UNITED NATIONS COMMITTEE AGAINST TORTURE

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Spirasi's Submission on Ireland

About Spirasi

Spirasi is a humanitarian, non-governmental organisation that works with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. In partnership with others, Spirasi enables access to specialist services to promote the wellbeing of the human person, encourages self-reliance and facilitates integration into Irish society.

Spirasi is a member of the International Rehabilitation Council for Victims of Torture. Spirasi is Ireland's only provider of specialist medical, therapeutic and psychosocial services to survivors of torture. Spirasi's education programmes complement the therapeutic by providing a key stepping stone to allow for further rehabilitation and integration into Irish society.

Founded in 1999, Spirasi has provided services to over 4200 survivors of torture and other forms of cruel, inhuman or degrading treatment or punishment. Each year the number of unique clients to Spirasi and the number of appointments increases, with 410 clients beginning to access services in 2016 alone and 3248 appointments taking place.

Spirasi's main funders are the Health Service Executive (HSE), the City of Dublin Education and Training Board (CDETB, formerly the VEC), the Spiritans, Tusla (The Child and Family Agency), the European Union and the United Nations Voluntary Fund for Victims of Torture.

Introduction

This report addresses a number of issues faced by torture victims arriving in Ireland as asylum seekers. These include, identification of victims, access to holistic rehabilitation, the treatment of child victims, immigration detention and access to MLRs to support refoulement claims. The report demonstrates that while a number of initiatives have been taken to ensure that torture victims fully enjoy their rights under the Convention, there is still more to be done in these areas.

1. The Right to Rehabilitation - 'As Full Rehabilitation As Possible'

General Comment 3 on the implementation of Article 14 of the Convention, which applies to all victims of torture and of acts of cruel, inhuman or degrading treatment or punishment (hereafter 'ill treatment') without discrimination of any kind, states that a State party is required to ensure in its

legal system that a victim obtains redress and has an enforceable right to 'the means for as full rehabilitation as possible', as well as to fair and adequate compensation.[1] According to the Committee, victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention.[2] The term 'victim' is also to include 'affected immediate family or dependents of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.'[3] Article 14 is applicable to those who suffered this harm outside of the territory of the State.[4] The ultimate objective in the provision of redress is the restoration of the dignity of the victim.[5] The Committee goes on to state that,

> Rehabilitation, for the purposes of the general comment, refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society.

In order to fulfil its obligations to provide a victim with the means for as full rehabilitation as possible, the State must adopt a long-term integrated approach and ensure that specialist services are available, appropriate and readily accessible.[6] According to General Comment 3 these should include a procedure for the assessment and evaluation of individual's therapeutic and other needs based on, inter alia, the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (The Istanbul Protocol) and may include a wide range of inter-disciplinary measures such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training and education etc.[7] It is important to note that the obligation to provide the means for as full rehabilitation as possible does not relate to the available resources of the State and may not be postponed.[8] Finally, national legislation should ensure that victims can exercise this right and further ensure their access to judicial remedy in this regard.[9]

1.2 Rehabilitation Services Available

As the General Comment emphasises, the State's obligation to provide 'the means for as full rehabilitation as possible' refers to the need to restore and repair the harm suffered by a victim

[1] UN Committee Against Torture (CAT), General comment no. 3, 2012 : Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties (hereafter General Comment 3), 13 December 2012, para 1 and para 32, available at: http://www.refworld.org/docid/5437cc274.html
[2] General Comment 3, para 3
[3] General Comment 3, para 3
[4] General Comment 3, para 22
[5] General Comment 3, para 4
[6] General Comment 3, para 13
[7] General Comment 3, para 13
[8] General Comment 3, para 12
[9] General Comment 3, para 20

whose life situation, including their dignity, health and self-sufficiency may never be fully recovered as a result of the pervasive effect of torture.[10]

Spirasi is largely State-funded and is the national centre providing for the needs of victims of torture in Ireland. Spirasi provides a level of care that can be considered a step toward rehabilitation. However, considering the content of the General Comment, our service provides only a small step towards fulfilling the State's obligation to provide the means for as full rehabilitation as possible for victims of torture.

Spirasi is currently the sole provider of a multidisciplinary needs assessment (physical, psychological and psychosocial) to survivors of torture. This assessment results in a care plan being made in respect of the individual's future rehabilitative needs and can lead to referrals to the specialised services offered by Spirasi, namely, individual, group or family therapy, psychosocial support and education opportunities, which include English, IT and numeracy classes. The outcome of this needs assessment is also communicated to the individual's own GP, including any recommendations for further external referrals as required.

