.

A common thread running through the feedback from focus group participants was a feeling of anxiety associated with prolonged periods of idleness and many participants suggested solutions for mitigating the detrimental effect Direct Provision has on future prospects for careers, social and family life, and personal fulfilment. Participants noted that dedicated **transition support** would go a long way towards preparing people for life outside of Direct Provision, whether that is to find housing in a difficult housing climate, build social confidence, or to upskill and enter the job market.

Many participants commented on the ethos within the Direct Provision system, as encountered through communication with the Reception and Integration Agency to daily interaction with centre staff and management, which they described as not being person-centred. Inconsistency in quality and competency of Direct Provision management is reflected in the experiences of the participants in this study who recounted contrasting examples of compassionate, supportive centre staff against experiences of others who had allegedly been met with indifference and in some cases subject to disrespectful treatment by centre staff. Participants reflected on the need for **consistent structures of governance**, including harmonised training for centre staff and a transparent monitoring system that engages with residents directly. The development of National Standards for Direct Provision, which contains a number of provisions designed to mainstream training and standard operating procedures[8] is a positive development in this regard, however the success of that initiative depends on a robust mechanism for implementation and evaluation.

[8] Department of Justice and Equality, *Draft National Standards for Direct Provision Centres – Public Consultation*, August 2018, available at: https://bit.ly/2NbEZPG

2.3 Overlap between the physical environment and personal wellbeing

Many of the issues highlighted by focus group participants and the solutions proposed thereof during the course of discussions did not fit neatly into either of the two categories above because their implications overlap with both the physical and personal elements of reception conditions.

Participants commented on the disparity of conditions and standards across the different Direct Provision centres, which, combined with a seemingly arbitrary process of dispersal upon arrival, only serves to aggravate existing problems and obfuscate channels of redress where people require access to support services. As mentioned above, the development of **National Standards** for Direct Provision is a welcome first step in the harmonisation of practice across the reception system, however measures need to be taken to ensure that they are effectively implemented and enforced. Participants noted that clear operating procedures and lines of communication with relevant centre staff and RIA personnel, which should accompany standardised reception policy, would allow residents to more effectively raise concerns and receive feedback, reducing stress caused by confusion and lack of information.

A significant gap in the current reception system as highlighted by residents is the lack of consideration for the personal preferences or accommodation needs of people before they are dispersed to a Direct Provision centre, where they are expected to remain for the duration of their asylum application. Focus group participants agreed that people should only be dispersed to centres that meet people's particular accommodation requirements. Specific suggestions included that single mothers and families be accommodated in centres in close proximity to schools, that LGBT people are accommodated in centres close to LGBT-support networks, with roommates who are tolerant of homosexuality and diverse gender identities, and that victims of torture and trauma are placed in locations within easy reach of medical and psycho-social support centres. The foundation for effective **vulnerability identification** in the reception context has been set with the transposition of the recast Reception Conditions Directive, which places an obligation on the State to identify special reception needs.[9] The draft National Standards for Direct Provision marks a step in the right direction, containing specific provisions for vulnerability assessment[10] that should be read in conjunction with the Reception Conditions Directive.

Of course, the effectiveness of these measures depends on the extent to which the State ensures their effective implementation. Participants in the focus groups noted that a key barrier to meaningful reform is the lack of consultation with residents on issues that directly affect them, particularly in the regular inspections carried out by RIA. RIA states that 'clinics' are held at least twice yearly where RIA staff attend centres to provide opportunities for one-to-one discussion with Direct Provision residents.[11] However, participants in this research indicated that they had never been directly consulted by the State as a part of any evaluation measure and that they have limited to no opportunity to put concerns directly to RIA or other relevant departments. As well as clear channels for communicating concerns to management and RIA, participants agreed that all Direct Provision residents should have the opportunity to input into **an independent evaluation process**, that is wholly separate from RIA and the State.

[9] S.I. No.230 of 2018 European Communities (Reception Conditions) Regulations, Reg.8; Transposing Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013 L180/96, Art.22.

[10] Department of Justice and Equality, *Draft National Standards for Direct Provision Centres – Public Consultation*, August 2018, Theme 10.

