

Direct Provision in Ireland – A Domestic Attempt at Managing a Global Human Rights Concern

At this very moment there are 5,609 asylum seekers living in Direct Provision in Ireland, 22.6% of whom are children,¹ a number significantly higher than the total number of prison detainees on the island.² Direct Provision has been the Irish government's response to the very global phenomenon of mass migration and the issue posed by asylum seekers awaiting judgment of their claim for refugee status. Scenes in recent months of the separation of children from their families in the United States and ships of asylum seekers in the Mediterranean being refused access to EU ports have become the tragic undercurrent of global affairs. This juxtaposition draws ever closer into focus the pernicious threat posed by populist political forces to the long-standing international regime on refugee protection. Direct provision refers to the system for the provision of basic meals and shelter to those claiming subsidiary protection, refugee status or leave to remain in Ireland. It is time that this 18-year-old, outmoded, non-legislative,³ discriminatory⁴ system be brought to an end in favour of an arrangement which upholds human dignity. It is contended that Direct Provision in its current iteration is an affront to the rule of law. It violates international law,

¹ Reception & Integration Agency, Department of Justice and Equality, *Monthly Report July 2018* (latest available report) p5.

² <http://www.prisonstudies.org/country/ireland-republic>. As of 28.09.2018 (most recent statistic date) there were 3816 prisoners held in Ireland including pre-trial detainees and remand prisoners.

³ When introduced in 2000, the system of Direct Provision was effected by Government by means of Departmental Circulars, with no approval or oversight by the Oireachtas (the legislative branch of the Irish State). While this non-legislative footing was found to be permissible in 2014 by the High Court in *C.A. & T.A. v Minister for Justice and Equality & ors* (2014) IEHC 532, its permissibility at an international level was questionable. Therefore the semi-legislative footing that the Direct Provision system will now attain in the wake of Ireland's accession in June to the EU Reception Conditions Directive is a welcome step.

⁴ See Concluding Observations, CERD, Ireland, UN Doc. CERD/C/IRL/CO/2 (14 April 2005), para 13 and Concluding Observations, CERD, Ireland, UN Doc. CERD/C/IRL/CO/3-4 (04 April 2011), para 20.

specifically transgressing a number of rights protected under the ICCPR, notably the right to equal treatment under law, the prohibition of inhuman and degrading treatment and the right to private and family life.⁵ Further, a number of UN human rights treaty bodies have voiced concerns over the impact of Direct Provision on various vulnerable groups including women⁶ and children,⁷ similar sentiments were also expressed under the UPR process.⁸

In response to these issues it is recommended that Ireland ratify the Optional Protocol to the Convention Against Torture and establish a National Preventive Mechanism (NPM) in accordance with the OPCAT to provide for the independent inspection of all places of deprivation of liberty in the State, including direct provision centers. The system of direct provision is not fit for purpose or aligned with Ireland's obligations under the ICCPR, any system that replaces it must ensure that individual's rights to equal treatment before the law, the right to private and family life; and freedom from inhuman and degrading treatment are respected, protected and fulfilled. Moreover, it is recommended that the system be made more transparent through the public provision of all statistics by the Reception and Integration Agency (RIA) on the time spent by asylum seekers in direct provision; and details be provided of all expulsions for whatever reason from direct provision. Finally, it will be argued that an independent complaints mechanism be established and that fundamental protections

⁵ Thornton L, "Law, Dignity and Socio-Economic Rights: The Case of Asylum Seekers in Europe," Working Paper No.6, *Fostering Human Rights Among European Policies (FRAME)*, January 2014.

⁶ Concluding Observations, CEDAW, Ireland, UN Doc. CEDAW/C/IRL/CO/4-5 (3 February 2006) at para 28-29.

⁷ Concluding Observations, CRC, Ireland, UN Doc. CRC/C/IRL/CO/2 (September 2006) at para 56.

