

**Irish Human Rights and Equality Commission**

**Policy Statement on the System of Direct Provision  
in Ireland**

**10 December 2014**



**An Choimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**

**Irish Human Rights and Equality Commission**

'I find it a dehumanizing experience which eats away at my dignity and my capacity to have control and choice over our lives and the proper care and maintenance of the welfare and development and nurturing of my son... I have next to almost no control over our own daily lives or our destiny.'<sup>1</sup>

## 1. Introduction

The Irish Human Rights and Equality Commission ('the Commission') was established by the Irish Human Rights and Equality Commission Act 2014.<sup>2</sup> The Commission has a statutory remit to protect and promote human rights and equality in the State, to promote a culture of respect for human rights, equality and intercultural understanding and to promote understanding and awareness of the importance of human rights and equality.<sup>3</sup> The Commission is tasked with reviewing the adequacy and effectiveness of law, policy and practice relating to the protection of human rights and equality and with making recommendations to Government on measures to strengthen, protect and uphold human rights and equality accordingly.<sup>4</sup>

The system of 'Direct Provision' was established in the year 2000 to provide direct support to asylum seekers by way of accommodation, food and a weekly allowance, while their applications for protection are processed.<sup>5</sup> The Reception and Integration Agency (RIA), a unit within the Department of Justice and Equality, co-ordinates accommodation in a number of Direct Provision accommodation centres around Ireland.<sup>6</sup> In the past, the former Irish Human Rights Commission focused several times on the human rights issues arising from Ireland's treatment of asylum seekers and the Direct Provision system, as part of the monitoring of Ireland's obligations to international treaty bodies,<sup>7</sup> by way of legislative observations,<sup>8</sup> through awareness raising and educational

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<sup>1</sup> Affidavit of 'Ms A' in case of *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* (Record No. 2013/751/JR), at para. 3.10.

<sup>2</sup> The Irish Human Rights and Equality Commission Act 2014 merged the former Irish Human Rights Commission and the former Equality Authority into a single enhanced body.

<sup>3</sup> Section 10(1)(a)-(e) of the 2014 Act.

<sup>4</sup> Section 10(2)(b) and section 10(2)(d) of the 2014 Act.

<sup>5</sup> The system of Direct Provision commenced on 10 April, 2000 from which time asylum seekers have received full board accommodation and personal allowances of €19.10 per adult and €9.60 per child per week. See website of Reception and Integration Agency at [http://www.ria.gov.ie/en/RIA/Pages/Direct\\_Provision\\_FAQs](http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs), last accessed on 9 December 2014.

<sup>6</sup> The Reception and Integration Agency currently lists a total of 34 centres, located throughout 16 counties in Ireland: Baleskin Reception Centre (located in Dublin), 31 Direct Provision Accommodation Centres (seven of which are State-owned) and two Self-catering Accommodation Centres (located in Dublin and Louth). See [http://www.ria.gov.ie/en/RIA/Pages/Reception\\_Dispersal\\_Accommodation](http://www.ria.gov.ie/en/RIA/Pages/Reception_Dispersal_Accommodation) last accessed on 9 December 2014.

<sup>7</sup> See Irish Human Rights Commission, Report to the UN on the Elimination of All Forms of Racial Discrimination, 2010, at paras. 22-29, last accessed from <http://www.ihrec.ie/publications/list/ihrc-nhri-cerd-shadow-report-to-un-committee-novem/> on 9 December 2014; Irish Human Rights Commission, Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland, 2011, at para. 23, last accessed from <http://www.ihrec.ie/publications/list/ihrc-report-to-un-universal-periodic-review-march/> on 9 December 2014; Irish Human Rights Commission Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights, 2014, at paras. 135-137, last accessed from <http://www.ihrec.ie/publications/list/ihrec-designate-report-on-iccpr-june-2014/> on 9 December 2014.

activities and by way of meetings, seminars, conferences and roundtable discussions.<sup>9</sup> Since their appointment as members designate of the Irish Human Rights and Equality Commission in 2013, the Commissioners have continuously expressed their concern about the human rights of residents in the Direct Provision system and many aspects of the system as it stands. This has been highlighted in the recent case of *C.A. and T.A v the Minister for Justice and Equality*, where some of the 'Reception and Integration Agency (RIA) 'House Rules' as well as the complaints procedures were found to be unlawful.<sup>10</sup>

