



## **Irish Centre for Human Rights**

### **Submission on Ireland's Fourth Periodic Report Before the Human Rights Committee.**

#### **Treatment of Asylum Seekers**

The Irish Centre for Human Rights at the School of Law, National University of Ireland, is Ireland's principal academic human rights centre. The Centre undertakes human rights teaching, research, publications and training and also contributes to human rights policy development nationally and internationally. The Irish Centre for Human Rights is co-directed by Professors Michael O'Flaherty and Ray Murphy.

The Irish Centre for Human Rights draws to the attention of the Human Rights Committee the manner in which Irish treatment of asylum seekers raises serious concerns under the International Covenant on Civil and Political Rights.

In particular, we refer to: the very low recognition rate for those seeking protection and the lack of transparency and perceived lack of fairness in the Irish protection determination system; the use of prisons to detain asylum seekers unnecessarily for immigration offences and; the Direct Provision system where applicants seeking protection are forced to reside in inappropriate living conditions with serious risks to the security of resident children, the significant effects of the system on private and family life and the detrimental consequences of prolonged institutionalisation on their mental and physical health.

The Human Rights Committee has previously expressed concern about the Irish systems for refugee determination and treatment of asylum seekers. In its Concluding Observations on Ireland's 3<sup>rd</sup> Periodic Report, The Human Rights Committee recommended:

“The State party should amend the immigration, residence and protection bill 2008 to outlaw summary removal which is incompatible with the Covenant and ensure that asylum seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection. It should also introduce an independent appeals procedure to review all immigration-related decisions. Engaging in such a procedure, as well as resorting to judicial review of adverse decisions, should have a suspensive effect in respect of such decisions. Furthermore, the State party should ensure that the Minister for Justice, Equality and Law Reform is not charged with the appointment of members of the new Protection Review Tribunal.”

The Committee also recommended that:

“The State party should review its detention policy with regard to asylum-seekers and give priority to alternative forms of accommodation. The State party should take immediate and effective measures to ensure that all persons detained for immigration related reasons are held in facilities specifically designed for this purpose. The State party should also ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied and separated children and that social services, such as the Health Service Executive, are involved in the age assessment of asylum-seekers by immigration officials.”

In its 4<sup>th</sup> Periodic Report of July 2012, Ireland devotes three paragraphs to respond to the Concluding Observations with regard to the rights of aliens. While the reviewed Immigration, Residency and Protection Bill has still not been passed, Ireland commits to “introduce comprehensive reforms of the immigration, residency and asylum systems, which will include a statutory appeals system and set out rights and obligations in a transparent way. The question of appeals for immigration decisions will be addressed in the context of an amended Bill.” There is no further detail on these envisaged reforms. In relation to the detention of asylum seekers there are nine paragraphs which lay out protections for asylum seekers in detention under the Refugee Act 1996 (as amended) but make no mention of detention under other immigration legislation.

### ***Low Recognition Rate and Unfairness in Process***

The protection determination process in Ireland can be characterised as lengthy, opaque and having a scant chance of an applicant being recognised as needing protection. There is a very low recognition rate for those seeking refugee status in Ireland. Practically no one is given subsidiary protection. In 2010 the rate of recognition for refugee status was the lowest in the EU27.<sup>i</sup> For the last three years, despite some recent increases, the numbers being declared refugees have been well below the average for the EU27.<sup>ii</sup> Ireland is the only country in the EU which has a bifurcated protection procedure. Applicants cannot apply for subsidiary protection until they have received a negative decision to their application for refugee status.

The recognition rate for subsidiary protection is the lowest in the European Union.<sup>iii</sup> Applicants can be in the process for up to seven years.

The Refugee Appeals Tribunal hearings take place behind closed doors and decisions are not published. While the Supreme Court decided in 2006 that previous relevant decisions had to be made available to legal representatives of those appearing before the Refugee Appeals Tribunal, the decisions are not public. The Irish Centre for Human Rights recognises the need to maintain the anonymity of refugee applicants but the application of the *in camera* rule by the Refugee Appeals Tribunal prevents transparency and consistency in decision-making (decisions could, for instance, be redacted and published which is the norm in most other developed countries). As asylum decisions by first and second instance determination bodies are not published, there is no way of making a comprehensive analysis of the quality of decisions other than based on a sample gathered by approaching individual applicants themselves. The lack of transparency in the determination process leads to a widely held perception that there is a culture of disbelief and lack of consistency in the determination process. Concerns have also been expressed at the poor quality of decision-making by the determination bodies. The independence of the determination bodies at first instance, the Office of the Refugee Applications Commissioner and second instance the Refugee Appeals Tribunal from the Department of Justice and Equality has been questioned. A further consequence of the secret nature of proceedings has been a large number of High Court challenges to determination bodies with significant backlogs and delays for applicants to have their protection needs assessed.

