

Irish Refugee Council

**Submission to the United Nations Committee
against Torture on the examination of Ireland's
National Report**

June 2017



Introduction

The Irish Refugee Council (IRC) is committed to promoting a fair and efficient asylum system that meets and goes beyond Ireland's international human rights obligations towards refugees and asylum seekers.¹ In pursuit of this goal, the IRC provides direct support to people at all stages of the international protection process in Ireland, including the provision of general information about the initial application procedure; tailored early legal advice and representation throughout the process; and facilitation of integration, which involves assisting people with access to education and accommodation. In addition to service provision, other priorities include support and advocacy for the particular issues facing young people in the asylum process, public and political awareness raising, and capacity building among stakeholders who engage with the asylum process.

Background to the report

This report comes on foot of significant legislative change to the Irish asylum system. The International Protection Act came into force December 31st 2016,² which repeals and replaces the Refugee Act 1996 (as amended).³ In particular, the IRC welcomes the introduction of a "single procedure," whereby refugee status and subsidiary protection applications are now considered holistically under a single application. Under the previous procedure, people would only have the option to make an application for subsidiary protection once they had exhausted and received a refusal on their application for refugee status. This 'bifurcated' procedure resulted in lengthy processing delays and backlogs, and was subject to wide criticism.⁴ In this sense, efforts to streamline the Irish asylum procedure are greatly welcomed. Notwithstanding that, a single procedure should not be advanced as a panacea for all issues in the Irish asylum system.⁵

In this light, the IRC would like to draw the Committee's attention to some areas of concern in the Irish asylum system going forward under this new legislation with regards to *inter alia* effective procedures for people fleeing persecution. The IRC also acknowledges that the International Protection Act is newly-commenced and as such, the impact of many of the issues raised in relation to the new legislation remains to be seen.

¹ Irish Refugee Council website: www.irishrefugeecouncil.ie

² International Protection Act 2016. Available here: <http://www.irishstatutebook.ie/eli/2015/act/66/enacted/en/html>

³ Refugee Act 1996 (as amended). Available here: <http://www.refworld.org/docid/3ae6b60e0.html>

⁴ To address the issues raised and make recommendations for future action, the Irish government convened a working group consisting of a range of stakeholders including NGOs, legal practitioners, academics, the UNHCR, government officials and asylum seekers and refugees themselves. Their findings were published in a comprehensive report: *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 [Working Group Report, hereafter]. Available here: <http://bit.ly/1GYBUL5>

⁵ Prior to the passing of the legislation at Bill stage, the Irish Refugee Council published a comprehensive recommendations document on areas of concern in the Bill. Available here: <http://bit.ly/1Oq2OAS>

Article 2 – Prevention of Torture

Facilities for immigration-related detention

In its Concluding Observations on Ireland in 2011, the Committee against Torture recommended that the State take measures to ensure that persons seeking international protection are held in facilities suitable to their needs and status.⁶ At present, the State continues to detain persons for immigration-related reasons at facilities shared by convicted and remand prisoners, including Cloverhill prison, Limerick Prison, the Dóchas Cenre (for female detainees), police (Garda Síochána) stations and holding rooms at Dublin Airport.⁷

In a report published in 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) was critical of Ireland's practice of detaining people in prisons for immigration-related issues. Following visits to a number of prisons, the CPT expressed concerns on a number of issues, including that immigration detainees were "mixed in holding cells (for up to five hours or more) with remand and convicted prisoners" and often without information detailing the reasons for their detention in a language that they could understand.⁸ For persons detained pending deportation, the CPT reported cases of bullying where the individual was placed in detention together with remand and convicted prisoners.⁹ Furthermore, prison staff stated "that they were not appropriately equipped or trained to look after immigration detainees."¹⁰ Overall, the CPT was of the opinion that "a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence."¹¹ The Irish government responded to the CPT in 2015, stating that they intended to establish a designated immigration detention facility near Dublin airport by 2016. In a Parliamentary Question on the issue dated July 2016, Minister for Justice Francis Fitzgerald stated that the facility "will be completed as soon as possible within the next 12 months and will replace the existing Garda Station at the airport, provide office accommodation for Gardaí and civilians as well as providing a modern detention facility."¹² There has been no indication as to the progress of this development at the time of this submission.