[11] Department of Justice and Equality, Reception and Integration Agency, *Inspections and Clinics*, available at: www.ria.gov.ie/en/RIA/Pages/Inspections_Clinics

3. The Potential for more Humane Reception Conditions in Ireland: Exploring the not-for-profit model

One of the most persistent barriers to any reform of the Irish reception system is that the current method of procuring property for housing asylum seekers is centred around a for-profit ethos and involves a tendering process that prioritises value-for-money criteria over the needs of the people who will be living in that space. If meaningful change is to take place in the Irish reception system, the approach to procurement of accommodation by the State needs to shift to prioritise the needs of asylum seekers.

However, the weighting of the current tender evaluation criteria in favour of value for money means that it would be very difficult for any not-for-profit body or NGO to engage successfully with the tendering process in its current form and ensure the minimum standards required to meet best practice. Notwithstanding existing pressures on the Irish accommodation system, if the quality of accommodation provided to international protection applicants is to meet minimum conditions required under EU law and the forthcoming National Standards on Direct Provision, a greater degree of flexibility and financial investment is required by the State to ensure that human rights values are embedded in the procurement process.

3.1 Lessons learned from best practice examples: Portugal and Sweden

Cooperation between State and not-for-profit organisations in the provision of reception conditions is not a novel concept and many other European countries have implemented such an approach for years.[12] Informed by the proposals for change raised by focus group participants as described in the previous section, the IRC reached out to partner organisations in other EU Member States with a view to identifying good practice examples that might serve as a model upon which Irish authorities and relevant stakeholders could enhance reception conditions in the Irish context. In that light, Portugal and Sweden were identified as two countries which could be considered to have established reception systems that place the principles of dignity and an adequate standard of living at the core of reception policy. Notwithstanding the fact that each country takes a unique approach to providing reception conditions within the challenges and limitations of their own national contexts, not unlike Ireland, the two countries share commonalities that have contributed to a greater level of care for the people applying for protection in those countries.

On the basis of communication with experts in partner organisations in Portugal and Sweden,[13] it would appear that the particular issues flagged by the focus group participants in the Irish context simply do not arise – or do not arise to the same extent – in the national contexts of the two case studies. In Portugal, the country's two dedicated reception facilities are operated by a national NGO, the Portuguese Refugee Council (PRC). Sweden, on the other hand, has established a "whole of Sweden" model for providing reception needs, which is effectively a dispersal system (not dissimilar to that in Ireland) based on solidarity, whereby local municipalities are encouraged to sign agreements with the Swedish Migration Agency to accommodate a quota of the country's asylum seekers proportionate to each municipality's size, population and resources.[14] Both countries operate two significantly different reception systems but achieve similar results. The most

[12] All EU Member States, with the exception of Ireland, the UK and Denmark, have participated fully in the various instruments of the Common European Asylum System, including the Reception Conditions Directive, since the first-phase instruments were introduced between 2000-2005.

[13] Experts with the Portuguese Refugee Council and FARR, the Swedish Network of Refugee Support Groups, were contacted as part of the wider research for this work.

[14] Report of the Swedish Government Inquiry into the reception and housing of asylum seekers examining areas for reform, 'Ett ordnat mottagande – gemensamt ansvar for snabb etablering eller atervandande (2018), Summary available in English from pp.35-43 here: https://bit.ly/2Kteu1c ; Asylum Information Database, *Country Report: Sweden 2017*, p.76.

striking commonality is the fact that authorities in both countries have established a long-standing relationship and dialogue with not-for-profit organisations and involved civil society in the development of reception policy. It is also important to note that the duration of asylum procedures in both countries is significantly shorter than that in Ireland. The result of these person-focused reception models, intertwined with effective asylum procedures, is that the issues that have become part and parcel of the Irish system are mitigated.

With respect to the issue of **autonomy**, in the Portuguese context, people are initially housed in a reception centre for the purposes of orientation and special needs assessment, before being dispersed to private accommodation after three months;[15] whereas in Sweden people are provided with a choice of private accommodation or a place in a communal, self-catering reception centre, subject to their special reception needs.[16] Identification of special reception needs takes place immediately in both countries, prior to dispersal to long-term accommodation. In Portugal, initial reception facilities have in-house, trained medical and psycho-social support staff responsible for initial and ongoing vulnerability assessment. The Swedish authorities conduct an initial cross-departmental vulnerability assessment at the outset prior to dispersal, with dedicated staff in communal reception facilities responsible for addressing ongoing vulnerability.[17] In both Sweden and Portugal, **privacy and adequate space** is prioritised in communal centres: single adults share a room with no more than one other person and families have their own apartment in communal reception centres.[18] **Integration** is frontloaded in both countries with either NGO and/or State-provided integration programmes and activities rolled out from the moment of arrival.[19] Protection applicants have the right of **access to the labour market** as soon as possible, with immediate access in Sweden and access within 1 week to 3 months in Portugal,[20] depending on individual circumstances.