While Spirasi is expanding its client-base in the settled refugee community, the organisation works largely with applicants in the international protection process. Therefore, while Spirasi, through its therapeutic, psychosocial and educational services, provides a first level of safety and support, some reconnection and a vital step to integration through language acquisition in an atmosphere that takes into account the particular needs of survivors, the service is limited in its ability to provide the enabling and restorative functions outlined in the General Comment through a combination of resource constraints and, crucially, the precarious situation and institutionalised living conditions of the majority of its clients, including, vitally, their being prohibited access to the labour market and afforded little to no access to vocational training and education while they are in the international protection process. Furthermore, the services offered are all based in Dublin and as a result it can be difficult or in some cases impossible for an individual to attend when they are located elsewhere in the country.

1.3 Living Conditions and Direct Provision

1.3.1. *The Direct Provision System*

The context in which a person lives greatly affects their ability to enjoy their right to rehabilitation. The Direct Provision system, in which the majority of Spirasi's clients and their families live, presents a number of impediments to rehabilitation. The Direct Provision system impedes the restoration of independence, physical, mental, social and vocational ability and full inclusion and participation in society, instead creating dependency, enforced destitution, a lack of privacy and obstacles to integration, all of which prevent a person enjoying their right to rehabilitation under the Convention. It is a system which in many cases exacerbates existing mental health difficulties and sometimes is itself the cause of mental health difficulties.[11] The Direct Provision system is a cause of major upset, stress and anxiety to Spirasi's clients on an ongoing basis.

[10] General Comment 3, para 12

[11] Murphy R. 2015. An Exploration of African Asylum Seekers' Mental Health Care Experiences in Ireland. PhD. Thesis, Trinity College Dublin

As one practical example of this, Spirasi clients have reported having to share a room with multiple strangers as a source of acute and constant distress, especially for those who suffer from insomnia or cannot sleep without the light on due to their trauma-related mental health difficulties, or who experience night terrors or nightmares. LGBTQ clients report feeling particularly unsafe in Direct Provision due to having to share a room with and experiencing harassment from people coming from cultures which do not accept homosexuality, like those they have fled.

The Direct Provision system was established in 2000 and sees asylum seekers accommodated in centres where they are provided with meals and a weekly allowance of €19.10 for an adult and €15.60 for a child, with both allowances due to be raised to €21.60 from August this year.[12] Children are able to attend school but adults may not work and there is little to no access to meaningful training opportunities or third level education. No travel card is provided and many of the Direct Provision Centres are located away from accessible amenities, supports and services, leaving residents isolated without the opportunity to integrate.

On the prohibition on the right to seek employment, in May this year the Supreme Court in Ireland ruled on a case where the complainant submitted that as a result of the ban on working for asylum seekers he suffered depression, "almost complete loss of autonomy" and said being allowed to work was vital to his development, personal dignity and "sense of self worth".[13] The seven judge court unanimously agreed the absolute ban was "in principle" unconstitutional, with Mr. Justice O'Donnell stating that 'This damage to the individual's self worth and sense of themselves, is exactly the damage which the constitutional right [to seek employment] seeks to guard against.'[14] The Court has adjourned making any formal orders for six months to allow the legislature consider how to address the situation and we would urge that asylum seekers, including survivors of torture, are afforded the right to work without delay in order to facilitate their rebuilding of themselves and their lives.

It is Spirasi's experience that without access to education or training opportunities or other activities within a community, the stigma and isolation of being an asylum seeker escalates and for those who are suffering from trauma-related mental health difficulties, this exacerbates their symptoms. For those who are not severely traumatised, this can cause mental health difficulties in itself. Also, without access to education, work or opportunities within the community, survivors are not prepared for integrating into Irish life when they do eventually receive protection status. Furthermore, due to the length of the asylum process, any skills or education asylum seekers arrive to Ireland with are often lost.

1.3.2. *Information on the Implementation of the Recommendations of the McMahon Report*

Spirasi, along with several other organisations, played an active role in the *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports*

[12] Asylum seekers' group insulted by allowance increase, The Irish Times, June 14 2017, available at https://www.irishtimes.com/news/social-affairs/asylum-seekers-insulted-by-allowance-increase-group-says-1.3119893
[13] Asylum seekers' work ban unconstitutional, says Supreme Court, 30 May 2017, available at https://www.irishtimes.com/news/crime-and-law/courts/high-court/asylum-seekers-work-ban-unconstitutional-says-supreme-court-1.3101419; N.V.H -v- Minister for Justice & Equality and others, 30 May 2017, full judgment available at http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/bba87f6e90ea3c5d80258130004199fe?OpenDocument
[14] *ibid*

to Asylum Seekers, also known as the McMahon Report, which was published in June 2015.[15] In February 2017 the State issued their second report on the progress of implementation of the recommendations that were made.[16] The report states that 92% of the recommendations are now implemented, partially implemented or in progress, an increase on the 80% reported by the first audit published in June 2016.[17] Unfortunately, there is a lack of detail provided in both progress reports as to the actions taken to implement each recommendation and where limited detail is provided wording is vague. As a result, any practical effects for survivors of torture living in Direct Provision are impossible to gauge and Spirasi is therefore largely dependent on what our clients and outreach officers report from the centres.