⁸ General Comment No.31, ICCPR, *The Nature of the General Legal Obligations Imposed on State Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (26 April 2004) at para 10.

for asylum seekers be strengthened in line with Ireland's obligations under its accession to the EU Reception Conditions Directive in June 2018.

As mentioned above close to 6,000 people remain languishing in Direct Provision centers today. They have been convicted of no crime and yet this highly institutionalized system of enforced dependency⁹ given its level of social control,¹⁰ and the poverty¹¹ and idleness¹² it imposes on asylum seekers bears a desultory, and arbitrarily constrictive hue. Due to the indivisible and interdependent nature of human rights, a violation of economic social or cultural rights can lead to a violation of civil and political rights. The significant legal and social problems which the system of Direct Provision engenders have consistently been stressed by academics, Irish human rights organisations and civil society actors over the past 18 years. The extent and level of social control exerted on asylum seekers in Direct Provision goes far beyond that of any other institution with at its core the purpose of social care. Children are obliged to share rooms with adults, the "House Rules"¹³ of these centers provide managers of the accommodation with substantial control. In such an environment it is

⁹ Thornton L, "Ireland: Asylum seekers and refugees" in Melatu Uche Okorie, *This Hostel Life* (Dublin, Skein Press, 2018) pp61-81.

¹⁰ Generally, Asylum seekers are unable to cook their own food, or decide what children should have for meals.

¹¹ The weekly payment to persons seeking asylum in Direct Provision was increased from €19.10 per adult and €9.60 per child only last month in the 2019 Budget to €38.80 per adult and €29.80 per child in line with recommendations made in the McMahon Report three and a half years ago. This is the first increase in the payment in the 18 years of the Direct Provision scheme and though an improvement, it still marks a meagre pittance when compared with minimum social welfare payments (which asylum seekers are precluded from) amounting to five times the amount per week.

¹² It wasn't until the 2017 Supreme Court decision of *N.V.H v Minister for Justice, Equality & ors* [2017] IESC 35, that the absolute prohibition on asylum seekers working in the state was declared unconstitutional with reference to the equality standard and notions of human dignity. A highly restrictive regime which made the right almost illusory was affected until the slightly broader permanent scheme came into force just in the last few months.

¹³ Department of Justice and Equality/Reception and Integration Agency, *Direct Provision Reception and Accommodation Centers: House Rules and Procedures* (RIA, 2011).

difficult to see how rights to private and family life could be vindicated. The operation of the system of Direct Provision borders on inhuman and degrading treatment when it is considered that asylum seekers spend anywhere in the region of 6 months to 7 years in the system. As of December 2017, asylum seeker cases which are not prioritized will not have their first International Protection Office (IPO) interview for up to 20 months.¹⁴ Further, the negative developmental effects of Direct Provision on children have been empirically proven.¹⁵ The Northern Ireland High Court even refused to return a Sudanese family to Ireland in 2013 on the basis that it would not be in the best interests on the child.¹⁶ The government's apathetic response is deeply troubling given that the Special Rapporteur for Children called for a full review of the system in 2011. It is recommended that the State ratify OPCAT¹⁷ and establish an NPM to provide for the independent investigation of Direct Provision centres.

In order that Ireland fulfil its obligations under international law, and the EU Reception Conditions Directive as well as creating a system which upholds the dignity of the individual it must establish a framework with those end goals in sight.

¹⁴ Thornton L, *"The Rights of Asylum Seekers and Ireland's Draft UN Convention on the Elimination of all forms of Racial Discrimination Report"*, 04 January 2018. This time delay raises further significant questions as to whether Ireland is meeting its obligations under Article 5(a) of the UNCERD.

¹⁵ Ní Raghallaigh M, 'Vulnerable Childhood, Vulnerable Adulthood: Direct Provision as Aftercare for Aged-Out Separated Children Seeking Asylum in Ireland' (2017) *Critical Social Policy*.

¹⁶ ALJ and A, B and C's Application for Judicial Review [2013] NIQB 88.

¹⁷ Ireland signed up to OPCAT in 2007 and remains the only EU country not to have ratified the Treaty.