The Irish Refugee Council Recommends that:

- **persons held for immigration-related reasons are held in facilities suited to their needs and status in the State;**

⁶ Ibid.

⁷ Global Detention Project, Ireland Immigration Detention Profile, Citing correspondence from the Department of Justice, see here: https://www.globaldetentionproject.org/countries/europe/ireland#_ftn68

⁸ Council of Europe (2015) *Report to the Government of Ireland on the Visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014*, (17 November 2015) para. 18.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Tánaiste and Minister for Justice and Equality Francis Fitzgerald response to Parliamentary Question, 07 July 2016, <http://www.justice.ie/en/JELR/Pages/PQ-07-07-2016-69>

- **staff working in facilities where asylum seekers may be held are provided with training to allow them to address the needs of asylum seekers and persons who may be victims of ill-treatment or suffering from trauma, including access to interpreters where necessary.**

Detention of asylum seekers

There are no disaggregated figures available for the numbers of asylum seekers that have been detained. Typically, asylum seekers may be detained for a number of reasons, including for example upon refusal of access to the territory at the port of entry or pending deportation.¹³ According to the latest data from the Irish Prison Service, in 2016 there were 421 committals to Irish prisons under immigration law, involving 408 detainees.¹⁴ This is a significant increase on the numbers registered in 2015 where there were 342 committals (involving 335 detainees).¹⁵ According to the latest available figures, 35 international protection applications were lodged from prisons in 2015.¹⁶ While the number of those detained for immigration-related reasons in Ireland is relatively low overall, the Irish Refugee Council is nonetheless concerned that the State does not distinguish within the cohort of “immigrant prisoners” those who may have international protection claims. This is particularly the case as the International Protection Act affords expanded powers of detention to police and immigration authorities. For example, the new legislation provides that “an immigration officer or a member of the Garda Síochána may arrest **without warrant** an applicant and detain him or her in a prescribed place... with **reasonable cause**...”¹⁷ The inclusion of power to arrest without a warrant is an unnecessary expansion of the powers to detain compared with those contained in the Refugee Act 1996 that it replaces. In addition, “reasonable cause” is not clearly defined in the text of the legislation, leaving scope for persons in the protection process to be arbitrarily detained.

Furthermore, there is concern around the length of time asylum seekers can be detained. The current formulation of the text in terms of the length of time an asylum seeker can be detained allows for renewable 21-day detention periods.¹⁸ This is not subject to a statutorily defined limit on the number of times this detention period can be renewed and leaves the potential for arbitrary indefinite detention in renewable periods. UNHCR specifically states that “indefinite detention is arbitrary and maximum limits on detention should be established in law.”¹⁹ The Irish Refugee Council and a number of NGOs called for a reduction in the breadth of detention powers afforded by the new Act when it was at draft stage.²⁰ The State must ensure that Irish immigration detention is not arbitrary in practice and that detainees

¹³ Irish Refugee Council, Asylum Information Database Country Report for Ireland 2016, p. 80, available here: http://www.asylumineurope.org/sites/default/files/report-download/aida_ie_update.v_final.pdf

¹⁴ Irish Prison Service (2017) *Annual Report 2016* (at: http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12631-IPS-annualreport-2016_Web.pdf), p.25.

¹⁵ Ibid.

¹⁶ Reception and Integration Agency, Annual Report 2015 p. 13, available here: <http://www.ria.gov.ie/en/RIA/AR-2015-RIA-Final%20draft.pdf/Files/AR-2015-RIA-Final%20draft.pdf>

¹⁷ International Protection Act 2015, Section 20.

¹⁸ International Protection Act 2015, Section 20 (12).

¹⁹ UNHCR, Detention Guidelines - Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), p. 26

²⁰ IRC Recommendations on the International Protection Bill, pp, 25-29. Available here: <http://bit.ly/1Oq2OAS>

are regularly updated as to the reasons for their detention and the length of time they will be detained for.