1.4 Recommendations:

- ***The State to ensure in the Irish legal system that a victim of an act of torture or ill treatment, including he or she who is subject to such treatment outside of the territory of the State, obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. Legislation should establish concrete mechanisms and programmes for providing holistic rehabilitation to victims of torture and ill-treatment as soon as possible following identification. Such legislation must allow for individuals to exercise this right and ensure their access to judicial remedy[18].***
- ***The State to ensure that domestic laws provide that a victim who has suffered trauma should benefit from adequate care and protection to avoid his or her re-traumatization in the course of legal and administrative proceedings, including the international protection procedure, as provided for by General Comment 3.[19]***
- ***The State to provide a detailed report to accompany the second audit published on the implementation of the recommendations of the McMahon report in February 2017 to allow for oversight, accountability and transparency in the implementation of the recommendations and to ensure that the McMahon report brings meaningful change to the lives of survivors of torture and others living in the Direct Provision system.***

[15] Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (The McMahon Report), June 2015, available at http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf

[16] Second Audit of Progress on Improvements to the Protection System (February 2017), Department of Justice and Equality, available at http://www.justice.ie/en/JELR/WG_Report_2nd_Progress_Table_2017.pdf/Files/WG_Report_2nd_Progress_Table_2017.pdf

[17] Tánaiste and Minister Stanton announce further significant progress on the McMahon Report, Direct Provision and supports to asylum seekers, 23 February 2017, available at http://www.inis.gov.ie/en/INIS/Pages/press-release-asylum-seeker-report-recommendations-230217; First Audit of Progress on Improvements to the Protection System (June 2016), Department of Justice and Equality, available at http://www.justice.ie/en/JELR/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-seekers.pdf/Files/Working-Group-to-Report-to-Government-on-Improvements-to-the-Protection-Process-including-Direct-Provision-and-Supports-to-Asylum-seekers.pdf

[18] General Comment 3, para 15 and para 20

[19] General Comment 3, para 21

- ***The State to opt in to the EU Reception Conditions Directive (Recast), which provides for access to the labour market and for enhanced protections for vulnerable applicants including victims of torture.***[20]
- ***Taking into account the recent Supreme Court judgment which deemed an indefinite ban on asylum seekers' right to work as unconstitutional, to provide asylum seekers including survivors of torture the right to work within 6 months of lodging an application for international protection in order to bring Ireland into line with EU standards, to restore people's dignity and autonomy, to facilitate integration and rehabilitation and to preserve the mental health of applicants for international protection including survivors of torture.***[21]
- ***The state to ensure access to vocational training and education opportunities for victims of torture in line with the definition of rehabilitation provided in General Comment 3.***
- ***The State to resource specialist services throughout the country, particularly in areas where there are Direct Provision or Emergency Reception and Orientation Centres, to ensure rehabilitation services are readily accessible to survivors of torture located outside of Dublin.***
- ***The State to ensure that a survivor of torture living outside of Direct Provision is not prevented from receiving a medical card, as is currently the case in practice.***
- ***In order to safeguard the dignity of persons living in Direct Provision including survivors of torture, the State to increase the Direct Provision allowance to levels commensurate with the Consumer Price Index and inflation and in consultation with residents of Direct Provision to ascertain their needs and to review and adjust this level annually as necessary. Pending this, the State should without delay increase the Direct Provision Allowance to at least the levels recommended by the McMahon report (recommendation 5.30), that is €38.74 for adults and €29.80 for children.***

2. Child and Adolescent Victims of Torture

2.1. Rehabilitation and Intergenerational Trauma

Child victims include children who themselves have experienced torture or other cruel, inhuman or degrading treatment or punishment or children whose family members have experienced such treatment. The current lack of specialised rehabilitative services for child and adolescent victims of torture in Ireland is highly concerning and is an area in which Spirasi is currently trying, within resource constraints, to expand its services through its family therapy programme.

Spirasi further believes that the Direct Provision system, which often sees parents and children of all ages sharing rooms and requires that children are never left unattended, is unsuitable for victims of torture and puts minor victims at risk of further trauma. Spirasi is particularly concerned about

[20] 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, available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033

[21] Asylum seekers' work ban unconstitutional, says Supreme Court, 30 May 2017, available at https://www.irishtimes.com/news/crime-and-law/courts/high-court/asylum-seekers-work-ban-unconstitutional-says-supreme-court-1.3101419; N.V.H -v- Minister for Justice & Equality and others, 30 May 2017, full judgment available at http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/bba87f6e90ea3c5d80258130004199fe?OpenDocument

intergenerational trauma amongst the asylum seeking population.[22] As just one clear manifestation of this risk, Spirasi clients report that children, especially those in the Direct Provision system, are, sometimes on a nightly basis, woken by the cries of their parents or others who experience night terrors or nightmares related to their past experiences. One client who spoke of this often, for example, suffered from regular night terrors and migraine and her two young children were witness to her night terrors on a regular basis and to her migraine attacks which would come on due to stress. On a few occasions she ended up in hospital because of her condition and the children were taken into foster care for a number of days. This caused the client further distress. As the conditions in which the client was living had prevented her from integrating in the community she had no one she could turn to to mind her children when she was ill. They now stay in the hospital with her when she gets an attack, as she refuses to send them back to foster care.