The Commission welcomes the announcement in October 2014 by the Minister for Justice and Equality and Minister of State of the appointment of a Working Group to report to Government on improvements to the protection process, including Direct Provision, particularly given that the Minister for Justice and Equality has stated that the 'length of time residents have spent and are spending in Direct Provision is an issue that needs to be addressed.'<sup>11</sup> The Commission recognises the skill and expertise of legal activists and the many civil society organisations working on this issue in Ireland. Ireland's asylum process, the Direct Provision system itself and the quality of the accommodation have been examined in several reports, many of which have called for the abolition of the system as it stands.<sup>12</sup> While respecting the Government's entitlement to establish a system of material support for the protection of applicants for asylum, the Commission wishes to make recommendations for measures to deal with the immediate and serious human rights implications of

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<sup>8</sup> Irish Human Rights Commission, *Observations on the Immigration, Residence and Protection Bill, 2008*, last accessed from <http://www.ihrec.ie/publications/list/observations-on-the-immigration-residence-and-prot/> on 9 December 2014.

<sup>9</sup> In 2010, the Irish Human Rights Commission hosted a roundtable meeting with stakeholders on the issue of Direct Provision. Consultations were held with non-governmental organisations in 2011 in preparation of the inclusion of the issue of Direct Provision in the IHRC's Submission to Ireland's first Universal Periodic Review in 2011. In 2014, the Irish Human Rights and Equality Commission Designate hosted a second roundtable meeting, entitled 'Human Rights and Equality Perspective on Asylum Process and Direct Provision System: Challenges and Solutions'. Presentations from this event are available for download from <http://www.ihrec.ie/publications/list.html#conferencepapers> last accessed on 9 December 2014.

<sup>10</sup> *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, Attorney General and Ireland* (Record No. 2013/751/JR).

<sup>11</sup> Minister for Justice and Equality, Frances Fitzgerald, Dáil Éireann, Debate, Direct Provision System, 19 June 2014. Last accessed from <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014061900045?opendocument> on 9 December 2014. The Commission notes criticism from civil society groups in relation to a lack of representation of asylum seekers as members of the group.

<sup>12</sup> See, for example, FLAC, *One Size Doesn't Fit All: A legal analysis of the Direct Provision and dispersal system, ten years on* (2009); Catherine Cosgrave, *Living in Limbo: Migrants' Experiences of Applying for Naturalisation in Ireland* (2011); Keelin Barry, *What's Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision* (2014); Claire Breen, 'The Policy of Direct Provision in Ireland: A Violation of Asylum Seekers' Right to an Adequate Standard of Housing' 20(4) *International Journal of Refugee Law* 611, (2008); Samantha Arnold, *State Sanctioned Child Poverty and Exclusion: The case of children in State accommodation for asylum seekers* (2012); Salome Mbugua, *Am Only Saying It Now: Experiences of Women Seeking Asylum in Ireland* (2010); Emily O'Reilly, 'Dealing with Asylum Seekers: Why Have We Gone Wrong?' 102(406) *Studies Magazine* 1, (2013); Irish Refugee Council, *Direct Provision: Framing an alternative reception system for people seeking international protection* (2013); Liam Thornton, 'The Rights of Others: Asylum Seekers and Direct Provision in Ireland' (2014) 3(2) *Irish Journal of Community Development* (forthcoming); Liam Thornton, 'Direct Provision and the Rights of the Child in Ireland' (2014) 17 (3) *Irish Journal of Family Law* 67-75; FLAC, *Our Voice, Our Rights: a parallel report in response to Ireland's Third Report under the International Covenant on Economic, Social and Cultural Rights* (2014); Sue Conlan, *Counting the Cost: Barriers to employment after direct provision*, (2014).

some of the issues it raises. The aim of this policy statement is to add the voice of the Commission to the existing body of evidence around people living within the Direct Provision system for long periods of time, focusing on the particular human rights implications of such lengthy stays and to inform the deliberations of the Governmental Working Group on Direct Provision. This statement sets out a short overview of the system of Direct Provision, followed by an examination of some of the historical and legacy issues leading to why people find themselves living within the system for excessive periods of time. It then highlights the overarching human rights and equality implications of the system, including its effects on family life and on children in particular.