The Irish Refugee Council recommends that:

- **detainees are provided with information as to their circumstances in a language that they can understand – guidance can be taken from Article 10 of the recast Reception Conditions Directive (2013);**
- **in the interests of transparency and good practice, the State disseminates disaggregated figures in relation to those detained on immigration-related grounds, including the numbers of those seeking international protection;**

Consent for medical examinations

In the event that the International Protection Office deems it necessary to obtain a medical report for the purposes of supporting or corroborating an individual's application for protection, Article 23 of the International Protection Act 2015 states that the relevant international protection officer "may require the applicant to be examined, and a report in relation to the health of the applicant furnished."²¹ The Irish Refugee Council is concerned that this provision does not oblige the officer involved to obtain the person's informed consent in advance of conducting a medical examination. Subjecting a person to a medical examination without their express consent is a serious infringement on their right to dignity and bodily integrity under the Charter of Fundamental Rights.²² Furthermore, the Irish Refugee Council is concerned at the ambiguous use of the word "examined," with no further clarification or guidance as to what such an examination might entail. This may result in applicants having to undergo unnecessary and stressful medical tests that do not go to the core of their protection claim.

The Irish Refugee Council recommends that:

- **the State ensure that medical examinations are not conducted without obtaining the express, informed consent of the person involved. Where a person is unfit to make an informed decision, then the person with responsibility to provide for their best interests should assess whether to give consent on their behalf;**
- **any examination is limited to non-invasive procedures that fully respect the human dignity of the person concerned;**
- **the reasoning given for carrying out a medical examination is linked to the core of the person's application for protection, so as to avoid arbitrariness;**

²¹ International Protection Act (2015), Section 23 (1).

²² Charter of Fundamental Rights of the European Union, (2000/C 364/01) Arts, 1, 2.

- **clear guidelines are published as to the application of Section 23 of the International Protection Act in practice.**

Adaptation of reception conditions to suit the needs of vulnerable persons

Ireland has opted-in to neither the EU Reception Conditions Directive nor its recast. As such, reception conditions in the Irish asylum procedure are not provided for in legislation and are administrated by the Reception and Integration Agency, a division of the Department of Justice. People are provided full room and board, and a modest weekly financial allowance under a partly-privatised system called Direct Provision consisting of a number of reception centres dispersed around the country. While initially intended for short-term accommodation, due to systemic delays and significant backlogs under the previous, bifurcated procedure, people have inevitably ended up living in Direct Provision for several years, drawing substantial criticism from civil society.²³

One consequence of the lack of a statutory basis for reception is that there is no formalised procedure for assessing and addressing the special reception needs of vulnerable people in the protection process.²⁴ At the initial reception centre, where asylum seekers are brought on arrival, it is standard practice for people to undergo a medical screening before they are dispersed to other Direct Provision centres around the country. It should be noted that this practice is not mandatory. At this first instance, people are also provided with access to a doctor and a psychological counsellor; however this has limited impact on the suitability of a person's eventual accommodation to their specific needs. There are no specialised facilities for survivors of torture or traumatised asylum seekers and persons are often accommodated in centres located in rural parts of the country that are some distance from required expert support services. Such conditions can exacerbate existing vulnerabilities and give rise to new issues.

With regards to gender-sensitive reception conditions, there is only one dedicated female-only Direct Provision centre.²⁵ The Irish Human Rights and Equality Commission, in their 2017 submission to the UN CEDAW Committee, highlighted a number of issues facing asylum-seeking women living in Direct Provision, including (but not limited to) the impact on the mental health and well-being of mothers, lack of access to adequate legal and general information and numerous accounts of sexual harassment.²⁶ In April 2014, The Reception and Integration Agency introduced a guidance document on sexual violence and

²³ Irish Refugee Council, *Direct Provision: Framing an Alternative Reception System for People Seeking International Protection (2013)*, available at: <http://bit.ly/1frbvX4>

²⁴ Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation of Reception Facilities for Asylum Seekers', February 2014, available at: <http://bit.ly/1klPkR>.