The above practice resonates with the issues raised throughout consultation with Direct Provision residents in Ireland and demonstrates what can be achieved if Ireland were to move towards a human-rights based approach to reception conditions. Taking a cue from Sweden and Portugal, this should be done in line with obligations under the Reception Conditions Directive, that Portugal and Sweden have been implementing for over a decade, and measures should be taken to reduce restrictions that prevent NGO and civil-society involvement in the reception system.

3.2 What best-practice reception in Ireland could look like: Core components of a not-for-profit model

Irrespective of the reception model employed, in order for reception conditions to provide an adequate standard of living, the appropriate standards must be clearly reflected throughout the procurement process and, in the case of communal centres, the text of the contracts under which centre operators are accountable. As it stands, contracts for Direct Provision centres are typically awarded for the duration of 18 months and place a number of basic obligations on centre operators in line with Irish housing law. The contracts do not contain any requirement on centre staff or management to have experience in the international protection context or of working with marginalised groups, or the need to have regard for general issues of human rights and equality in carrying out their duties. The practical consequence of this is

[15] Asylum Information Database, *Country Report: Portugal 2017*, p.74.
[16] Asylum Information Database, *Country Report: Sweden 2017*, p.76.
[17] Asylum Information Database: *Sweden Country Report 2017*, p.60.
[18] Asylum Information Database, *Country Report: Portugal 2017*, p.74; Asylum Information Database, *Country Report: Sweden 2017*, p.76.
[19] Asylum Information Database, *Country Report: Portugal 2017*, p.65; Asylum Information Database, *Country Report: Sweden 2017*, p.56.
[20] European Council on Refugees and Exiles, *Asylum Information Database Comparator: Reception Conditions, Employment*, 2017, available at: www.asylumineurope.org/comparator/reception

that the evaluation criteria in the current open competitive tendering process is heavily weighted in favour of private actors who have property readily available to meet immediate capacity needs but which may lack the quality and expertise required to meet the needs of asylum seekers.

Furthermore, obligations on contractors are weakened substantially by imprecise language in contracts. The Office of the Comptroller and Auditor General, in its most recent review of the procurement and management of Direct Provision contracts in 2015, commented that over half of the stated deliverables are worded in vague terms that "make measurement difficult, or are stated in such a way that the matter is left to the discretion of the contractor."[21] The report recommended that the Department of Justice review the contract used for procuring Direct Provision centres to ensure that standards and timelines for deliverables are in place and to clarify the implications of failure to provide those deliverables.[22] With the State's recent opt-in to the Reception Conditions Directive and the ongoing development of National Standards, there is an opportunity to adjust the procurement process to clarify contractual obligations and encourage not-for-profit actors to engage with the tendering process by highlighting the value of NGO expert input. Indeed, as the Working Group Report notes, one benefit of a not-for-profit model is that any profits made are reinvested in the facility and provision of expert services.[23]

While by no means a definitive solution to the host of problems inherent in the Direct Provision system, the following section sketches out what a not-for-profit reception model might look like under a more human-rights oriented procurement process.

The following chart sets out in order the key elements of a not-for-profit model that would be required to meet the minimum standards envisaged by the participants in the focus groups for this research as well as obligations under the Reception Conditions Directive. The core elements were identified by cross-referencing feedback from current Direct Provision residents with examples from best-practice elsewhere that could realistically be introduced in Ireland. If the Irish State were to relax requirements on the tendering process, with a view to encouraging suitably qualified NGOs to engage in the process, this model could feasibly be piloted in one or two centres before being rolled out more widely across the reception system subject to close scrutiny and evaluation.

[21] Office of the Comptroller and Auditor General, *Report on the Accounts of the Public Services 2015* (September 2016), p.76.
[22] Ibid, 81.
[23] Working Group Report, p.154.