Finally, recommendations are set out listing immediate measures that the Commission calls on the government to put in place. These include the introduction of a 'single protection procedure' for any person seeking protection; the introduction of a defined time limit for stays in Direct Provision; measures towards the movement of existing families out of Direct Provision; respect for residents' right to prepare their own food appropriate to their culture, diet and individual needs; enhanced protection for vulnerable persons including victims of trafficking in particular; an increase to the weekly allowance to a realistic amount that ensures dignity, respect and autonomy for individuals; the establishment of an independent appeals mechanism in addition to supporting requests from the Office of the Ombudsman and the Ombudsman for Children to extend their remit into this area; opting into the Recast Reception Conditions Directive of 2013; and the provision of education and training to residents in preparation for seeking employment once they leave the system. These recommendations are summarised on pages 18-19 below.

## 2. System of Direct Provision

'Direct Provision' usually refers to the provision of support by the State, in the form of accommodation, food and basic welfare, to a person who is seeking asylum. The predominant reason why a person is accommodated in the Direct Provision system is because they have applied for some form of protection in Ireland.<sup>13</sup>

To gain international protection under the current system, a person must apply first for refugee status. If their application is unsuccessful, a person may apply for subsidiary protection,<sup>14</sup> and finally

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<sup>13</sup> An asylum seeker is a person who seeks refugee status, subsidiary protection or leave to remain. Section 2 of the Refugee Act 1996 states that a 'refugee' is a person, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'

<sup>14</sup> See S.I. No. 518 of 2006, European Communities (Eligibility for Protection) Regulations 2006 and S.I. No. 423 of 2013, European Union (Subsidiary Protection) Regulations 2013. To be eligible for subsidiary protection, a third country national is entitled to subsidiary protection from Ireland where he or she faces a real risk of suffering serious harm if he or she is returned to his or her country of origin or country of former habitual residence. 'Serious harm' consists of (i) death penalty or execution, or, (ii) torture or inhuman or degrading treatment or punishment of the applicant in the country of origin, or (iii) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

for 'leave to remain'<sup>15</sup> if they are unsuccessful in each of the other processes. If a person is granted protection, they may leave the Direct Provision system and begin to live independently. If procedures operate efficiently, an asylum seeker might expect to live in Direct Provision for a brief period of some months. If there are difficulties with the processes, however, numerous appeals and court challenges may result in a person remaining in Direct Provision for many years. Some of those who are not granted any form of protection can continue to live in Direct Provision indefinitely, as they may have been issued with Deportation Orders which cannot be given effect to, for a variety of reasons.

Applications for international protection are predominantly made at the Office of the Refugee Applications Commissioner (ORAC).<sup>16</sup> Applicants are first accommodated in Baleskin Reception centre and subsequently resettled in one of 34 Direct Provision centres around the country, which are mostly privately run.<sup>17</sup> Those who have alternative means of support can choose to live elsewhere but will not be entitled to allowances or other support from the State.

Once accommodated in a centre, residents are given a Direct Provision allowance of €19.10 per adult and €9.60 per child by a Community Welfare Officer, on behalf of the Department of Social Protection,<sup>18</sup> and are issued with medical cards. Children have an entitlement to primary and secondary education.<sup>19</sup> Asylum seekers are not allowed to enter employment, even where they have an independent right to work.<sup>20</sup> In 2004, the introduction of the Habitual Residence Condition created a requirement that applicants should be habitually resident in the State at the time of applying for social welfare payments, limiting access to a number of social welfare payments in the majority of circumstances.<sup>21</sup> Asylum seekers are not entitled to jobseeker's allowance, pension, widow or orphan's payment, child benefit or one-parent family payment, carer's benefit, carer's allowance, domiciliary care allowance, respite care grant, or disability allowance, when they are not considered habitually resident in Ireland.<sup>22</sup> A Community Welfare Officer may also authorise exceptional needs payments for items such as clothing, baby equipment, or school related needs.<sup>23</sup>

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<sup>15</sup> An application for leave to remain is made under section 3 of the Immigration Act 1999. Section 3(3)(a) of the 1999 Act states that where the Minister for Justice proposes to make a Deportation Order, an individual may request leave to remain in the State. The Minister is obliged to consider a number of factors where such an individual makes such a claim, including age, duration of residence, family circumstances, humanitarian circumstances, the common good and considerations of public policy.

<sup>16</sup> According to Reception and Integration Agency, *Annual Report 2013*, p.10. Applications may also be made at airports or other ports.

<sup>17</sup> Reception and Integration Agency, *Annual Report 2013*, p. 33. In 2013, the Government spent over €55 million on such centres, according to Reception and Integration Agency (2014) *RIA Annual Report*, Dublin: Department of Justice and Equality, p.31.