²⁵ Reception & Integration Agency, Annual Report (2015) p. 55. Available at: <http://bit.ly/2mW2IHA>

²⁶ Irish Human Rights and Equality Commission, Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports (January 2017), Sections 13.4.1 – 13.4.2. Available at: <http://bit.ly/2lAMB4T>

harassment in Direct Provision centres;²⁷ however concerns have been raised about its implementation.²⁸ Furthermore, people who are identified as victims of trafficking are housed in Direct Provision centres, a practice that has been subject to international scrutiny.²⁹ The Council of Europe Group of Experts on Action against Trafficking in Human Beings recommended that the Irish government reviews its policy of accommodating victims of trafficking in Direct Provision centres and to consider setting up specialised shelters tailored to their specific needs.³⁰ To date this policy remains unchanged.³¹

The Irish Refugee Council welcomes the extension of the remit of the Ombudsman and the Ombudsman for Children to residents of Direct Provision.³² It is important that access to this mechanism is not hindered by the presence of special needs. Children and victims of trauma or ill-treatment may face particular obstacles in approaching Reception and Integration Agency staff in order to first attempt to resolve any issues with them before the Ombudsman can be accessed. This is particularly the case where there is no mechanism for acknowledging special needs in the first place. In May 2017, the Ombudsman for Children highlighted that for both children and adults making complaints, the process can be quite “daunting”, as there is a perception that making such a complaint will have a negative impact on the outcome of their international protection application.³³

The Irish Refugee Council recommends that:

- **a formalised vulnerability identification mechanism is established for the purposes of reception that go beyond the scope of the initial medical service provided upon arrival, to ensure that the person is accommodated in a location that is both practically and geographically suited to their particular needs;**
- **vulnerability assessment and identification occurs on a continuum, so that special needs are identified not only at the earliest possible instance in the asylum process but also where they arise at later stages in the process;**
- **once special needs are identified, reception conditions are adapted accordingly and that special needs are also taken into account in asylum procedures.**

²⁷ Reception and Integration Agency, Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence and Harassment, (April 2014) Available at: <http://bit.ly/2lvYqK0>

²⁸ Irish Human Rights and Equality Commission Submission to CEDAW, p. 117.

²⁹ UN Human Rights Committee (2014) Concluding Observations on the Fourth Periodic Report of Ireland, CCPR/C/IRL/CO/4, para. 20.

³⁰ Council of Europe Group of Experts on Action against Trafficking in Human Beings (2013) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round, GRETA(2013)15, p. 45.

³¹ Department of Justice and Equality, Second National Action Plan to Prevent and Combat Human Trafficking in Ireland, (October 2016) Section 2.4.2. available at: <http://bit.ly/2ssezIF>

³² Office of the Ombudsman, Press Release: *Ombudsman and Ombudsman for Children can now investigate complaints from those in Direct Provision*, (March 2017) available at: <http://bit.ly/2s4JMuP>

³³ Ombudsman for Children, Press Release: *Making a complaint is daunting for those living in Direct Provision – Ombudsman for Children* (May 2017) available at: <http://bit.ly/2rk4O5J>

Article 3 – Non-Refoulement

Access to the territory

While there have been no official reports of *refoulement* from any point at the Irish border, the Irish Refugee Council notes that in response to a Parliamentary Question on the issue, Minister for Justice Francis Fitzgerald stated that 3036 persons were refused leave to land in the period from January to September 2016, 267 of whom were subsequently permitted entry upon expressing their intent to make an application for international protection.³⁴ In response to a later Parliamentary Question, Minister Fitzgerald stated that in total in 2016, 178 Afghan, 7 Eritrean, 26 Iraqi and 37 Syrian nationals had been refused leave to land at ports of entry.³⁵ Of that cohort, 57 persons were admitted to the state to make an international protection application, meaning that the remainder were returned to where they arrived to Ireland from.³⁶

These figures are of concern, as the countries cited are widely-acknowledged to be countries from where refugees originate. Information on refusals to enter the territory and procedures at Ireland's air and land borders and information is sparse. The Irish Refugee Council continues to call for transparency and an independent oversight mechanism to ensure that human rights standards are upheld by Irish authorities at airports and other ports of entry.³⁷ The State may look to the UK Border Agency's Independent Inspector of Borders and Immigration for good practice in this regard.³⁸

The Irish Refugee Council recommends that:

- **disaggregated data on those refused access to the Irish State is published on a regular basis (including numbers, nationality and reason for refusal of those concerned);**
- **all persons refused leave to land are provided with access to legal advice and information on the asylum procedure, in a language that they can understand;**
- **an independent oversight mechanism is established for the purposes of monitoring State practice at points of entry to the territory and ensuring that State authorities are in full compliance with human rights obligations. This role could be held by an independent authority with the mandate for such responsibility.**

³⁴ Tánaiste and Minister for Justice and Equality Francis Fitzgerald response to Parliamentary Question, (2nd November 2016) available at: <http://bit.ly/2lbeCyW>

³⁵ Tánaiste and Minister for Justice and Equality Francis Fitzgerald response to Parliamentary Question, (31st January 2017) available at: <http://bit.ly/2kQ9qBt>

³⁶ Ibid.

³⁷ Irish Refugee Council, *Media Statement: Refusals of leave to land are alarming, says Irish Refugee Council* (21 January 2016) available at: <http://bit.ly/1PPivhu>; Irish Refugee Council Recommendations on the International Protection Bill 2015 (November 2015) p. 6, available here: <http://bit.ly/1Oq2OAS>

³⁸ Independent Chief Inspector of Borders and Immigration, <http://icinspector.independent.gov.uk/>

Inadmissability procedures

The International Protection Act 2015 contains broad provisions outlining admissibility procedures prior to permitting access to the international protection procedure. Section 21 states that an application may be deemed inadmissible where *inter alia*:

*“(a) another Member State has granted refugee status or subsidiary protection status to the person”*³⁹

The Irish Refugee Council has previously expressed concern that the scope of inadmissability contained in Section 21 is out of step with Ireland’s human rights obligations under the European Convention on Human Rights and the Charter of Fundamental Rights.⁴⁰ Jurisprudence from the European courts has demonstrated that breaches of human rights obligations may occur in other Member States irrespective of whether or not they have previously granted international protection status to an individual.⁴¹ People should not be deprived of the right to access protection procedures solely on the basis that they have been granted protection elsewhere, be it another EU Member State or a third country. Any admissibility procedure should, at its core, take account of the likelihood of persecution, serious harm and/or other human rights abuse should a person be returned from where they arrived.

The Irish Refugee Council recommends that:

- **applications for international protection not be deemed inadmissible solely on the basis of having been granted refugee status or subsidiary protection in another EU Member State.**

The Irish Refugee Council is also concerned that there is no statutory exemption of unaccompanied children from inadmissibility procedures. Generally, inadmissibility procedures may violate a person’s right to apply for asylum under Article 18 of the Charter of Fundamental Rights and unless subject to strict monitoring and regulation, may be incompatible with the principles of non-refoulement and the best interests of the child. Given the particular vulnerability of unaccompanied and separated children, it is of concern that the scope of Section 21 of the International Protection Act remains worded in such a way that suggests that unaccompanied minors and separated children may be deprived of access to the protection procedure.

The Irish Refugee Council recommends that:

- **in line with the principles of non-refoulement and the best interests of the child, the State ensure that unaccompanied children never be subject to inadmissability procedures.**

³⁹ International Protection Act 2015, Section 21.

⁴⁰ Irish Refugee Council recommendations on the International Protection Bill 2015, p. 21.

⁴¹ For example, see: ECtHR, *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011; CJEU, Joined Cases, C-411/10, C-493/10 *N.S. v Secretary of State for the Home Department and M.E. and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, 21 December 2011; ECHR, *Tarakhel v. Switzerland*, Application no. 29217/12; R (on the application of EM(Eritrea)) v. Secretary of State for the Home Department, [2014] UKSC 12.