On this note, childcare is also a prominent issue for a lot of clients. Clients who are trying to manage their own mental health difficulties report being exhausted by the need to constantly supervise their children given the nature of the Direct Provision and Emergency Reception and Orientation Centres. For example, in some hostels where there are only shared bathrooms parents need to accompany their children to them for safety reasons and in the hostels where there is a playroom or play area the children need to be accompanied at all times often causing tension and affording clients no time to engage in other activities to aid their own rehabilitation and integration.

Spirasi is further concerned that these children and young people are not receiving adequate therapeutic support and that there may also be a lack of awareness in school as to what the child or young person is experiencing at home, therefore compounding the difficulties

2.2 Integration, Social and Educational Supports

Regarding integration, social and educational supports, all of which are vital to a child or adolescent victim's rehabilitation and development, the conditions and resources provided and facilitated by the Reception and Integration Agency within the Direct Provision system are going to play a fundamental role in shaping the lives of children and adolescent victims for many years to come. For example, children are not able to form the same friendships as their peers as they are not able to invite friends to the centre for playdates or sleep overs and parents do not have the money to allow them to join in on particular activities their peers are taking part in. All of these factors add to the distress of parent and child victims alike and not only impede their recovery but exacerbate their difficulties. One example of the need for dedicated support is in relation to homework, as Spirasi clients who do not speak English well enough report their distress at not being able to provide the assistance their children need and most rooms in the hostels do not have a desk or a space for the child to do their school work in private. It is our experience in Spirasi that the levels of integration support available to children and adolescents varies greatly from accommodation centre to accommodation centre with some children having access to, for example, playgroups, homework clubs and excursions out of the centre, while many others do not have access to any such resources.

[22] Atia Daud, Erling Skoglund, Per-Anders Rydelius, Children in families of torture victims: transgenerational transmission of parents' traumatic experiences to their children, International Journal of Social Welfare, Volume 14, Issue 1 (2005), pp. 23–32 available at http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2397.2005.00336.x/full

2.3 Access to the Ombudsman for Children's Office

Spirasi greatly welcomes the expansion of the remit of the Ombudsman for Children's Office to accept complaints in relation to children living in Direct Provision.[23] However, one month after beginning to accept such complaints the Ombudsman for Children, Dr. Niall Muldoon highlighted that while 'It is still early days…it is clear already that many find making a complaint very daunting. Understandably people in Direct Provision are fearful that a complaint of any kind, to any organisation, may affect their refugee status…that people, many of whom have been through traumatic experiences, are wary of drawing any attention to themselves.'[24] He went on to state that 'It is clear that greater understanding, and improved communication is needed across the public service, and in all Government Departments to make it easier for people living in both Direct Provision centres and Emergency Reception and Orientation Centres, to make a complaint.'[25]

2.4 Recommendations:

- ***The State to ensure the development and resourcing of a framework of holistic and interdisciplinary rehabilitation for child and adolescent survivors of torture, which ensures that legal, socio-economic, psychological and medical assistance is available on their arrival to Ireland. Assistance must be tailored, culturally sensitive, include a gender perspective, be victim-oriented and encourage the full participation of the child or adolescent. In the provision of assistance, family interventions and the role of the parents, as well as all of those involved in the life of the child or adolescent victim, must be recognised as key to nourishing the child's resilience. In all matters, the best interests of the child should always be of primary consideration, in line with the UN Convention on the Rights of the Child.[26]***
- ***Integration, social and educational supports and resources must be accessible to all child and adolescent victims of torture across all accommodation centres to facilitate their holistic rehabilitation. Such supports may include homework clubs and study groups, playgroups, mentor or 'buddy' programmes, extracurricular activities, excursions and other activities as appropriate.***
- ***Measures must be taken to improve awareness amongst and provide training to teachers and other school staff as to the experiences of and on working with children in Direct Provision, including a special focus on child and adolescent victims of torture.***
- ***The State must ensure greater understanding and improved communication across the public service, and in all Government Departments to make it easier for all people living in both Direct Provision centres and Emergency Reception and Orientation Centres but particularly victims of torture, to make a complaint to the Ombudsman and Ombudsman for Children's Office. The State must take measures to reassure people that this is a safe,***