<sup>18</sup> See RIA website at [http://www.ria.gov.ie/en/RIA/Pages/Direct\\_Provision\\_FAQs](http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs), last accessed 9 December 2014.

<sup>19</sup> Education (Welfare) Act 2000, section 17(1).

<sup>20</sup> Refugee Act 1996, section 9(4). Asylum seekers are not necessarily illegal immigrants and may have residence permits and work permits prior to their application for protection.

<sup>21</sup> According to Section 246(7)(b) and (c) of the Social Welfare (Consolidation) Act 2005 (as amended), persons who have applied for subsidiary protection are not habitually resident in the State, regardless of how long they have been in the system for determination of status.

<sup>22</sup> Social Welfare Consolidation Act 2005, sections 141(9), 153(c), 163(3), 168(5), 173(6), 180(2), 210(9), 220(3), 224(1) and 246(7) as amended by the Social Welfare Law Reform and Pensions Act 2006, sections 4(1), 16 and sch., items 4 and 14, the Social Welfare and Pensions Act 2007, section 24(d), the Social Welfare and Pensions

### 3. Historical and Legacy Issues

The State has accommodated almost 52,000 residents in the Direct Provision system since it was introduced in Ireland in April 2000.<sup>24</sup> At the end of September 2014, there were 4,494 people living in Direct Provision accommodation centres. Of this number, 1,522 were below the age of 18.<sup>25</sup> The majority of Direct Provision residents are at the later stages of the asylum process: 1,274 (30%) are applying for subsidiary protection; 1,270 (30%) have been served with a Deportation Order or notice of intent to serve one; 501 (11.8%) are between processes, 260 of whom are applying for judicial review. There are 133 children (3.1%) who are not registered as asylum seekers, including between three and 19 children who are Irish citizens residing with asylum seeker parents in Direct Provision. In addition, there are 263 other residents (9.4%) who are not categorised.

The numbers of applications for international protection are presented in Figure 1 below. Applications began to increase in the early 1990s, prompting the enactment of the Refugee Act in 1996. The Act was not fully implemented until 1999. The substantial increase in applications between 1996 and 2000 meant that many applicants were still awaiting a declaration in 2000 when the Direct Provision system was introduced. At the end of January 2001, the first month for which full data is available, there were 10,356 persons awaiting a recommendation on their status and a further 1,923 awaiting the outcome of an appeal.<sup>26</sup> The numbers applying declined considerably after 2002 and have continued to decline until 2013 when there were 946 applications for international protection. In the first six months of 2014 there have been 597 applications for international protection, a 26.5% increase on the 472 applications in the same period in 2013.<sup>27</sup>

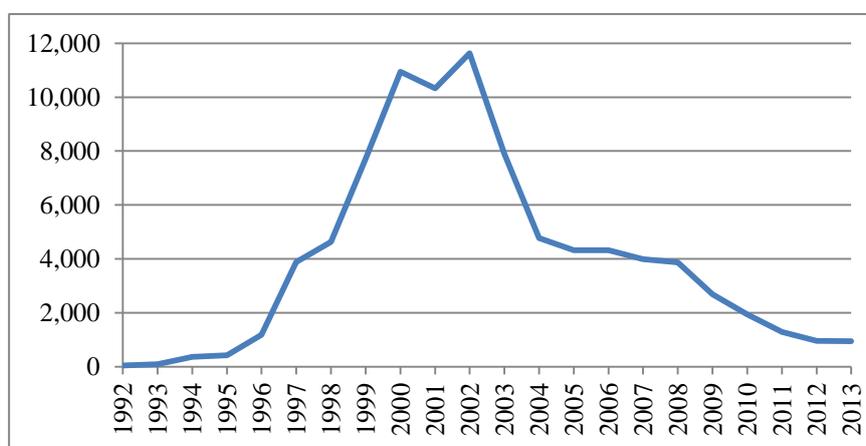


Figure 1. Annual applications for international protection in Ireland<sup>28</sup>

Act 2008, section 16(b), the Social Welfare and Pensions (No. 2) Act 2009, section 15, the Social Welfare and Pensions Act 2011, section 9(4)(e) and the Social Welfare and Pensions Act 2014, section 11.

<sup>23</sup> Social Welfare Consolidation Act 2005, ss. 192, 201, and 202, as amended by the Social Welfare and Pensions Act 2007, section 25(2) and sch. 1, and Social Welfare and Pensions Act 2008, s. 18(2) and sch. 1.