Identification of vulnerable persons with special procedural needs

In line with above comments on the need to take account of special needs in reception conditions, the Irish Refugee Council regrets that the International Protection Act is silent on any requirement for international protection officials to carry out a vulnerability assessment at any stage in the asylum procedure. This is in spite of recommendations from the Irish Refugee Council on the draft legislation⁴² and the findings of an interagency working group report on the Irish international protection process and reception conditions (hereafter referred to as the Working Group Report), which called for resources to be made available to NGOs and State bodies to facilitate the “early identification of vulnerable applicants.”⁴³ Failure to identify the special needs of applicants from the earliest possible stage can greatly hinder their capacity to fully engage with the asylum process and can lead to erroneous decisions where vulnerabilities go unrecognised or arise at a late stage in the process. Where this occurs, the process risks becoming unduly prolonged by unnecessary appeals and judicial reviews before the High Court. In the worst case, a flawed negative decision can lead to an applicant being returned to a country where they fear persecution. The lack of an identification mechanism is out of step with the majority of other EU Member States that have signed up to the recast Asylum Procedures Directive⁴⁴ and the recast Reception Conditions Directive,⁴⁵ of the Common European Asylum System, both of which contain provisions for the identification of vulnerable applicants with special needs. The International Protection Office has committed to a prioritisation procedure with the commencement of the new Act; however, this practice is limited to specific categories of applicant and does not incorporate a formalised identification mechanism, which may inevitably lead to the special needs of some vulnerable applicants going unrecognised.⁴⁶

The Irish Refugee Council recommends that:

- **the International Protection Office establishes a formalised vulnerability identification mechanism, so that any special needs can be added to an applicant’s file and addressed from the moment their claim is lodged;**
- **personnel working with asylum seekers at different stages of the process (i.e. authorised officers lodging the application, international protection officers conducting the substantive interview, decision-makers, etc) are trained to identify special procedural needs. This ensures that not only are special needs**

⁴² Irish Refugee Council Recommendations on the International Protection Bill 2015 (November 2015), available here: <http://www.irishrefugeecouncil.ie/wp-content/uploads/2015/11/IRC-Recommendations-on-International-Protection-Bill-2015-Final.pdf>

⁴³ 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, (June 2015) <http://bit.ly/1GYBUL5>

⁴⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L180/60 29.6.2013 (hereinafter recast Asylum Procedures Directive), Article 24.

⁴⁵ 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 (recast), OJ L180/96 29.6.2013 (hereinafter recast Reception Conditions Directive), Article 22.

⁴⁶ International Protection Office & UNHCR Statement on the Prioritisation of Applicants, <http://bit.ly/2m1Plbi>

identified at the beginning of the procedure, but also where vulnerability arises during the process and the asylum procedure is adapted to meet their needs.

Applications for international protection by unaccompanied minors

Once it comes to the attention of an international protection officer that an applicant may be an unaccompanied minor, that official is obliged to notify the Separated Children's Unit of the Child and Family Agency (TUSLA).⁴⁷ Under TUSLA's care, each unaccompanied minor is assigned a social worker who is responsible for deciding whether or not the child should make an application for international protection.⁴⁸

There is no standardised policy or guidelines setting out how such decisions should be made in practice and the Working Group Report called for clarity on TUSLA's decision making procedure in this regard.⁴⁹ The sole decision on whether or not an unaccompanied child may make an application for international protection is entirely at the discretion of the Child and Family Agency, which may run contrary to the child's individual right to seek asylum under Article 18 of the Charter of Fundamental Rights. Given the serious implications of such a decision on the child's future, and the complexity of asylum law and persecution of a child-specific nature, it is important that legal representatives with expertise in child and asylum law are instructed to advise the child. The Working Group report recommended that Ireland's asylum legislation clearly provide that all children (accompanied or otherwise) have the right to lodge an application for international protection either directly or through a representative.⁵⁰

The Irish Refugee Council recommends that:

- **unaccompanied children be allowed to make an application for international protection on their own behalf, or where an application is made by a social worker on their behalf that such an application is on the basis of legal advice from a legal representative with experience in child-specific persecution. Such advice should be incorporated into the care plan of the child;**
- **for the purposes of full transparency and good practice, the procedures by which TUSLA social workers decide whether or not to enter an unaccompanied minor into the international protection process should be clarified and made publicly available.**

⁴⁷ International Protection Act 2015, Section 14(1).