[23] Children in Direct Provision will now share equal rights with other children in Ireland – Ombudsman for Children, 23 February 2017 available at https://www.oco.ie/2017/02/children-in-direct-provision-will-now-share-equal-rights-with-other-children-in-ireland-ombudsman-for-children/

[24] Making a complaint is daunting for those living in Direct Provision – Ombudsman for Children, 2 May 2017 available at https://www.oco.ie/2017/05/making-a-complaint-is-daunting-for-those-living-in-direct-provision-ombudsman-for-children/

[25] *ibid*

[26] How Can Children Survive Torture? Report on the Expert Workshop on redress and rehabilitation of child and adolescent victims of torture and the intergenerational transmission of trauma, Office of the High Commissioner for Human Rights, May 2016, pg. 23 available at http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/HowCanChildrenSurviveTorture.pdf

secure and independent complaints mechanism and that making a complaint will not affect their international protection claim.

3. Immigration Related Detention

S.78(3)(a) of the new International Protection Act 2015 states that a person may be detained for an immigration related offence 'in a prescribed place'. In Ireland, individuals detained for immigration reasons continue to be held in prison facilities alongside convicted and remand prisoners. The Committee for the Prevention of Torture (CPT), following its visit to Ireland in 2014, stated 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' and that where detention for immigration reasons is required, as a last resort, individuals 'should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel'.[27] Minister Frances Fitzgerald stated in July 2016 that 'Persons held on immigration related matters, including those with deportation orders are, unless the subject of a conviction, in general kept apart from convicted persons while in detention and are treated the same as remand prisoners and are subject to the same regime and receive the same privileges as this grouping.' In regard to future plans for a separate facility, the Minister stated that 'Plans are being progressed for the provision of a dedicated immigration detention facility at Dublin Airport…This redevelopment 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.'

3.1 The Effects of Detention on Survivors of Torture

Spirasi has received cases of survivors of torture being detained in Irish prisons. As some examples of their experiences, one young man who had been previously detained and tortured by state authorities in his country of origin was held in Cloverhill prison for 3 weeks surrounding his transfer to a third country. He understood that he had been detained for 'giving lip' to an immigration official. He found the experience in Cloverhill Prison hugely frightening as the threatening atmosphere and witnessing of violence and constraint against others reminded him of his past experiences. He experienced re-traumatisation due to this detention. Another young man was charged and remanded in Cloverhill Prison under the Immigration Act for failing to produce documentation proving his identity and while there was violently assaulted and injured by fellow prisoners and left deeply traumatised.

The CPT on its visit to Ireland further noted that individuals held for immigration-related reasons in Ireland 'were not provided with information in a language they could understand about what was happening to them, heightening their anxieties' and that 'prison managers and officers in the places visited by the CPT all agreed that they were not appropriately equipped or trained to look after immigration detainees. [28]

[27] European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment from 16 to 26 September 2014, Council of Europe, 17 November 2015, 2.A(5), available at http://hudoc.cpt.coe.int/eng?i=p-irl-20140916-en-12

[28] *ibid*

The continued detention of survivors of torture in Ireland, especially alongside convicted and remand prisoners and with staff who are not trained to work with survivors, is of grave concern to Spirasi. Detention of torture survivors can have serious psychological effects and can compound the effects of previous detentions. Further detention puts torture survivors in circumstances of relative isolation, often exacerbated by their lack of English, thereby increasing the likelihood of their reliving and fixating upon past traumatic experiences, with few, if any, means of relief, and leading to increased anxiety and distress and the possibility of self-harm and suicide.[29]

3.2 Recommendations:

- ***An agreement by the State to take all possible precautions to ensure that survivors of torture are not subject to detention and subsequent re-traumatisation in Ireland.***
- ***A framework to be agreed by the State and relevant agencies and NGOs, including a medical and psychological screening to be carried out by persons highly trained in working with traumatised individuals, designed to identify victims of torture prior to detention and for alternatives to detention to be provided for individuals identified as such.***
- ***Commitment by the State to consult with relevant health professionals and NGOs to provide methodological training to all personnel who work with persons detained for immigration-related reasons on the identification and treatment of survivors of torture in order to prevent re-traumatisation and to facilitate their access to medical, psychological, social and legal supports as required.[30]***
- ***Commitment by the State to ensure access as required to qualified and accredited interpreters who have received specialised training so that individuals detained for immigration-related offences are kept regularly informed of their rights and the status of their case as well as information on and facilitation of their accessing available supports and relevant complaint mechanisms. Every effort should be made to ensure that the detained individual is comfortable with and able to speak freely to the interpreter employed taking into account their individual circumstances and the circumstances of their case as well as reiterating the confidentiality by which the interpreter is bound.***

