



SUBMISSION TO JUSTICE & EQUALITY JOINT COMMITTEE

MASI
MOVEMENT OF ASYLUM SEEKERS IN IRELAND

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Executive Summary

MASI is the collective Movement of Asylum Seekers in Ireland, a platform for asylum seekers to join together in unity and purpose. As a group of people directly affected by the system of direct provision and as people who are currently undergoing the international protection application process, we, unlike experts and NGOs, are uniquely placed to offer direction to the Committee on Justice and Equality on these issues.

The content and recommendations in our submission are all directly informed by the experiences of members as asylum seekers; people who live every day of their lives under the dehumanising system of direct provision. The purpose of our submission is to gather together our collective experiences to inform the Justice Committee and to make a series of key proposals that will make the Irish State's asylum system compatible with minimum human rights standards.

Our recommendations are informed by a number of key principles:

- Human rights are not gifts bestowed by governments and institutions; they are rights and entitlements that we all possess by virtue of being human. People cannot be treated as 'less than' others and, indeed less than human, merely because of differences in nationality and citizenship.
- The asylum system is obliged to uphold and vindicate the fundamental human rights of all international protection applicants, including family rights, the right to privacy, the right to education, the right to work, the best interests of the child, vulnerable persons, LGBT rights, women's rights, the right to religious freedom.
- The role of the asylum system is to vindicate peoples' right to seek asylum and to live in safety in Ireland.
- The rights of the child and the protection of children in the international protection system must be a priority of the asylum system.
- Deportations are brutal and dehumanising can have no part of an ethical and human rights centred approach to asylum and migration.

- People seeking protection in Ireland are entitled to live an independent life with their families in accommodation that upholds the rights to privacy, dignity, and integrity of the person.

Our key recommendations are:

- Legal Process: The process of seeking asylum is first and foremost a legal process so it is essential that people receive all necessary legal advice and that the system is orientated towards vindicating peoples' right to seek asylum and to live in safety.
- Work: The right to work must be immediate and unrestricted for all people seeking protection in Ireland.
- Reception: People should be accommodated in reception for no longer than three months before moving into housing in the community.
- Direct Provision: Direct provision should be abolished and people seeking asylum in Ireland should have access to the same housing supports via their local authorities as is the case for others.
- Full and tuition fee free access to education and training at all levels must be available to international protection applicants.

We conclude our submission with a summary of the our recommendations that if implemented, would take Ireland away from the abhorrent and dehumanising system of Direct Provision and move towards a more humane asylum process.

Background

MASI – the Movement of Asylum Seekers in Ireland is a grassroots organisation based in Ireland working and advocating for the rights of refugees, asylum seekers and migrants. The group was founded after the protests in Kinsale Road Accommodation Centre in 2014. Our focus is on achieving the complete abolition of Direct Provision; an end to deportations; the right to work for all in the asylum system; and free access to all levels of training and education for international protection applicants.

MASI'S KEY PRINCIPLES FOR JUSTICE, & DIGNITY IN THE ASYLUM PROCESS

We want Ireland to become a leading country in the way the Irish state treats refugees and people seeking asylum. In order to achieve this the following basic principles must be enshrined at the core of the asylum system.

1. Human rights are not gifts bestowed by governments and institutions; they are rights and entitlements that we all possess by virtue of being human. People seeking protection in Ireland are entitled to justice, dignity and full recognition of their full human rights. People cannot be treated as 'less than' others and, indeed less than human, merely because of differences in nationality and citizenship. Indeed the obligation to honour human rights is greater when the people at stake are in unquestionably precarious and vulnerable situations.
2. The asylum system is obliged to uphold and vindicate the rights of all international protection applicants, including family rights, the right to privacy, the right to education, the right to work, the best interests of the child, the rights of all vulnerable persons, LGBT rights, women's rights, the right to religious freedom.
3. The role of the asylum system is to vindicate peoples' right to seek asylum and to live in safety in Ireland. The asylum system should treat people with respect and operate with the assumption of eligibility. In practice, this means moving away from current system that treats people with suspicion and is focused on undermining applicants' credibility.

4. The rights of the child and the protection of children in the international protection system must be a priority of the asylum system. Children should never be separated from their parents or deported. Children must be enabled to have a normal childhood. People must be enabled to live an independent family life and to have a home, not an institution overseen by 'managers'.
5. Deportations are brutal and dehumanising and can have no part of an ethical and human rights centred approach to asylum and migration. Deportation means returning people, often with use of violent physical force, to situations where their lives are in danger, separating children from parents, removing people who have lived here for many years in a state of limbo, and returning children and young people to countries they have never even visited. No society can call itself civilised that condones the horrors of deportation.
6. People seeking protection in Ireland are entitled to live an independent life with their families. Accommodation and living spaces in reception centre must be fit for purpose and holds the right to privacy, dignity, and integrity of the person of people seeking asylum. People seeking asylum in Ireland should have access to the same housing supports via their local authorities as is the case for everyone else living in Ireland.

Following on from these key principles we demand the following actions be taken with immediate effect in order to ensure that asylum system is fit for purpose and upholds the most basic standards of human rights.

- Direct Provision must be abolished and nothing resembling the Direct Provision system can be accepted as an 'alternative' to Direct Provision. At the very least, this means a return to pre-2000 conditions when people seeking asylum were afforded equal treatment with citizens, with the right to work and access to welfare and housing supports. This is supported by the Special Rapporteur on Child Protection recommendations in their last report.
- The Department of Justice and Equality should have no part in any thing to do with the accommodation of asylum seekers. That should be overseen by local

authorities. The reception system for international protection applicants cannot be a 'for-profit' enterprise that uses human beings as fodder for profit. It must respect people's basic human rights including the right to privacy and agency over one's own life, and it must not subject people to management by others and to the dictatorship of petty bureaucratic processes designed to dehumanise and break us.