⁴⁸ European Migration Network Ireland, Policies and Practices on Unaccompanied Minors in Ireland (November 2015), p. 25. Available here: <http://bit.ly/2sAEc4E>

⁴⁹ 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, (June 2015) Section 3.199. Available at: <http://bit.ly/1GYBUL5>

⁵⁰ *ibid.*

Age assessment procedures

Section 24 of the International Protection Act contains provisions for conducting an examination to determine the age of a person making an application for international protection. Such an examination may be carried out by medical means;⁵¹ however, the legislation is unclear on when a medical examination should be required over other methods. Given the fact that the accuracy of medical age-assessments are disputed and unnecessarily invasive, the Irish Refugee Council has previously called for any age-assessment procedure to be psycho-social in nature and conducted by a fully independent body, not linked to the young person's care or protection needs.⁵² Furthermore, the provisions are silent on any appeals process where the results of such an assessment find an applicant to be over the age of 18 and there is no obligation to ensure access to legal advice at any stage in the age assessment procedure. There is no publicly available policy or information on age-assessment in the Irish asylum system and it is unknown to what extent such information exists internally with the relevant authorities.⁵³ The Irish Refugee Council is concerned with the general lack of transparency in age assessment proceedings, in particular with regards to: who is responsible for conducting an examination, the nature of that examination, the extent to which a person is apprised of the ramifications of an age-assessment examination and the procedure by which a decision can be appealed.

The Irish Refugee Council recommends that:

- **the age assessment process is fully transparent and that all material on age determination used by the authorities is made fully public, including relevant training and policy documents;**
- **age assessments are non-medical in nature and conducted by an independent body not involved with the child's care or protection needs;**
- **all persons subject to an age-assessment test are fully informed on the proceedings and the consequences of the results, including the right to appeal a decision.**

⁵¹ International Protection Act 2015, Art. 24(2)(c)

⁵² Irish Refugee Council, Recommendations on the International Protection Bill, p. 16.

⁵³ Samantha Arnold & Diego Castillo Goncalves, The International Protection Act 2015 and Age Assessment, Irish Law Times (2016) p. 3.

Article 10 – Training for International Protection Personnel

Training for personnel working with traumatised and vulnerable asylum seekers

In its previous concluding observations, the Committee against Torture called on the Irish State to “Strengthen its efforts to ensure the training of law enforcement personnel and others on the treatment of vulnerable groups at risk of ill-treatment, such as children, migrants, Travellers, Roma and other vulnerable groups.”⁵⁴ In relation to the International Protection Act, the Irish Refugee Council previously noted with concern that there is no minimum statutory requirement for the qualifications of personnel engaged with the protection process.⁵⁵ Nor are there any substantive legislative provisions or policy documents detailing the specific knowledge, qualifications and additional training required for those who might encounter different categories of vulnerable applicant at all stages of the asylum procedure.

Similarly, while the Chairperson of the International Protection Appeals Tribunal is empowered to convene regular training for personnel working at appeals stage,⁵⁶ there is no equivalent provision for staff working with asylum seekers at the early stages of the procedure. The Department of Justice has raised on a number of occasions that it provides ad hoc training to staff in conjunction with UNHCR, the European Asylum Support Office and national experts.⁵⁷ The Department of Justice, in two recent progress reports on the implementation of the recommendations from the Working Group Report has indicated that they have “implemented” personnel training in a number of key areas.⁵⁸ However, the frequency and content of these trainings is not elaborated upon and it is not known how the effectiveness of these trainings is monitored in practice, if at all.

The Irish Refugee Council recommends that:

- **regular training for personnel working with vulnerable asylum seekers with special needs is formalised, either in legislation or a policy document to be made available publicly. In the interests of transparency, training materials developed for use at both the first instance and later stages in the procedures should be published;**
- **the implementation and impact of any training for personnel should be monitored and evaluated to ensure that protection decision making is of the highest quality standard and meets international standards.**

⁵⁴ UN Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture on Ireland, CAT/C/IRL/CO/1 (June 2011), para. 30.

⁵⁵ Irish Refugee Council Recommendations on the International Protection Bill, p. 2.

⁵⁶ International Protection Act 2015, Section 63 (7).

⁵⁷ Working Group Report, Section 3.237.

⁵⁸ Department of Justice, First Progress Report on Implementation of Working Group Report Recommendations (June 2016). Available here: <http://bit.ly/2rUotsD>; Department of Justice, Second Progress Report on Implementation of Working Group Report Recommendations (February 2017). Available here: <http://bit.ly/2lZUvSM>.