4. Early Identification of Victims of Torture

The early identification of victims of torture is vital to ensure that individuals can effectively enjoy all of the rights afforded by the Convention. The early identification of survivors of torture or other ill-treatment who have arrived in Ireland to seek asylum is essential to allow them to present their claim for international protection as fully as possible from the initial stage and obtain medico-legal documentation where required in order to ensure the principle of non-refoulement is upheld. Furthermore, early identification is crucial to ensure their access to medical, psychological and psychosocial care at as early a stage as possible to initiate and provide ongoing support and treatment which may prevent any physical or mental symptoms from becoming chronic.[31] Early

[29] Susi, D. and Salinsky, M., Protection not Prison: Torture Survivors Detained in the UK, Medical Foundation for the Care of Victims of Torture,200, p. 3, available at https://www.freedomfromtorture.org/sites/default/files/documents/Salinsky-ProtectionNotPrison.pdf

[30] General Comment 3, para 35

[31] 'Recognising Victims of Torture in National Asylum Procedures; A comparative overview of early identification of victims and their access to medico-legal reports in asylum-receiving countries', International Rehabilitation Council for Torture Victims (2013) pg. 12-13, available at http://irct.org/assets/uploads/pdf_20161120143448.pdf

identification is also crucial to ensure placement in appropriate accommodation and access to legal supports, to allow for enabling accommodations to be made to support individuals in navigating and receiving fair treatment in the international protection procedure.

4.1 Special Procedural Guarantees and Adapted Asylum Determination Procedures

S.58(1) of the new International Protection Act states that only in the application of the provisions on the content of international protection 'due regard shall be had to the specific situation of vulnerable persons such as…victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence.' Spirasi puts forward that due regard should be had to the specific situation of victims of torture throughout the entirety of the protection procedure and not be limited to those granted international protection. The psychological sequelae of torture puts victims of torture at a disadvantage in standard asylum processes which are focused on assessing credibility and which view inconsistencies, late disclosures or inability to recall, as an example of just some of the ways in which a past history of torture may affect an individual's testimony, in a negative light. Survivors of torture require special procedural guarantees and adaptions to the standard asylum procedure, informed by the Istanbul Protocol, in order to ensure their access to their rights under the Convention and their fair treatment in the international protection procedure.

4.2 The McMahon Report's Recommendations for Screenings

Spirasi, along with several other organisations, as already mentioned above, played an active role in the *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, also known as the McMahon Report, which was published in June 2015. The report called for the introduction of a more comprehensive vulnerability screening (Recommendation 3299) and the review and strengthening of the current health screening service provided by the HSE at the Balseskin Reception Centre to facilitate a multi-disciplinary screening which assesses medical, psychological and social needs (Recommendation 4210) for all applicants for international protection. It was specified that both screenings should take place within 30 days of an applicant lodging their application and both screenings should be accessible to applicants living outside of the Direct Provision system.

In its second report on the implementation of the Recommendations of the McMahon report published in February 2017 the government has reported 'partial implementation' of Recommendation 4210 citing 'additional staff' being added to the Balseskin health team but states that 'the HSE have not been in a position to provide the level of significant resourcing necessary to facilitate the 30 day time frame mentioned in the recommendation'.[32] In relation to Recommendation 3299 the progress report states that the introduction of the vulnerability screening is 'a desirable objective but carries significant resource implications' and as a result 'this recommendation is unlikely to be implemented in medium term' although elsewhere in the report it

[32] Second Audit of Progress on Improvements to the Protection System (February 2017), Department of Justice and Equality, pg. 41, available at http://www.justice.ie/en/JELR/WG_Report_2nd_Progress_Table_2017.pdf/Files/WG_Report_2nd_Progress_Table_2017.pdf

is stated 'Commitment in the draft HSE Service Plan for 2017 to develop "Vulnerability Assessment" in collaboration with Mental Health colleagues will be progressed accordingly.'[33]

Also forming part of recommendation 4210 is that 'follow up and monitoring of persons who fall into the category of "vulnerable" should occur on an on-going and regular basis until such time as the applicant exits the protection system'. The government states in the progress report that 'significant resource and cost implications have not facilitated progress of this recommendation to date.'[34]

4.3 Concerns Related to Screening

Spirasi acknowledges that a screening process that identifies certain vulnerabilities currently exists in the Balseskin Reception Centre but is concerned as it does not specifically include trauma-related mental health difficulties and therefore a possible past history of torture. Further to this, as applicants for international protection are normally moved from the Balseskin Reception Centre and dispersed to Direct Provision centres throughout the country within two to three weeks, Spirasi is very concerned that victims of torture that are actually identified are moved on before they can avail of a multi-disciplinary needs assessment process, such as that currently offered externally by Spirasi, and that referrals made to Spirasi and other services may not come to fruition due to applicants being moved out of Dublin and communication between them and the referrer or service referred to breaking down. Finally, Spirasi notes from experience that clients with serious trauma-related mental health difficulties often end up living outside of the Direct Provision system due to difficulties they experience living with their condition in an institutionalised setting and a significant number of clients become homeless as a result as well as self-medicating through substance abuse and without access to the Direct Provision Allowance or a medical card.