- The Reception and Integration Agency (RIA) is not fit for purpose and must be abolished.
- The immediate and full right to work must be given to ALL international protection applicants from when they have their first 'small' interview and must remain valid until they are given a positive decision or are no longer residing in the State.
- High quality legal advice must be available to all applicants at all stages of the asylum process. The right to claim asylum is enshrined in international law; as the asylum process is a legal process, the right to high quality legal advice and representation is at the core of the right to claim asylum.
- Full and tuition fee free access to education and training at all levels must be available to international protection applicants.
- There must be transparency, accountability and oversight of what happens at the border, when people are refused entry to the country to exercise their right to claim asylum. There is no transparency about the basis of such refusals, and these decisions are made by immigration officers who often have little knowledge of asylum law.

SECTION 1: THE LEGAL PROCESS

The process of claiming asylum and seeking international protection is a legal process. From the beginning to the end of this legal process, everything that the applicant writes in their application or says in interview is part of their case and it is scrutinised for inconsistencies, gaps and mistakes – anything that could discredit a person's credibility. The asylum process is a hostile process for those going through it. **It is vital that we move away from an asylum system that treats people with**

suspicion, to a system that treats people with respect and that is focused on vindicating peoples' right to seek asylum and to live in safety.

THE NECESSITY FOR EARLY AND EXPERT LEGAL ADVICE:

The legal infrastructure of the asylum process in Ireland is often described as dysfunctional. Certain characteristic aspects of the legal process of claiming asylum in Ireland must be addressed if this State is to approach anything like 'international best practice'. First of all, the difficulty people have in accessing legal advice and assistance from qualified solicitors means that people seeking asylum in Ireland have great difficulty in getting a positive decision. People seeking international protection in Ireland are entitled to register with the Refugee Legal Service (part of the services of the Legal Aid Board) and are supposedly entitled to a solicitor and caseworker. However, the vast majority of people do not get legal advice before submitting their IPO2 questionnaire or in preparing for their main 'substantive' interview. This is not because people don't want legal advice, but because in reality the legal advice is not there. A caseworker reading through a heavily legalistic questionnaire that the applicant has attempted to complete on their own, as is the usual form 'legal advice' takes for people seeking asylum, does not constitute expert legal advice. Even when people have a solicitor at this stage of the process, the solicitor very rarely accompanies their clients to the interview. There is a tacit, informal presumption on the part of the Department that if people need legal advice, they can get it if and when they appeal a negative decision. The refusal of the State to invest in proper legal support for people seeking international protection in Ireland can be understood as a policy decision to keep the numbers of positive decisions and people claiming asylum in the state as low as possible.

WAITING & THE IRISH ASYLUM PROCESS

The refusal of the State to provide real legal support for people seeking protection is connected to the length of time that people are forced to wait at every stage of the asylum process in the Irish system. People are now waiting around a year from submission of the questionnaire to be called to their substantive IPO interview. Given that the asylum process is adversarial at its core in Ireland, with the person seeking protection more or less on their own against the system and its representatives, this

long period of waiting represents the deterioration of people's memory and powers of recall, and certainly the exact order of events and details of the claim often become confused in people's minds as time passes and capacities deteriorate in the enforced dependency and poverty of the de facto detention conditions of Direct Provision.

Once the interview is over, people are back to indefinite waiting again for many months for a decision. Even when people are given a positive decision, they can wait for as long as 8 months for the decision to be ratified by the Minister for Justice, and until they receive this declaration people with positive decisions are left in a limbo where they cannot access work, education, or any of the services and supports that should rightfully be available to them. Even when people receive a negative final decision and are living in the shadow of a deportation order, people can be left in this terrible paralysing limbo for years on end, living with a deportation order that the State does not or cannot implement.

AN ADVERSARIAL ASYLUM SYSTEM & UNSAFE DECISIONS

There are many disturbing cases of refusals being overturned after years in the appeal process. By the time bad decisions are overturned, people's lives and health have been devastated in ways that can't be fixed. In one case, for instance, a woman arrived in Ireland seeking asylum having experienced torture, rape, and sexual slavery. Her case was turned down at first instance because the Department of Justice and Equality assumed she was lying about her experiences and ignored crucial information on country of origin. After 8 years, having finally accessed the services of Spirasi who supported her claims with a medico legal report, the decision was overturned at appeal stage and the woman was granted refugee status. The Irish asylum system, based on the assumption that the person seeking protection is lying and must be found to be a liar, condemned this woman, already suffering from deep trauma after experiencing things she will never recover from, to eight years in limbo. This eight years in Direct Provision and dragging herself through the legal process in all its brutality, is something that this woman will never recover from.

AN UNEQUAL LEGAL AID SYSTEM?

One of the reasons for the difficulty accessing legal advice is the lack of proper remuneration of solicitors who take on legal aid asylum cases. Through the Private Practitioners Panel, private solicitors provide early legal advice for a set fee paid by the Legal Aid Board that covers only guidance on completing the questionnaire rather than legal assistance in completing it. This fee does not cover the cost of attending the substantive interview. For appeals, solicitors are paid a set fee of 400 euro which must be split with the barrister who attends the Appeals Tribunal hearing of a case. According to solicitors in the field, there seems to be great disparity between the state's legal aid payment rates for asylum cases as compared to other legal circumstances. Again, this indicates the state's tacit refusal to invest in legal support for people seeking protection as a way of keeping the numbers of positive decisions low.

AN UNEQUAL JUDICIAL REVIEW SYSTEM

When the IPAT returns a negative decision on appeal, this may be challenged by judicial review. The applicant has to get permission to apply for a judicial review, and this is a lengthy and expensive process. However, a further obstacle is placed in the way of asylum seekers and in many other immigration cases by Section 5 of the Illegal Immigrants (Trafficking) Act 2000 as amended. This imposes a 28 day deadline to apply for judicial review. In almost every other area of Irish law, people are granted 3 months to apply for judicial review. In this period, the applicant – most likely a person living in Direct Provision without access to basic resources such as money, transport, and social capital – has to: get a decision, get an appointment with a solicitor, who then has to decide if this case has a chance of success, get a barrister, draft the entire legal proceedings, have them translated into the applicant's language if necessary, and lodge the application with the High Court in Dublin. The timeline, in other words, makes it almost impossible for people to apply for judicial review in asylum cases. Further, there is a discrepancy in the grounds required to get permission to apply for a judicial review between immigration (including asylum) cases and all other legal circumstances, or to appeal a negative decision of the High Court. In asylum and many other immigration cases, permission to apply for judicial review is given only if the judge finds that you have substantial grounds to show that the decision was wrong. In non-immigration cases, it is only required to have an

arguable case. Finally, in asylum and many other immigration cases, a negative decision of the high court can only be appealed with the permission of the judge who decided against the applicant in the first place. We call for the removal of Section 5, creating parity between immigration and non-immigration processes for judicial review.