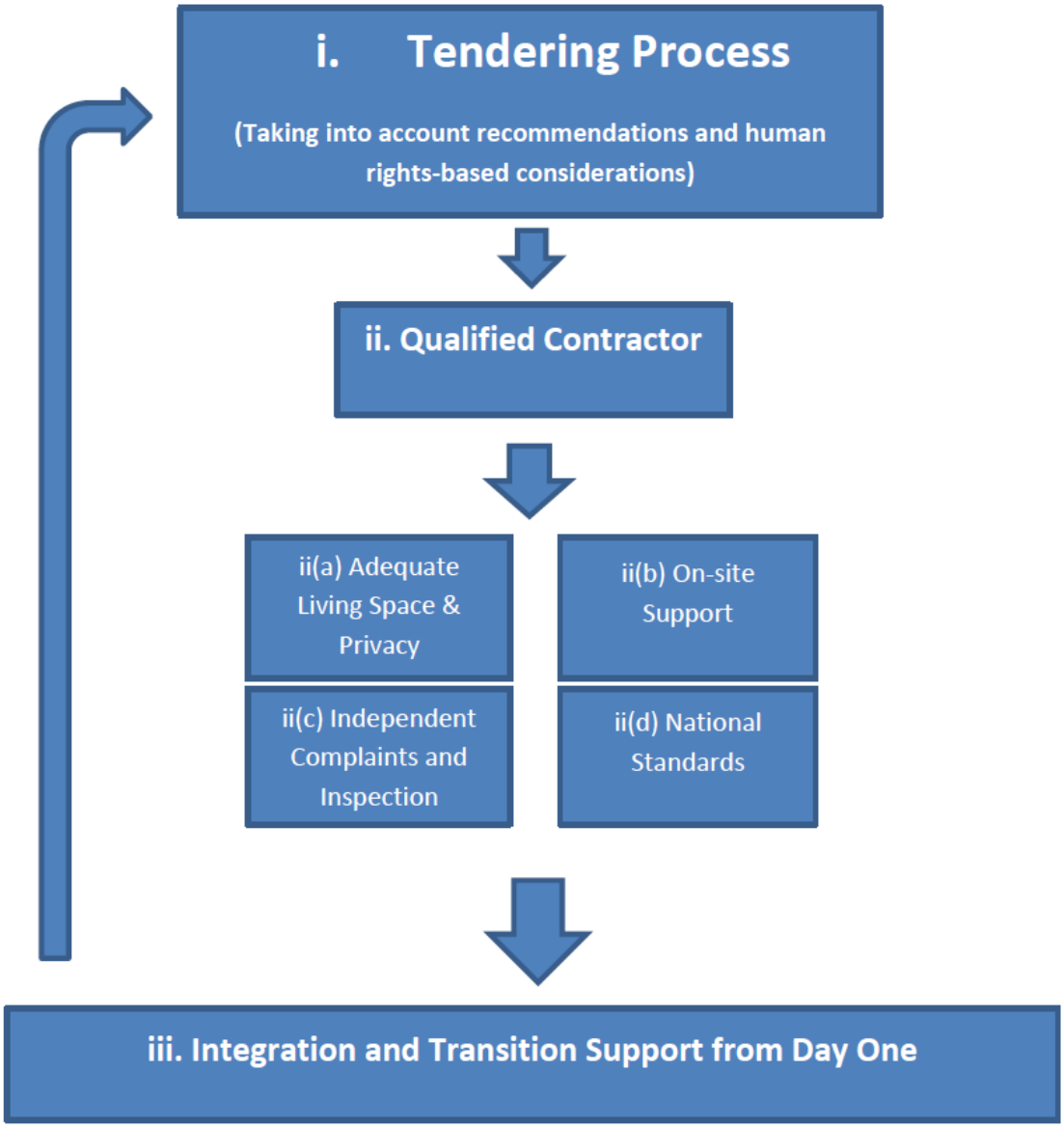


Figure 1: Key elements of a not-for-profit model

(i) A More Flexible Tendering Process

As mentioned already, if the State is serious about progressing reform of the current system, the approach to that reform must be informed by human rights as well as economic considerations. To date, no consideration has been given to the value offered by a more human rights-based alternative to the current system that, while potentially more expensive at the outset, might demonstrate better value for money in the long-term. As examples from other countries show, good quality reception conditions facilitate the capacity of individuals to fully engage with the international protection procedure and contribute to Irish society.