For the reasons outlined above and reiterating the crucial importance of early identification of victims of torture to ensure their access to the necessary supports to facilitate their rehabilitation and the fact that the obligation to ensure 'as full rehabilitation as possible' does not relate to the available resources of State parties and may not be postponed, we would strongly urge that the State seek to fully implement a robust vulnerability screening, accessible to all protection applicants, without delay. We would urge that this is undertaken in consultation with specialist service providers to ensure both the design of the screening and the training of staff will be in line with international best practice and informed by the standards laid down in the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman and Degrading Treatment and Punishment* (The Istanbul Protocol).[35]

[33] Second Audit of Progress on Improvements to the Protection System (February 2017), Department of Justice and Equality, p. 62 and 41 respectively, available at http://www.justice.ie/en/JELR/WG_Report_2nd_Progress_Table_2017.pdf/Files/WG_Report_2nd_Progress_Table_2017.pdf

[34] Second Audit of Progress on Improvements to the Protection System (February 2017), Department of Justice and Equality, p. 62, available at http://www.justice.ie/en/JELR/WG_Report_2nd_Progress_Table_2017.pdf/Files/WG_Report_2nd_Progress_Table_2017.pdf

[35] The Manual on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman and Degrading Treatment and Punishment (The Istanbul Protocol), Office of the United Nations High Commissioner for Human Rights, (2004), available at http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf

4.4 Recommendations:

- ***The screening for and identification of victims of torture to be introduced into national legislation along with guarantees of special procedural measures and suitable accommodation to be made available as required to facilitate their particular needs throughout the international protection process as a member of a vulnerable group.***
- ***The existing voluntary health screening service provided by the HSE at the Balseskin Reception Centre to be expanded so as to ensure a comprehensive multi-disciplinary assessment of medical, psychological and social needs of all protection applicants including a vulnerability assessment to identify victims of trauma, in particular torture and other cruel, inhuman or degrading treatment or punishment. This assessment should result in individuals being referred to specialised healthcare and support services where appropriate, including legal supports. This comprehensive health screening should be made equally accessible to applicants who do not live in Direct Provision accommodation and should be performed no later than 30 days after an initial application for international protection has been made.***
- ***All assessments and screening procedures and training of personnel in these procedures should be informed by the standards of the Istanbul Protocol and with the prevention of re-traumatisation as a priority.***
- ***Follow-up and monitoring of persons who fall into the category of "vulnerable" should occur on an on-going and regular basis to ensure continuity of care until at least such time as the applicant exits the international protection system.***
- ***Sufficient resources should be made available at the earliest possible stage, to both relevant NGOs and State agencies, particularly under the proposed more truncated single procedure in order to facilitate early identification.***
- ***Efforts should be made by the Reception and Integration Agency, the Health Service Executive, centre management and others to take steps to encourage applicants to avail of the multi-disciplinary needs and vulnerability assessment.***

5. Medico-Legal Reports

Medico-Legal Reports (MLRs) and the accompanying Professional Witness Reports, are crucial to the credibility assessments carried out in the international protection status determination proceedings and therefore vital to ensuring that the prohibition of refoulement, enshrined in Article 3 of the UN Convention Against Torture and S.50 of the new International Protection Act, is respected. An MLR is a report carried out by a medical expert that includes a physical and/or psychological evaluation of the victim, and the expert's opinion of the probable relationship of the physical and/or psychological findings to torture or ill-treatment.[36]Ideally MLRs should be used as early as possible in the international protection process to ensure that decision-makers have the strongest evidence available when reviewing an applicant's case. Training of decision-makers in the interpretation of MLR findings is vital including an understanding of the effects that torture can have on an asylum

[36]The Manual on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman and Degrading Treatment and Punishment (The Istanbul Protocol), Office of the United Nations High Commissioner for Human Rights, (2004), Annex I, para 6(b) available at http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf

seeker's ability to recount events and sustain a coherent narrative. The Committee has repeatedly held that complete accuracy is seldom to be expected from victims of torture yet the international protection process often draws negative inferences from inconsistencies in testimony when assessing the credibility of an individual's claim.

With regard to the provision of medico-legal documentation, where an arguable case of past torture or ill-treatment is made as evidence that a real risk of such treatment upon removal to their country of origin exists, the burden of proof shifts to the State to refute that risk. In practice, this places a specific obligation on the State to effectively investigate the claim, including the veracity of the allegations of past torture or ill-treatment, as well as the bearing that they may have, if any, on the real risk of torture or other ill-treatment upon removal to a third country. This places an obligation on the state to facilitate and ensure access to an MLR for an applicant for international protection where an arguable case of past trauma or torture is put forward. The applicable standard for an investigation is the Istanbul Protocol and in particular its principles guiding forensic medical evaluations.