INTERPRETERS & THE INTERVIEW

Good quality and neutral interpreters are vital to an equitable asylum system. For many people, interpreters and translators make the difference between negative and positive decisions in their cases - through no fault of the person who is seeking protection but again because of the indifference and negligence that appear throughout the asylum process. There are no established standards in Irish legislation governing translation/interpretation services. This leads to the recruitment of unsuitable and unqualified interpreters which obviously has serious consequences for people's claims. For instance, a woman seeking protection from persecution in Iran was given a member of staff from the Iranian Embassy as her interpreter at interview. In another case, a Yoruba woman from Nigeria was given an Igbo person as interpreter – with no knowledge or care that these regions have different languages and a long legacy of conflict. There is a serious need for qualified and appropriate interpreters who are given training in the specifics of the asylum process and working with people who have suffered trauma.

OBSERVERS & THE INTERVIEW

In the majority of cases, people face the life-and-death interview that will determine their future alone. People are entitled to have their solicitor present but in most cases this does not happen. There is no independent recording of interviews and a copy of the interview record is not given to the applicant or their solicitor until and unless a negative decision is given. Even in this case, the record does not necessarily reflect everything that happened in the interview and will replicate and hide any errors of interpretation that may have occurred. This adds to the lack of transparency, the lack of accountability, and the potential for racist and unsafe proceedings in the Irish system. People should be entitled to be accompanied at interview by a person of their choosing, especially when their legal representative does not attend.

REFUSAL OF LEAVE TO LAND & HUMAN RIGHTS VIOLATIONS

There is at present no oversight, transparency or accountability for what happens at the borders of the state where every year thousands of people are refused leave to land and exercise their right to claim asylum as expressed in international and European human rights law. In 2018, 3558 people were refused entry to the state at Dublin Airport. As the UNCAT Committee observed in relation to the Irish situation, people refused entry have no way of knowing their rights or how to get legal advice and assistance. As they state, it is incumbent on the Irish state to make sure such legal assistance and information is available to people arriving at the border. Further, there must be independent observers present at points of entry to provide oversight of what is actually happening. As it is now, there is no record of why people are refused entry and no accountability.

Recommendations:

- People must get free, independent, early and expert legal advice before they submit their questionnaire and throughout all stages of their case.
- The time that the process takes at all stages must be addressed. There is no reason that the major interview cannot happen much earlier. People need to have immediate access to psychological and medical assessment and high quality legal advice from professionals trained in immigration law when they enter reception, and the interview should take place within 6 weeks in situ in the reception centre after such consultation and assistance has been availed of.
- The lack of any time limit or timeline for how long the process will take is one of the most damaging aspects of life in the direct provision and asylum system in Ireland. There must be a time limit placed on how long a person seeking asylum can be left waiting for a decision on their case, and there must be consequences for the failure of the IPO to provide a final decision within a reasonable time frame.
- Pursuant to this, a statutory provision must be made to require the Minister to grant long-term residency/permission to remain to any international protection applicant who has been awaiting a final decision for at least 18 months. This should be applied retrospectively as well as in future cases. The asylum process continues after the Minister has granted permission to

remain. This would end legal limbo for those who are currently in the system and guard against the limbo people are subjected to when decisions at all stages of the application process are not forthcoming.

- There must be a serious investment by the state into ensuring that high quality legal advice and representation is available freely to all people seeking protection in Ireland. We recommend a benchmarking exercise to compare how the legal aid available in asylum cases stacks up against criminal cases (taking into account the costs of attendance at hearings, the cost of expert medical reports, and so on).
- Section 5 of the Illegal Immigrants (Trafficking) Act 2000 as amended must be removed and parity created between immigration and non-immigration timeframes and grounds for judicial review.
- People should be able to bring an observer with them to interview. We do not want people interacting with the Department of Justice alone. We do not want the process to be invisible anymore. Civil servants would not treat asylum seekers the way they do if an Irish person, particularly a white Irish person, was observing the proceedings. These proceedings should not be cloaked in mystery with often highly vulnerable people pitted against trained barristers operating on behalf of a system that is based on an assumption of their 'guilt' and lack of credibility.
- High quality, trained, impartial translators and interpreters in people's languages and dialects must be made available to people seeking protection.

SECTION 2: WORK

Core Recommendation: The right to work must be immediate and unrestricted for all people seeking protection in Ireland.

Prior to May 2017, International Protection applicants were not allowed to work in Ireland. This changed when the Supreme Court found that the government's absolute ban on the right to work for asylum seekers in the absence of a time for processing asylum claims was in breach of the constitution (O'Donnell, 2017: 8). The Burmese man had spent 8 years in Direct Provision, having gone through all the

stages of the asylum process such as receiving a first instance decision, appealing, and judicial review stage. He submitted to the court, and the court accepted, that his right to dignity was violated by the absolute ban on the right to work. The presiding justice reasoned that an asylum seeker can rely on constitutional rights that affect them as a human person (O'Donnell, 2017: 8). Importantly, in addressing the question of mootness in the matter since the applicant had already received, the judge noted that if the court does not proceed with the case, another applicant in the same or similar position may approach the court in future (O'Donnell, 2017: 3).