The evaluation criteria under the open competitive process and the specifications in the contracts themselves should reflect the issues raised by people living in Direct Provision and align with the National Standards. Contracts should also reflect the role of centre operators, as part of a robust reception system, in facilitating the rehabilitation and integration of survivors of persecution. In order to attract contractors who are committed to delivering such services, contracts should be awarded for longer durations than the current 18 months in order to ensure the security of both the reception centre residents and staff.

(ii) The Qualified Contractor

The procurement process should accommodate proposals from not-for-profit bodies that have experience providing accommodation and / or ancillary services to meet the needs of vulnerable or marginalised groups. Such proposals could also be put forward by partnerships of NGOs with different expertise in relevant areas. For example, an associated housing body with available property could submit a proposal in partnership with an NGO that specialises in providing psycho-social, legal or other dedicated support to people in the protection process. In the alternative, such a model would not necessarily preclude private actors from engaging with the process, provided they are willing to comply with best practice recommendations and standards, including ensuring that staff and management are adequately trained.

A suitably qualified contractor would ideally meet the following criteria:

(ii)(a) Provision of adequate space

The successful contractor must be in a position to provide dedicated facilities, or construct such facilities where the tender process allocates time and funds for this. As per minimum standards called for in this article and demonstrated in international best practice, living space must provide a degree of privacy and autonomy. To achieve this, the contracted centre could potentially be composed of apartment units within an apartment complex, as is the case in European counterparts. Each apartment would accommodate 4-6 single adults and contain a cooking and living space. Families should be accommodated in a private apartment where possible.

(ii)(b) In-house support

As required under the Reception Conditions Directive and envisaged in the current draft of the National Standards, staff should be adequately experienced and trained to meet the specific needs of people who may have experienced severe human rights abuse. This includes the competency to identify special needs and vulnerability that arises throughout the process. The IRC welcomes the inclusion of a dedicated "Reception Officer" in the current draft of the National Standards, whose role is to ensure that people's needs are met throughout the international protection process. The introduction of such personnel to the Irish reception system would mirror best practice examples from elsewhere in Europe and the State is encouraged to implement this, together with the other Standards, as soon as possible. Where certain specialised support is not permanently available onsite, contractors can engage with NGOs or other professional actors to establish regular medical, psycho-social and legal clinics where necessary.

One example of where a similar approach is already executed successfully in the Irish context with respect to a particularly vulnerable group, is in the provision of reception conditions for unaccompanied minors. Unaccompanied minors are accommodated in residential units that accommodate up to six young people where management and onsite social workers provide holistic care for the residents that meet their immediate needs but also with a view to ensuring successful future transition out of the centre.[24]

(ii)(c) Transparent and Independent Complaints and Inspections

The Direct Provision residents engaged with as part of this research unanimously described a lack of faith in the established Direct Provision inspection procedure carried out by RIA, which is far from independent and

[24] Tusla Child and Family Agency, Registration and Inspection Service, *Inspection of Unaccompanied Children's Residential Centre 2015*. Available at: https://bit.ly/2rFtnf0

to which asylum seekers have no opportunity to provide input.[25] With regards to mechanisms for complaints for Direct Provision residents, while the remits of the Offices of the Ombudsman and the Ombudsman for children have been extended to receive complaints from people in Direct Provision, many of the people engaged with for the purposes of this research were either not aware that such a service exists, or did not trust its independence or capacity to elicit meaningful change in their circumstances. This is notwithstanding concerted efforts on behalf of the Ombudsman to raise awareness of their role within Direct Provision amongst asylum seekers.[26]

The successful contractor must ensure that all residents are aware of their right to make a complaint and informed as to how that process unfolds. An independent inspection mechanism should be established that would ensure that due consideration is given to the voices of people living in reception centres. It is concerning that the current draft of the National Standards for Direct Provision, as released for public consultation, does not confirm the role of an independent inspectorate. Such a body should be embedded within the National Standards document, as the implementation, effectiveness and overall value of any harmonised standards will depend entirely on the presence of an independent monitoring and evaluation mechanism.

(ii)(d) Commitment to National Standards

Currently, conditions across reception centres are drastically different depending on a range of factors such as: the expertise of the private contractor, the geographical location of the centre and the quality and original function of the building. As mentioned above, any contractors should be obliged to commit to minimum standards and held accountable for failure to carry out their duties in line with such standards under an independent monitoring and evaluation process.