5.1 MLRs in Ireland

Spirasi and a small number of private doctors provide MLRs to applicants in the international protection process in Ireland in line with the standards of the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman and Degrading Treatment and Punishment* (The Istanbul Protocol).[37] Spirasi has always heavily subsidised the preparation of these reports, receiving a fee of €492 per report from the State through the Legal Aid Board's Refugee Legal Service while the cost to produce each report is €1,190. For clients who have private legal representation the cost of an MLR can be a barrier to access. Spirasi experienced a crisis in funding in 2016 which halted the production of MLRs between August 2016 and January 2017 and led to lengthy delays for applicants in the protection process in obtaining a report. Spirasi has since been able to access additional funding from the Asylum and Migration Integration Fund (AMIF) which, together with the redirection of all of the assistance Spirasi receives from the UN Voluntary Fund for Survivors of Torture to this pursuit, should allow Spirasi to continue producing MLRs until March 2020. However, this period of ceased production of reports created a significant backlog of cases which puts the current waiting time for an appointment for a Medico-Legal Examination at 8-10 months from the date of referral. Spirasi is very concerned that the new Single Procedure introduced by the International Protection Act 2015, designed to speed up and streamline the international protection decision-making process, will negatively affect survivors of torture given either the lengthy delays they will need to be afforded in the legal process to allow for a medico-legal report to be obtained or their not being able to obtain a report in time for the consideration of their claim at first instance.

Also, given the crucial importance of documentary medical and psychological evidence to a survivor of torture's protection claim, confronted with a shortage of funding and increased requests for MLRs Spirasi has unfortunately had to prioritise the preparation of MLRs to the detriment of the provision of additional rehabilitative and complementary therapies offered to clients in the past. Given both the strictly time limited nature of the funding received from AMIF and the draining effect the subsidising of MLRs is having on Spirasi's ability to provide greater rehabilitative and complementary

[37] The Manual on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman and Degrading Treatment and Punishment (The Istanbul Protocol), Office of the United Nations High Commissioner for Human Rights, (2004), available at http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf

therapies as it has done in the past, we would urge the State to increase the sanction to match the cost of production of the report and thus ensure the continued production of reports is securely funded into the future. This would increase the options individuals have open to them with regards to avenues through which to obtain an MLR and ensure that rehabilitative services are not further compromised.

In relation to the training of immigration officials and decision-makers in the consideration and application of MLRs, Spirasi recognises that substantial improvements have been made in this regard over the past number of years and encourages the continued and ongoing advancement of training and multi-disciplinary consultation between legal, medical and psychological professionals in this regard to ensure victims of torture are recognised as such.

5.2 Recommendations:

- ***To increase the Legal Aid Board Sanction of €492 per medico-legal report to match the cost of producing the report to ensure the continued and secure funding of medico-legal documentation in line with the standards of the Istanbul Protocol in the future.***
- ***Legislation that places a clear obligation on the State to ensure access to medico-legal documentation of torture in a timely manner.***
- ***To provide guarantees that individuals are afforded the necessary delays in the international protection legal process while awaiting a medico-legal examination and report and put at no disadvantage as a result of this delay and to provide support and resources to relevant agencies and organisations to minimise the current waiting list times for medico-legal documentation to ensure that survivors of torture are not subject to significantly lengthier procedures than other applicants, therefore cancelling out the benefits of any prioritisation of this group.***
- ***Strengthening of training of immigration decision-makers, in line with the Istanbul Protocol, on the consideration and application of medical evidence and ongoing multi-disciplinary consultation and dialogue between legal, medical and psychological professionals in this regard to ensure a transparent and uniform system that ensures victims of torture are recognised as such. It is very important that training of decision-makers ensures that psychological sequelae of torture are considered on parity with physical evidence of torture and further, that victims of torture are not disadvantaged by difficulties with memory or other psychological sequelae of torture which may be perceived as negatively affecting their credibility.***
- ***Methodological training of immigration decision-makers in working with victims of torture and ill-treatment in order to prevent re-traumatisation should be ensured and training and policy measures should further focus on vicarious trauma and its effects on decision-makers, including an emphasis on continued self-care and the possible renewal of key staff to avoid burn out.***
- ***Legal representatives who advise international protection applicants should receive training from health professionals on recognising both the physical and psychological sequelae of torture and other cruel, inhuman and degrading treatment or punishment so that they can make the appropriate referrals to obtain medical evidence to support the applicant's claim. Given the nature of the relationship between the legal representative and their client, the legal representative should use their unique position to ensure not***

only that a victim of torture receives special procedural guarantees and support throughout the legal process but that they are made aware of rehabilitative and psychosocial support services that they can access.

- ***The provision of detailed statistics on the use of medico-legal reports in the international protection procedure including the stages of the process at which they are requested, postponements granted as a result of awaiting a medico-legal report and the outcomes of cases where medico-legal reports were applied.***