There are a number of important issues arising from the judgement. The most salient of them for the Movement of Asylum Seekers in Ireland is the Burmese man's claim that the ban on the right to work affected his self-esteem (right to dignity). This is not unique to the applicant. Other asylum seekers living in Direct Provision have shared similar experiences that the years spent in the system robbed them of the sense of purpose and self-worth (Murphy, Keogh, and Higgins, 2018: 12). Thus the Supreme Court's observation that the ban on the right to work affects more who are in the same position as the Burmese man who took the matter to the courts is not to be forgotten when making arrangements for access to the labour market.

In February 2018, the Supreme Court formally declared the absolute ban on the right to work for asylum seekers unconstitutional if there is no time limit on the processing of asylum claims (Carolan, 2018). In response to the court order, the Minister imposed work permit legislation that governs how non-EU nationals in the State purely for work gain access to the labour market and this was criticised as being too restrictive (Carolan, 2018). No applicant was able to meet the work permit requirements thus the interim measure failed to grant effective access to the labour market. The Irish government, with the consent of the national legislature, opted into the EU Directive of Reception Conditions. The directive, much like the Supreme Court, provides for discretion in how the State grants effective access to the labour market. Article 15 of the EU Directive on Reception Conditions requires that international protection applicants be granted effective access to the labour market no later than 9 months if a first instance decision has not been issued. And while the same Article 15 allows Member States to prioritise EU citizens and other legally resident non-EU nationals, Article 4 permits Member States to enact more favourable conditions for international protection applicants if they wish to do so.

Ireland adopted the European Communities (Reception Conditions) Regulations 2018 which allows international protection applicants to access the labour market if they have not had a first instance decision after 9 months from applying for protection. And the access is granted by a Labour Market Access Permit that sets international protection applicants apart from other non-EU nationals in the State as they would ordinarily have a GNIB or Irish Residency Permit Card from the Department of Justice and Equality with a clear and concise description of terms by which the non-EU national can access the Irish labour market. And employers are all familiar with that. They go as far as including the requirement of an EU Passport or Stamp 4 on the Irish Residency Permit even for non-EU language jobs (see Job advert on the redacted references). And when MASI, UCD Career Development Centre, and several recruitment companies organised job search skills, CV and interview skills writing workshops for international protection applicants, the problem with the disadvantage created by the permit was raised by asylum seekers who had difficulty accessing the labour market with the permit. Other issues such as challenges opening bank accounts, obtaining driving licences, and the location of some of the Direct Provision centres in places that have poor to no public transport make it difficult for international protection applicants who have the permit to actually work (Khambule and Mulhall, 2018).

Importantly, the permit is not issued to people who are appealing their first instance decision or at the judicial review stage which is discriminatory since the permit would only be issued to mostly people who have recently arrived in the State leaving out many people who have been in the asylum process for a long time (Khambule and Mulhall, 2018). It worth remembering that the Burmese man who had taken the Minister for Justice and Equality to court over the work ban had been through both the appeal and judicial review process. Thus, the refusal to allow people who are in the same position to work makes a mockery of the legal process since the court only proceeded with the case with a view that there are other people in who are affected also affected by the work ban. It is import to highlight that asylum seekers do not cease to be human once issued with a first instance decision thus they are entitled to have their inviolable fundamental human right to dignity vindicated by the State. The impact of being banned from working has already been established to have a negative impact on the affected person's self-esteem. It also condemns children in

Direct Provision to a life of State-sponsored poverty when their parents are not allowed to work so that they can provide for their children. The Ombudsman for Children has said that Direct Provision is wholly unsuitable for children as they are forced to live a life of poverty (Hutton, 2018).

And Brennan (2018) reports that a mother told the courts that she had to sell sexual favours in order to support her son while living in Direct Provision. At a talk in the University College Dublin, a gay man from MASI shared that he cannot remember the number of times he had been offered money for sex. And a producer of *Taken Down*, a television drama set in a Direct Provision centre, shared at the same talk, that the show's research team had encountered cases where women and children had been offered money for sex while living in Direct Provision. AkiDWA (2012: 14-15), and Holland (2017) report that women and children do not feel safe in Direct Provision. The restrictions on the right to work make people in Direct Provision more vulnerable to such exploitation. MASI has also encountered people working from 7am to 5pm for as little as €25-€27 to escape the idleness which has a huge impact on mental health, and general hardships of life in Direct Provision. We have been informed that residents in the Grand Hotel Direct Provision centre in Wicklow are "volunteering" in the hotel with the promise that they will get reference letters which will help them in their application for international protection. So, the owner of the Grand hotel is profiteering from them being accommodated there, and from their labour as the work they do would ordinarily be done by paid staff. The Movement of Asylum Seekers in Ireland believes that these problems would be overcome if international protection applicants lived in the community rather than accommodation centres made exclusively for asylum seekers. To vindicate the inviolable right to dignity, and protect international protection applicants from exploitation, sexual exploitation or otherwise, and to facilitate integration, MASI recommends that the Department of Justice and Equality lifts the restrictions on the right to work.

Recommendations on the Right to Work

- The Right to Work must be automatically given to all people seeking protection from the very beginning of the process. At the moment, people can

only apply for permission to work if they have not received a first decision on their case within 9 months. This has left many people without any hope of the right to work, people who have been in the system longest and whose skills, sense of self, and physical and psychological well-being have already been affected by the direct provision and asylum system.

The 9-month wait is unnecessary and is the very maximum allowed under the EU directive. Research shows that people begin to lose skills and psychological wellness rapidly after 6 months in DP-like environments. Immediate permission to work is the answer.

Even when people have permission to work, the majority are finding it impossible to find work. People have to contend with racism and xenophobia (see O'Connell (2018), McGinnity, Grotti, Groarke, and Coughlan, (2018)), and as well as the stigma of being seen as an 'asylum seeker', and with lack of recognition of their qualifications and experience.

The work permit itself puts employers off immediately (rather than the card that employers are used to, this work permit is a long letter with many warnings to potential employers about the consequences of breaking employment law).

Currently, the permit must be renewed every 6 months. This puts employers off. The renewal period must be extended.