<sup>24</sup> Reception and Integration Agency, *Monthly Statistics Report*, December 2013, p.8.

<sup>25</sup> Reception and Integration Agency, *Monthly Statistics Report*, September 2014, p.8.

<sup>26</sup> Office of the Refugee Applications Commissioner, *Monthly Statistics January 2001*; Refugee Appeals Tribunal, *Annual Report 2001*.

<sup>27</sup> Office of the Refugee Applications Commissioner, *Monthly Statistics January 2013–June 2014*. This rising trend has been noted by the UNHCR, *Asylum Trends: First half 2014 Levels and Trends in Industrialized Countries*, Geneva, 2014, p.18.

<sup>28</sup> Office of the Refugee Applications Commissioner, *Annual Report 2013*, p.54.

The numbers of Direct Provision residents are available since 2004, and are presented in Figure 2 below as compared with the number of applications in each year. While the number of persons applying for international protection has declined considerably, the numbers of residents in Direct Provision has declined much more slowly and the duration of residence has increased. Out of the 4,434 residents in Direct Provision at the end of 2013, 2,647 (60.1%) have been in Direct Provision for longer than three years, 1,686 (38.0%) for longer than five years, and 604 (13.6%) for longer than seven years. According to estimations made from data published by RIA, the average duration that residents have been in Direct Provision has risen steadily since the middle of 2004 at a rate of 3.7 months every year.<sup>29</sup>

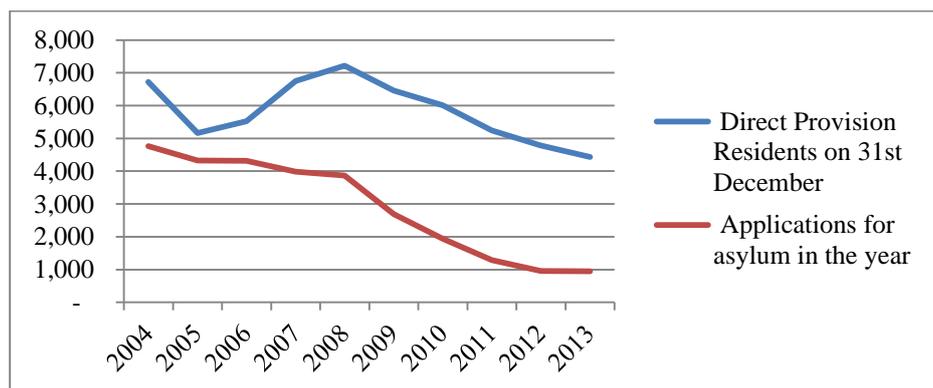


Figure 2. Number of residents in Direct Provision and annual applications for international protection<sup>30</sup>

The duration that Direct Provision residents have spent in the system, as of the end of 2013, is presented in Figure 3 below. Only 480 (10.8%) residents have been in Direct Provision for shorter than six months. Direct Provision residents have spent an average of 48 months (i.e. four years) in Direct Provision.<sup>31</sup>

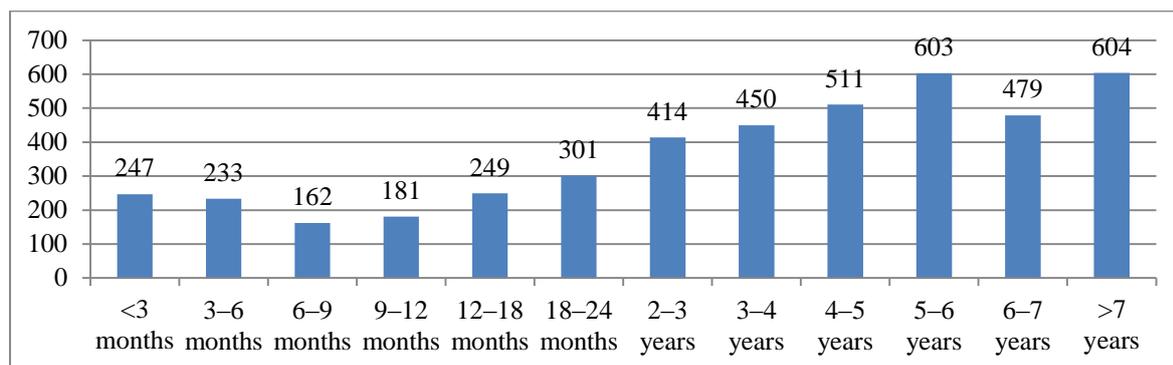


Figure 3. Length of stay of Direct Provision residents at the end of 2013<sup>32</sup>

<sup>29</sup> These figures are calculated from Reception and Integration Agency annual reports from 2004–13. Averages are not available before February 2012, but can be estimated from the numbers given for those in Direct Provision for specified periods, e.g. 3–6 months, 6–9 months, etc.