(iii) Integration and transition support from the outset

As demonstrated already through the personal testimony of Direct Provision residents and examples of good practice drawn from other countries, there is significant value – not just for the individual but for wider Irish society – in a reception system that promotes integration and facilitates transition to independent living from the outset. Integration needs to be at the heart of reception policy and this should be reflected in the tendering process by evaluating proposals through the lens of integration by considering the proximity of the centre to population hubs and key supports; setting out opportunities to engage with local communities; and delineating the qualifications or training required of staff to provide transition support.

Where possible, NGOs with relevant expertise can cooperate with centre management to organise regular information clinics or dedicated programmes or vocational training courses on capacity building for job searching, or assistance seeking private housing. Similarly, centre management should be encouraged to bring asylum seekers and their host community together through social events and relaxation or removal of rules on visitation.

4. Challenges to be overcome

With a view to assessing the realisability of a not-for-profit model, the IRC has approached organisations with expertise in providing dedicated accommodation and related support to people, such as associated housing

[25] RIA Inspection.
[26] Office of the Ombudsman, *Direct Provision: The story so far – A commentary by the Ombudsman* (2018). Available at: https://bit.ly/2rDEN3D

bodies, as well as experts on the Irish housing context, to obtain their thoughts and feedback. Despite widespread support for finding an alternative to Direct Provision, and genuine interest in the potential of a not-for-profit approach, there are a number of hurdles that will need to be overcome before such a model can be pursued.

First and foremost, overshadowing any discussion of the need for high quality accommodation for people in the asylum process is the ongoing issue of Ireland's housing and homelessness crisis, which has a direct impact generally on opportunities for reform of Direct Provision and specifically for individuals trying to transition out of Direct Provision. Garnering public and political support for improved accommodation for international protection applicants is a delicate task at a time when the total official number of Irish homeless is the highest in the history of the State at almost 10,000.[27] It is incredibly important to emphasise that one issue should not take precedence over the other and that the State has clear obligations to provide housing and an adequate standard of living for both homeless Irish and people in the international protection process.[28]

One consequence of the lack of affordable housing is that people are unable to move out of Direct Provision once they have been granted status. The extremely competitive housing market has put refugees, who may have spent several years in Direct Provision, at further disadvantage in securing private accommodation. Through its dedicated housing project, which assists refugees access the private rental market,[29] the IRC has documented a litany of additional challenges refugees face, including considerable financial limitations and inability to save for a deposit due to lack of income; limited social connections to assist with house searches due to isolation and poor integration prospects while in Direct Provision; difficulty engaging with landlords for people with limited English skills or suffering from trauma; and cases of discrimination by prospective landlords.[30] At time of writing, there are currently approximately 600 people living in Direct Provision who have some form of status but cannot leave due to the wider housing crisis.[31]

The bottleneck of people with international protection status who are unable, due to no fault of their own, to leave state-provided accommodation has resulted in the Direct Provision system reaching full capacity, with latest RIA reports putting the occupancy rate at 97%.[32] Through its drop-in service, the IRC is seeing a dramatic increase in the numbers of people trying to enter Direct Provision who are already homeless or face a real risk of being made homeless due to the lack of available beds and no alternative accommodation being offered.[33] Such practice is a clear failure to implement obligations under the Reception Conditions Directive to ensure an adequate standard of living for people in the protection process.

The lack of vacancies is further exacerbated by systemic delays in the processing times for international protection applications by the International Protection Office, with many applicants not being in a position to leave Direct Provision until after they receive a final decision on their case. While under EU standards applications should be processed within 6 months, the UNHCR office in Ireland has indicated that people may

[27] Focus Ireland, Latest Figures on Homelessness in Ireland, available at: www.focusireland.ie/resource-hub/latest-figures-homelessness-ireland/.
[28] See, e.g. Irish Times, 'Lack of affordable housing is key issue', 20 August 2018, in response to: Irish Times, 'Refugee family reunification putting 'pressure' on homeless system', 9 August 2018.
[29] Irish Refugee Council, *Housing Pilot*, available at: www.irishrefugeecouncil.ie/about/irc-housing-project
[30] For an in-depth overview of the challenges facing people seeking to transition out of Direct Provision, see: University College Dublin, Trinity College Dublin, Irish Refugee Council, 'Transition from Direct Provision to Life in the Community', June 2016.
[31] Irish Times, 'Warning that asylum seekers at risk of homelessness', 17 September 2018.
[32] Reception and Integration Agency, *Monthly Report July 2018*, p. 11.
[33] IRC Press Statement, 'Irish Refugee Council calls for Government to urgently address issue of people seeking asylum being made homeless', 20 September 2018.