People often can't open a bank account and asylum seekers are not allowed to hold a driving license – two items absolutely vital for people working and living in remote places with no transport.

- The current permit must be replaced with a temporary Irish Residency Permit (IRP) card indicating that the bearer has permission to work full-time. The new IRP card would replace the current Temporary Residency Card ('blue card'). This would make the permit instantly recognisable to potential employers and would allow international protection applicants to prove residency for the purpose of obtaining a driving licence and opening a bank account.
- Currently, the right to work is revoked if a person is given a negative decision at the appeal stage and/or is issued with a deportation order. In the Irish asylum system, people are often left for years with a deportation order

hanging over them. Sometimes this is overturned and people are given permission to remain. The right to work must be given as soon as the asylum process begins, must be valid for a minimum period of 12 months, and **it must remain renewable until the person has an alternative IRP or is no longer residing in the State.**

- International Protection applicants must be allowed to hold a driving license. Some Direct Provision centres are not accessible by public transport. And if the government is to abolish Direct Provision, then people would have to be allowed to drive.
- International Protection applicants must have access to vocational training and education. At present, some Education and Training Boards only allow international protection applicants to enrol for courses up to level 6 whereas others only allow only level 3. There must be no disparities in the provision of these courses.
- There are children born in Ireland whose families have been served with deportation orders. The children know no other country but Ireland as their home. The Minister has discretionary power to grant permission to remain to any non-EU national. We recommend that the Minister for Justice and Equality introduces a scheme to regularise undocumented people in Ireland. This would end their legal limbo. Many of them are working in care looking after vulnerable people in the State. Regularisation as already done for undocumented students in Ireland, only affects people who are already in the State.

SECTION 3: RECEPTION

Core Recommendation: People should be accommodated in reception for no longer than three months before moving into housing in the community.

Reception is recognised as a crucial period for people seeking protection. Multiple reports and conventions recognise the critical importance of providing early and high quality legal, informational, psychological, medical, language and vocational support to people. This is critical for people's claims for protection, for people's recovery from often deep trauma and dislocation, and

for people's chances at building a fulfilled, independent life for themselves and their families.

Reception in Ireland refers to the initial period when a person who is seeking asylum is usually brought to Baleskin Reception Centre during which time they have their first preliminary ('small') interview with the IPO before being sent or 'dispersed' to a Direct Provision centre.

Reception is recognised as a crucial period for people seeking protection. Multiple reports and conventions recognise the critical importance of providing early and high quality legal, informational, psychological, medical, language and vocational support to people. This is critical for people's claims for protection, for people's recovery from often deep trauma and dislocation, and for people's chances at building a fulfilled, independent life for themselves and their families.

Reception conditions are central to recognizing and vindicating the rights of people seeking asylum. This is acknowledged in the EU Receptions Directive, which the Irish legislature finally transposed into Irish law in 2018. But this transposition has not translated to any improvement or attempt at implementation of improved reception conditions on the ground. In fact, conditions for people seeking asylum in Ireland continue to get worse.

However, people should be in reception for no longer than three months before moving into housing in the community (**not** into Direct Provision). Reception centres should provide all the information, services and supports that are necessary for people in the initial stages of seeking asylum, and should be fully staffed with appropriately trained, experienced professionals.

The reception and direct provision system is over capacity and people arriving to Ireland to seek asylum are being sent to 'emergency accommodation' – guesthouses, bed and breakfasts, hotels – with absolutely no access to information about the asylum process and their rights; no access to the supports and services that people need; and often no means of communicating with anyone in the 'emergency accommodation'. People are being dumped in what are effectively conditions of detention, effectively deprived of freedom of movement (try getting around with €38.80 per week and no public transport), at a time when they are at their most vulnerable.

Basic supports and services are not available to people – people have little or no access to solicitors or legal advice, psychologists and other mental health experts, translators/ interpreters.

The EU Charter of Fundamental Rights recognises the right to asylum (chapter 1, article 18), the right to dignity (1.1), and the right to the integrity of the person, including mental and physical integrity (1.3). The EU Convention on Human Rights vindicates the person's right to liberty and security (art. 5) and the right to respect for family and private life (art. 8). The Irish State is obliged to vindicate these rights. They are fundamental human rights that cannot be suspended because someone is seeking protection. In fact, the obligation to honour these fundamental human rights is greater when the people at stake are in unquestionably precarious and vulnerable situations.

KEY ISSUES IN THE IRISH RECEPTION SYSTEM & RECOMMENDATIONS

➤ DECENTRALIZE RECEPTION

Recommendations:

In a newly configured reception system, there would be reception centres in or near major cities and towns in all regions of the State, all offering the full supports and services that people need on arrival in the state and in making their application for international protection.

People would stay in the reception centres for a maximum of 3 months, extendible for those who request it. After this, people would be assisted into housing in the community through the local authority.

DECENTRALIZE THE INTERNATIONAL PROTECTION OFFICE (IPO)

At the moment people have to make long and very difficult journeys to attend IPO interviews and other business related to their asylum claims. There have been cases of families left on the street after their IPO interviews with nowhere to go and no way to get back to remote centres by public transport. This distressing situation could easily be remedied.

Recommendation: It would be far easier and more efficient if the IPO could travel to regional reception centres at regular intervals (monthly, for instance) to conduct interviews.

HIGH QUALITY IN-HOUSE ADVICE & SERVICES = MORE EFFICIENT SYSTEM

Currently people wait 20 months for their first interview. The waiting and uncertainty in the process combined with loss of independence and dignity in what ECRE has described as the de facto detention system of Direct Provision destroy people in mind, body and spirit.

Despite Government and Dept of Justice excuses about increased numbers of people seeking asylum in Ireland, based on the number of people who claimed asylum in Ireland in 2018 the reception system is currently 'processing' on average 70 people per week. This is not a large number of people. In a decentralised and fully resourced system, it should be entirely possible to provide excellent reception conditions and a faster, more just, safer asylum process for people seeking protection.