### ***Detention of Asylum Seekers***

The Irish Centre for Human Rights notes that, while detention of asylum seekers is not widely used in Ireland, there is no immigration detention facility in the State. Immigration detainees are kept with the rest of the prison population. The relevant provisions of immigration legislation allow for detention, *inter alia*, where the asylum applicant: has not made reasonable efforts to establish his or her true identity or without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents. The Irish Centre for Human Rights is concerned that these provisions result in protection applicants being held unnecessarily and inappropriately in prison.

### ***The System of Direct Provision***

The Direct Provision system raises a number of human rights concerns. The Direct Provision system was established in 2000 in response to an increase in requests for international protection in Ireland. As of February 2013, 4,826 people reside in Direct Provision accommodation centres, managed by the Reception and Integration Agency, spending on average four years in the system, with some residents living in Direct Provision centres for more than seven.<sup>iv</sup> A case has recently been brought before the High Court to challenge the legality of the system. During the past year in particular, residents of Direct Provision have reported inappropriate living conditions, complaints of malnutrition, serious risks to the security of resident children, including sexual assaults,<sup>v</sup> significant effects of the system on

private and family life and detrimental consequences of prolonged institutionalisation on their mental and physical health.

Persons seeking protection in Ireland are accommodated in isolation from the rest of the population. While they can leave the centres during the day and are not technically detained, they are obliged to sign a record sheet on their return to the centre at night. Under the Refugee Act, they are not authorised to work while awaiting the outcome of their status determination process and visitors are not permitted to enter accommodation centres. While children living in Direct Provision attend the same schools as the rest of the population, they cannot invite friends to visit and are often unable to fully participate in school activities due to cost. All of the above-mentioned factors segregate persons living in Direct Provision centres from the rest of society, contribute to their isolation and seriously hinder integration, present or future, as a result of years of institutionalisation.

The accommodation centres are dispersed throughout the State, and residents have no say as to where they may be placed. Residents are often transferred from one centre to another, sometimes on the other side of the country, as centres are being closed and places re-allocated. Such transfers are often undertaken without due regard to the circumstances of residents affected, for instance when children's education or continued medical care or counselling are disrupted.

Women living in Direct Provision are often placed in positions of particular vulnerability due to lack of appropriate accommodation and care, in particular for women who had experienced sexual violence, as well as young women and single mothers.

The rights of children living in Direct Provision are also not fully protected, with matters relating to immigration falling outside the remit of the Office of the Ombudsman for Children.

The shortage of non-denominational schools in Ireland and the fact that the majority of schools have a Catholic ethos seriously limits the rights of children in Direct Provision to receive education in accordance with their religious belief. The privacy and family life limitations referred to above also affect the rights of parents to educate their children in accordance with their own convictions. Residents of Direct Provision also report a lack of sensitivity toward religious practices. For example, for some Muslim residents unnecessary distress has been caused by frying oil and utensils used for pork products being used for other foodstuffs and adjustments to meal times to facilitate Muslim residents observing Ramadan have not being made.

While persons living in Direct Provision centres can make complaints to RIA, there are no independent complaints or monitoring mechanisms available to them. It is worth noting that the equality legislation (Employment Equality Acts 1998 to 2011 and the Equal Status Acts 2000 to 2011) referred to by the Government in its 4<sup>th</sup> Periodic Report, does not apply to persons seeking protection.

### ***Refugee Determination and Women***

In general, the asylum system lacks gender-proofing. Neither the Office of the Refugee Applications Commissioner or the Refugee Appeals Tribunal has published gender guidelines to guide its staff in the treatment of gender-specific claims, such as those involving sexual or gender-based violence. Neither the first or second instance bodies nor the Minister for Justice and Law Reform keep gender disaggregated data on gender-related protection applications.

### ***Refugee Determination and Trafficking***

In order to fall under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking, an individual must be formally identified as a victim of trafficking by a member of the Garda Síochána (police) not below the rank of Superintendent. Individuals who have lodged an application for asylum appear to be excluded from the scope of the Administrative Arrangements and do not benefit from the recovery and reflection period or temporary residence permission.

Further information: Peter Fitzmaurice, Doctoral Fellow and Solicitor, Ph.d. Candidate, Irish Centre for Human Rights, National University of Ireland, Email address:

[peterfitzmaurice@gmail.com](mailto:peterfitzmaurice@gmail.com)

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<sup>i</sup> 'Asylum in the EU27:', Eurostat, March 2011.

<sup>ii</sup> 'Asylum in the EU27', Eurostat, March 2012 and 'Asylum in the EU27', Eurostat, March 2013.

<sup>iii</sup> There were only 2 grants of subsidiary protection in 2010. There have, up to the end of 2012, been 80 grants in total.

<sup>iv</sup> Reception and Integration Agency Monthly Statistics Report, February 2013, p 19.

<sup>v</sup> Refugee and Integration Agency Annual Report 2012.