be waiting an average of 19 months for a first instance decision on their case.[34] The consequence of this for the development of broader reform within the wider reception system is that there is a lack of appetite in the immediate term for the State to negotiate the terms of a more NGO-friendly tendering process, as it struggles to find accommodation to meet the immediate need. Similarly, associated housing bodies and NGOs are reluctant to expand their portfolio of services to asylum seekers as they come under increased pressure to provide existing key services in the current housing environment.

Despite these challenges, all stakeholders including State, civil society and most importantly people living in Direct Provision, are in unanimous agreement that the current system of accommodating asylum seekers is long overdue substantial reform. Next steps should consist of channelling that momentum through open dialogue between interested parties to tease out concerns and lay the foundation for a model that prioritises the needs of the person and ensures that they are able to rebuild their lives and make a contribution to Irish society.

[34] Irish Times, 'Asylum seekers waiting up to two years for decision, says UN', 25 April 2018.

Concluding Thoughts

Dug Cubie[1]

Most of us have never had to face the chilling reality of fleeing our homes and loved ones, arriving in a new country, and asking for protection from persecution and severe human rights abuses. Yet this is the lived experience of far too many people globally and across Europe. As we approach the 90th anniversary of the establishment of the original Nansen International Office for Refugees and the 70th anniversary of the Universal Declaration of Human Rights, the right to seek asylum remains as fundamental a human right as it was in the dark days following the First and Second World Wars. As signatories to the 1951 UN Refugee Convention, states such as Ireland have made a commitment that people will not be returned to places where they would face persecution (the obligation of *non-refoulement*) and to provide support whilst their request for protection is processed. By necessity, there will be a period of time between when someone claims asylum and when their case can be concluded. During this time, we have an obligation to treat people humanely and to respect their human dignity. How best to review each person's individual circumstances for claiming asylum, and where to accommodate them while they await a decision is, at its core, what the debate around reception conditions in Ireland is all about.

This publication is the culmination of 18 months of work to bring together a variety of voices and perspectives on the future of asylum reception in Ireland. Building on the extensive work of Dr McMahon and all the members of the Working Group on Direct Provision and Supports to Asylum Seekers, the objective of the 'Beyond McMahon' conference was to continue to explore the most effective ways to support asylum seekers in Ireland, and to hear how other countries have addressed similar questions. I believe that one of the successes of the conference and student Masterclass in April 2018 was the diverse group of contributors, and the active and informative inputs from all participants. It is important that we learn from comparable international partners, such as the Scottish and Portuguese Refugee Councils, and reflect on how their experiences can be incorporated into our own system for the protection and reception of persons fleeing violence, persecution, war and human rights abuse. Genuinely listening and engaging with the concerns and challenges faced by persons living in direct provision centres across Ireland is fundamental.[2] Likewise, we have to be aware of the resource constraints within which state agencies and decision-makers are working, and the broader homelessness crisis that is impacting so many families and individuals. It is also especially important to acknowledge the positive support provided by many local communities to residents in direct provision centres all across the country.

We hope that the diversity of views expressed in this publication reflects the different approaches advanced at the conference itself. While not everyone agreed as to what the next steps forward should be, this is part of an on-going dialogue between state actors, civil society and most importantly those currently living in or former residents of direct provision. From my own perspective, I would like to conclude with the following thoughts.

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[2] See, for example, Maria Bateson's contribution to this publication: 'Residents' Perspectives on the Future of Asylum Reception in Ireland: Reception Centres Consultations June/July 2018'.

On 10th December 2014, the Irish Human Rights and Equality Commission (IHREC) issued a Policy Statement on Direct Provision.[3] This Statement and commitment by IHREC to highlight the issue of direct provision in Ireland fed directly into the work of the McMahon Working Group. Within IHREC's policy statement were 10 recommendations, and it is useful to reflect on the positive developments that have occurred in the past four years, before moving on to consider the remaining challenges.