Recommendations:

In a reconfigured reception system:

- Legal advice on claims and legal assistance with completing the IPO questionnaire and preparing for the major interview would be provided to all.
- Provision of full and expert advice and supports. The IPO interview should happen while in reception, within 6 weeks of submitting the IPO questionnaire.
- People should not be in reception for longer than 3 months and should be enabled to get housing in the community as early in the process as possible.
- The Temporary Residence Certificate (TRC) card should be replaced with an IRP-style card that includes the right to work permit and will be accepted as valid ID for bank account and driving license purposes. The Irish Residence Permit (IRP) card includes description of the immigration permission and permission stamp number, and a microchip containing photo, fingerprints, and personal details.
- The living space in reception centres needs to be fit for purpose and must uphold the right to privacy, dignity, and integrity of the person of people seeking asylum.

- People should have the right to delay the first interview if they are traumatised or need more time.

ON-SITE ACCESS TO HIGH QUALITY SUPPORTS AND ADVICE:

It is absolutely vital that reception centres provide access to all of the following on-site. Some of these are described in greater detail below.

- access to information;
- high quality legal assistance;
- psychologists trained in working with people who have been subject to violence, torture and trauma and who are sensitive to issues of cultural diversity;
- quality medical care;
- childcare facilities, play spaces and homework spaces for children;
- Good quality and neutral translation services
- English language and literacy classes;
- Supports for training, education and employment;
- Library space with access to internet, computers, etc.
- Community Welfare and social workers; assistance with accessing accommodation post-reception.

These services and supports must be provided by trained specialists who are independent of the Department of Justice & Equality.

INFORMATION:

People are not given basic information about their rights as asylum seekers or about what is going to happen in the asylum process. Leaflets are sometimes provided on various aspects of the process or people may be directed to IPO and NGO websites for information. That this is seen as adequate demonstrates the disconnection and indifference of the Dept of Justice from people on the ground as well as the problems with NGO engagement on the ground. Information booklets and leaflets are written in a way that many find inaccessible and difficult to fully understand. People may not have easy access to the internet or to devices where they can view online material.

People may not be able to read. They may have too much else going on to be able to give information leaflets the attention they need.

➤ **Recommendation:**

As well as the usual leaflets, informational videos should be made available to people in all languages in the reception centre outlining the process of seeking asylum in Ireland and the rights people seeking asylum have. Staff in the reception centres should be fully trained and informed about the process of seeking asylum and of people's rights so that they can also provide this information to people in reception.

LEGAL ADVICE:

The process of seeking asylum is first and foremost a legal process. It is therefore absolutely vital that people receive legal advice on their claims as early as possible. People have to submit a complicated 62-page application form to the IPO in order to apply for international protection. This form will determine how their case goes – it will be scrutinised for any gaps, mistakes, inconsistencies and these will be used to discredit the person's credibility. Yet people are by and large left to complete this form on their own. The Legal Aid Board provides legal advice to people seeking protection through the Refugee Legal Service including 'Early Legal Advice'. However, 'early legal advice' translates in reality as a hard-pressed caseworker taking fifteen minutes to read over the 62-page application form that the applicant has tried to complete. This hardly can be described as expert or even adequate legal advice. Many people receive no legal advice until **after** they have submitted their application, usually if their case has to go to appeal.

- **Recommendation:** In-house early legal advice from a qualified lawyer with expertise in asylum cases needs to be provided in every reception centre to every international protection applicant. This advice needs to be available to all **before** the application is made. People need to have expert assistance with completing the questionnaire, with preparation for the interview, and they need to be accompanied to the major interview by their solicitor at the very least, as well as by an observer. The legal process is outlined in more detail below in the section on The Legal Process.

PSYCHOLOGICAL & MEDICAL SERVICES:

The Irish state has failed in its responsibility to protect and support the recovery of people seeking asylum who have particular vulnerabilities and special needs. The College of Psychiatrists of Ireland note that refugees and people seeking asylum have much higher rates of anxiety, depression and up to 10 times the level of PTSD as the 'indigenous' population. They conclude that people seeking protection require a specialised service from appropriately trained professionals who can care for the peoples' unique needs, taking into account issues of language, cultural difference, as well as practical issues of mobility and accessibility. [College of Psychiatrists of Ireland – *The Mental Health Service Requirements in Ireland for Asylum Seekers, Refugees and Migrants from Conflict Zones* (March 2017)]

Many national and international bodies have insisted on the need for the Irish state to provide a formalised screening process for people seeking asylum who have suffered torture and for people with other special needs and to ensure that people seeking protection have access to expert medical and psychological treatment and care and yet nothing has been done to implement these basic protections and supports. People require specialised medico-psychological legal reports as 'evidence' for their claim for international protection, but accessing the professional bodies that can provide such reports is a difficult and lengthy process. At the moment the state outsources its responsibility in this regard to Spirasi, who have a waiting list of 10 months. This time delay has negative effects both on people's recovery and on their claims for international protection.

In their 'Concluding Observations' on Ireland in July 2017, the Committee of the UN Convention Against Torture note the necessity for Ireland to formally implement these supports. The Committee concludes that the State must "provide adequate funding to ensure that all persons undergoing the single procedure under the IPA have timely access to medico-legal documentation of torture, access to specialised rehab services accessible country-wide, and to support and train personnel working with asylum seekers with special

needs.” The EU Reception Conditions Directive states that “Member states shall ensure that persons who have been subjected to torture, rape, or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care” (article 25). The Irish State continues to ignore these obligations and no such supports are in place apart from Spirasi appointments which can often start after a person has been in the asylum system for a year or more due to under resourcing.

Recommendations:

- State must provide early screening for vulnerabilities in line with the State’s statutory obligations.
- State must provide specialised and culturally sensitive medical and psychological treatment and care and rehabilitation for all people seeking protection, particularly people with special needs.
- Maximum 4 week wait for medico-psychological screening and legal reports. At the moment, people are being denied assistance until they have a PPS number. Assistance must be available from arrival, regardless of PPS number issues.
- These services must be available in-house in the reception centres and must be independent of the Department of Justice & Equality.

SECTION 4: ALTERNATIVES TO DIRECT PROVISION

Core recommendation: People seeking asylum in Ireland should have access to the same housing supports via their local authorities as is the case for homeless people. Direct Provision centres and a reception centres are not homes.

People seeking asylum in Ireland should have access to the same housing supports via their local authorities as is the case for others. The housing needs of people seeking asylum must be an integral if distinct part of any recommendations and/or solutions to the housing and homelessness crisis.

We regard people in Direct Provision as 'homeless' in that they are without a home and exist in a similar way to people forced to live in and try to raise their children in 'hubs'. We are in similar situations of destitution and marginalisation as others at the sharp end of the state's housing policy; we are like those placed in B&Bs and hubs being used as human meat to generate private profit; we must fight together against these institutionalised, bureaucratic, dehumanising ways of diminishing our lives and destroying us in body and spirit.

For people who need to avail of voluntary assisted living, arrangements for this must be made but it must not be for profit, must not subject people to 'managers', and must allow people ready access to the high quality services and supports that they need, and should not mean that people have to rely on NGOs for services. The state must stop outsourcing responsibility for social protection.

Centres where legal, psychological, medical, language, community and integration supports are available onsite to people in the asylum system need to be available to people once they are through the reception process. These services must be free, accessible, and not for profit.

We support the recommendation by the Special Rapporteur on Child Protection that asylum seekers be given access to welfare supports so they can leave Direct Provision. However, we reject the idea that people be granted supports to leave Direct Provision if they have been awaiting a first instance decision as proposed by the Special Rapporteur on Child Protection and propose that a statutory provision be made to require the government to provide the supports as per Special Rapporteur on Child Protection (2018: 17) recommendation, and replace a first instance decision as a precondition for supports with "if a protection applicant has not moved out of the reception centre on their own after 90 days from the date of submitting an application", and that such supports are provided immediately for those who do not avail of reception centre services and is means tested after working for a period of 12 weeks as done currently. The issue with the words "first instance decisions" is that they leave open the possibility of people staying in reception centres for longer if they have a first instance decision as currently experienced by applicants who are appealing and are not allowed to work.

Some Issues:

- Violation of the rights and best interest of the child (numerous reports substantiate this).
- For-profit system that outsources the state's obligation to private interests and serves only to enrich businesses and corporations.
- Centres run by managers and staff with no training or expertise in relevant areas, with residents subjected to devastating petty cruelty and petty bureaucracy. People seeking asylum do not need to be 'managed', they want the chance to make a new life.
- Direct Provision is toxic. It kills people and makes people sick in mind, body and spirit. Too many people have died and are dying in Direct Provision. The open prison conditions, the erasure of people's sense of self, the petty bullying bureaucracy of RIA and of managers and staff, the enforced poverty and desperation of being stuck in Direct Provision with no agency, no space or privacy, for years on end. DP must be abolished; any reception system or 'alternative' recommended in its place must not in any way resemble DP, must not be 'for profit', must not involve 'managers', and must prioritise the agency and dignity of people seeking asylum.

Right to Education

There are gross inequalities in access to education and training for people seeking asylum. Access to further education is inconsistent and depends on where people are living. In some places, people are barred from taking courses higher than FETAC level 3. In other places, people have free access to level 6 courses. Even where people manage to access such courses or even manage to get places in third level courses, on a local level managers in many centres take active steps to prevent people from taking up training and education through petty bureaucratic methods. People seeking protection have been excluded from third level education as they are treated as 'international' for fee purposes and thus liable to the extremely high 'international student' fees (usually in the region of 17-20K per year). This means that children who have grown up in Direct Provision and often been born in Ireland (like their peers who are undocumented) have been routinely excluded from further education. In 2015, the then Minister for Education

made a minor change to policy, stating that children who had been in the Irish school system for 5 years and who did not have a deportation order were eligible for Irish/EU fees at third level. Given that many people in the system for 5 years will be living with an unactioned deportation order and given that these conditions still leave third level completely out of reach for children living in direct provision, the uptake on this 'scheme' has been negligible – a risible 2 people entered third level under these conditions last year. Several universities now have a limited number of scholarships of varying quality for people who are refugees, asylum seekers, or former asylum seekers. However, this is not sustainable and puts access to third level education on a charitable grounding that can be leveraged as PR for third level institutions, rather than establishing the right to meaningful access to further education and third level education for people in the asylum process.

Children

There have been numerous reports over the years by (for instance) HIQA, the Special Rapporteur on Child Protection, and the Ombudsman for Children, insisting that Direct Provision is a violation of the rights and best interests of the child and that children should not be growing up in Direct Provision - and yet it remains in place. It is clear and evident that children need a real home and the opportunity for normal family life and these are being completely denied to all children forced to live and grow in the apartheid system of Direct Provision. Children have to share space including bathrooms with complete strangers; confined to a room with their family, they have no private space for play or for homework; they cannot invite friends home; they are segregated in school by the fact of living in direct provision; providing books and school supplies, uniforms and sports gear is an often impossible struggle for families, and mothers in particular will often resort to desperate means including the most precarious forms of transactional sex to supply these necessities for their children. Indeed, children themselves have been propositioned for sex inside and outside the centres. Children in Ireland as unaccompanied minors who age out present a particularly terrible case as they are transferred from

the care system to the Direct Provision system with any supports they had suddenly taken away.