Of the 10 recommendations, positive action can be seen in many of them. For example, asylum seekers have been granted to right to work, albeit in a limited fashion, and the State has opted into the EU's Recast Reception Conditions Directive.[4] Likewise, there has been movement on the provision of self-catering facilities in some, but not all, centres; and the weekly allowance paid to asylum seekers was increased in the 2018 budget.[5] Of note, the Ombudsman for Ireland issued his first report on direct provision in January 2018;[6] and the new National Standards of Accommodation for Persons in Direct Provision will apply to all new contracts for direct provision centres from early 2019.

However, two central issues remain: the duration of time that many people spend in direct provision; and the type and quality of accommodation which protection applicants must stay in during the decision-making process. The reasons why many people spend years in direct provision centres are complex, and is compounded by the limited availability of affordable and appropriate homes for people who have been recognised as refugees or granted leave to remain. However, a key determinant of the length of time people stay in direct provision is the quality and resourcing of the international protection decision-making process itself. Despite the commencement of the International Protection Act 2015, considerable delays and backlogs remain. Direct provision was introduced in 2000 on the basis that an initial decision would be made in 6 months, and so asylum seekers would not spend long periods of time in reception centres. This target was repeated in Article 39(5) of the 2015 Act, yet is not being achieved. As noted by the Jesuit Refugee Service, at the end of 2017 the average waiting period until interview was over 2 years.[7] Nevertheless, despite the pressure to speed up the decision-making process, the quality of decisions cannot suffer as expedited or truncated initial decisions will only lead to lengthy appeals both to the International Protection Appeals Tribunal and to the courts. As stressed by the Irish Refugee Council, well-justified and evidenced cases at first instance result in more sustainable decisions and fewer appeals.[8]

The second key element of a humane reception system is that it must be responsive to the needs of the wide variety of people who may be residents. This is not a simple task, but the contributions to this publication have highlighted many improvements that could be implemented within the current system as well as realistic alternative approaches. The commercialised model utilised for the past 18 years should not be the only basis for discussion. A non-for-profit model, as elaborated by Luke Hamilton[9] and as implemented by

[3] IHREC, *Policy Statement on the System of Direct Provision in Ireland* (10 December 2014), available at: www.ihrec.ie/documents/ihrec-policy-statement-on-direct-provision/.

[4] See Liam Thornton's analysis above: 'A Time for Hope? The European Communities (Reception Conditions) Regulations 2018'.

[5] See Eugene Bank's contribution above: 'Beyond McMahon – The Future of Direct Provision – Accommodation and Related Services'.

[6] The Office of the Ombudsman, *The Ombudsman & Direct Provision: The story so far, A commentary by the Ombudsman* (January 2018), available at: www.ombudsman.ie/publications/reports/the-ombudsman-and-direct/index.xml

[7] Jesuit Refugee Service, *Asylum Statistics 2012-2017*, available at: http://jrs.ie/index.php/photo-gallery See also: Irish Refugee Council, *Refugee decision making waiting times at crisis point* (13 December 2017), available at: www.irishrefugeecouncil.ie/news/irish-refugee-council-refugee-decision-making-waiting-times-at-crisis-point/6147

[8] Irish Refugee Council, *Roadmap for Asylum Reform* (2011) p.4, available at: www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/Roadmap-for-Asylum-Reform3.pdf

[9] See Luke Hamilton's contribution, 'Envisioning Best Practice for International Reception Conditions in Ireland: The value of a not-for-profit model' above.

the Portuguese Refugee Council,[10] offer the potential for a best practice model which reflects both the obligations and constraints of the state with the needs of those people seeking protection in Ireland.

Finally, I would like to thank all the contributors to the conference and this publication. In particular, I would like to acknowledge the generous funding provided by the Irish Human Rights and Equality Commission for this project and their on-going support, including Emily Logan's participation in the conference itself. To ensure that the decision-making process and reception conditions for those claiming asylum in Ireland are fit for purpose, a broad coalition of actors are required to continue to shine a spotlight on the inequities of the current system. For example, we have much to learn from the proactive approach set out in the New Scots Refugee Integration Strategy and the Portuguese holistic model of NGO-led refugee reception centres. Despite the welcome changes implemented following the McMahon Report, there is still much work to be done to ensure that the Irish asylum reception system truly prioritises the needs of the residents accommodated within it.

[10] See Maria Teresa Tito de Morais Mendes' contribution, 'Reception Conditions for Refugees in Portugal' above.