SECTION 5: RECOMMENDATIONS

1. People must get free, independent, early and expert legal advice before they submit their questionnaire and throughout all stages of their case.
2. The time that the process takes at all stages must be addressed. There is no reason that the major interview cannot happen much earlier. People need to have immediate access to psychological and medical assessment and high quality legal advice from professionals trained in immigration law when they enter reception, and the interview should take place within 6 weeks in situ in the reception centre after such consultation and assistance has been availed of.
3. The lack of any time limit or timeline for how long the process will take is one of the most damaging aspects of life in the direct provision and asylum system in Ireland. There must be a time limit placed on how long a person seeking asylum can be left waiting for a decision on their case, and there must be consequences for the failure of the IPO to provide a final decision within a reasonable time frame.
4. Pursuant to this, a statutory provision must be made to require the Minister to grant long-term residency/permission to remain to any international protection applicant who has been awaiting a final decision for at least 18 months. This should be applied retrospectively as well as in future cases. The asylum process continues after the Minister has granted permission to remain. This would end legal limbo for those who are currently in the system and guard against the limbo people are subjected to when decisions at all stages of the application process are not forthcoming.
5. There must be a serious investment by the state into ensuring that high quality legal advice and representation is available freely to all people seeking protection in Ireland. We recommend a benchmarking exercise to compare how the legal aid available in asylum cases stacks up against criminal cases

(taking into account the costs of attendance at hearings, the cost of expert medical reports, and so on).

6. Section 5 of the Illegal Immigrants (Trafficking) Act 2000 as amended must be removed and parity created between immigration and non-immigration timeframes and grounds for judicial review.
7. People should be able to bring an observer with them to interview. We do not want people interacting with the Department of Justice alone. We do not want the process to be invisible anymore. Civil servants would not treat asylum seekers the way they do if an Irish person, particularly a white Irish person, was observing the proceedings. These proceedings should not be cloaked in mystery with often highly vulnerable people pitted against trained barristers operating on behalf of a system that is based on an assumption of their 'guilt' and lack of credibility.
8. High quality, trained, impartial translators and interpreters in people's languages and dialects must be made available to people seeking protection.
9. The Right to Work must be automatically given to all people seeking protection from the very beginning of the process. At the moment, people can only apply for permission to work if they have not received a first decision on their case within 9 months. This has left many people without any hope of the right to work, people who have been in the system longest and whose skills, sense of self, and physical and psychological well-being have already been affected by the direct provision and asylum system.
 - a. The 9-month wait is unnecessary and is the very maximum allowed under the EU directive. Research shows that people begin to lose skills and psychological wellness rapidly after 6 months in DP-like environments. Immediate permission to work is the answer.
 - b. Even when people have permission to work, the majority are finding it impossible to find work. People have to contend with racism and xenophobia (see O'Connell (2018), McGinnity, Grotti, Groarke, and Coughlan, (2018)), and as well as the stigma of being seen as an 'asylum seeker', and with lack of recognition of their qualifications and experience.

- c. The work permit itself puts employers off immediately (rather than the card that employers are used to, this work permit is a long letter with many warnings to potential employers about the consequences of breaking employment law).
 - d. Currently, the permit must be renewed every 6 months. This puts employers off. The renewal period must be extended.
 - e. People often can't open a bank account and asylum seekers are not allowed to hold a driving license – two items absolutely vital for people working and living in remote places with no transport.
10. The current permit must be replaced with a temporary Irish Residency Permit (IRP) card indicating that the bearer has permission to work full-time. The new IRP card would replace the current Temporary Residency Card ('blue card'). This would make the permit instantly recognisable to potential employers and would allow international protection applicants to prove residency for the purpose of obtaining a driving licence and opening a bank account.
11. Currently, the right to work is revoked if a person is given a negative decision at the appeal stage and/or is issued with a deportation order. In the Irish asylum system, people are often left for years with a deportation order hanging over them. Sometimes this is overturned and people are given permission to remain. The right to work must be given as soon as the asylum process begins, must be valid for a minimum period of 12 months, and **it must remain renewable until the person has an alternative IRP or is no longer residing in the State.**
12. International Protection applicants must be allowed to hold a driving license. Some Direct Provision centres are not accessible by public transport. And if the government is to abolish Direct Provision, then people would have to be allowed to drive.
13. International Protection applicants must have access to vocational training and education. At present, some Education and Training Boards only allow international protection applicants to enrol for courses up to level 6 whereas

others only allow only level 3. There must be no disparities in the provision of these courses.

14. There are children born in Ireland whose families have been served with deportation orders. The children know no other country but Ireland as their home. The Minister has discretionary power to grant permission to remain to any non-EU national. We recommend that the Minister for Justice and Equality introduces a scheme to regularise undocumented people in Ireland. This would end their legal limbo. Many of them are working in care looking after vulnerable people in the State. Regularisation as already done for undocumented students in Ireland, only affects people who are already in the State.
15. Legal advice on claims and legal assistance with completing the IPO questionnaire and preparing for the major interview must be provided to all when required, and not limited.
16. Provision of full and expert advice and supports. The IPO interview should happen while in reception, within 6 weeks of submitting the IPO questionnaire.
17. People should not be in reception for longer than 3 months and should be enabled to get housing in the community as early in the process as possible.
18. The living space in reception centres needs to be fit for purpose and must uphold the right to privacy, dignity, and integrity of the person for everyone in the international protection process.
19. People should have the right to delay the first interview if based on vulnerability assessment and or Spirasi type of services, they are traumatised or need more time.

a. Reception centres must provide:

20. access to information;
21. high quality legal assistance;
22. psychologists trained in working with people who have been subject to violence, torture and trauma and who are sensitive to issues of cultural diversity;
23. childcare facilities, play spaces and homework spaces for children;
24. Good quality and neutral translation services

- 25. English language and literacy classes;
- 26. Supports for training, education and employment;
- 27. Library space with access to internet, computers, etc.
- 28. Community Welfare and social workers; assistance with accessing accommodation post-reception.

These services and supports must be provided by trained specialists who are independent of the Department of Justice & Equality.

- 29. People seeking asylum in Ireland should have access to the same housing supports via their local authorities as is the case for homeless people. Direct Provision centres and a reception centres are not homes. No free and healthy human being should be institutionalised and subjected to dehumanising petty bureaucratic processes daily.
- 30. Unaccompanied minors must be accommodated in reception centres for children, and the State must encourage foster care and adoption where possible because every child deserves to grow up in a loving home, not an institution where their lives are governed by rules that other children in the State experience.
- 31. When an unaccompanied minor turns 18 with or without a positive decision on their asylum claim, they must be supported to live independently.

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