<sup>30</sup> These figures are calculated from Reception and Integration Agency annual reports from 2004–13 and from the Office of the Refugee Applications Commissioner’s annual reports from 2004–13.

<sup>31</sup> Reception and Integration Agency, *Annual Report 2013*, p.12.

<sup>32</sup> Reception and Integration Agency, *Annual Report 2013*, p.12.

Delays may happen at any stage in the process of seeking international protection. The stages may broadly be divided as follows:

- a. **Applications for Refugee Status to Office of the Refugee Applications Commissioner (ORAC):** As of the end of January 2014, there were 265 outstanding applications to ORAC, 177 (44.2%) of which are resident in Direct Provision (4.2% of total residents). In cases where the Dublin Regulation does not apply,<sup>33</sup> the majority of ORAC processing times are within six months.
- b. **Appeals on Refugee Status to Refugee Appeals Tribunal (RAT):** As of the end of 2013, there were 651 outstanding appeals to RAT. 485 (74.5%) of these are resident in Direct Provision, (11.5% of total residents). Figures indicate that almost all negative ORAC decisions are appealed to RAT, which may indicate poor quality negative recommendations could be a factor and could be a cause for longer stays in Direct Provision. The number of outstanding cases has decreased, but a greater proportion of these are now older.
- c. **Applications for Subsidiary Protection:** At the end of 2013 there were 3,000 outstanding applications for subsidiary protection, some up to six years old. 1,272 of the applicants are resident in Direct Provision (42% of total residents). Those not granted subsidiary protection will most likely apply for leave to remain and remain in Direct Provision until these applications are processed.<sup>34</sup>
- d. **Deportation Orders and Leave to Remain:** The processing of Deportation Orders and representations for leave to remain are made by the Repatriation Unit of the Irish Naturalisation and Immigration Service (INIS), a function of the Department of Justice and Equality, and deportations are carried out by the Garda National Immigration Bureau. INIS processed 3,075 cases in 2013, including persons other than asylum seekers who are deemed to be illegally in the State. There is no data on the number of outstanding cases to be processed, but 402 Direct Provision residents are awaiting the result of representations made for leave to remain, constituting 9.5% of total residents in Direct Provision.<sup>35</sup> At the end of January

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<sup>33</sup> The 'Dublin System' (Recast Dublin III Regulation No. 604/2013) determines the Member State that is responsible for examining an application for international protection lodged in an EU Member States. It provides for the transfer of asylum seekers from one Member State to another where appropriate for their claims to be heard. Dublin III is largely based on the same principle on the previous Dublin II Regulation (Dublin II Regulation 343/2003/EC) and its predecessor the Dublin Convention.

<sup>34</sup> The system will need to be reformed further in response to the CJEU's ruling in *H.N. v. Minister for Justice Equality and Law Reform* where it held that the State may decide a subsidiary protection application after a decision on refugee status, but that it must ensure that a person may apply for both refugee status and subsidiary protection at the same time and that there is no unreasonable delay in considering the subsidiary protection application, at para. 58. The question was referred by the Irish Supreme Court regarding interpretation of the Asylum Qualification Directive 2004/84/EC. The applicant challenged the Minister's refusal to consider his application for subsidiary protection because he had not made a prior application for refugee status. This case will now to revert to the Supreme Court.

<sup>35</sup> These figures are calculated from the Irish Naturalisation and Immigration Service, Distribution of Cases in RIA by Nationality and Judicial Review (end January 2014), provided 6 June 2014.

2014, there were 4,466 persons with an outstanding Deportation Order.<sup>36</sup> However, many of these are several years old and may have very little chance of enforcement. 868 residents of Direct Provision have been issued with Deportation Orders accounting for 20.5% of residents.

- e. **Judicial Review:** As of July 2014, there were 743 cases in the Asylum Pre-leave List, covering at least 925 applicants.<sup>37</sup> 906, the vast majority of these applicants, are Direct Provision residents (21.4% of total residents). No detailed data is published on the timelines for processing cases. Judges are now hearing leave application and substantive cases in one telescoped hearing, which has shortened the period of time for those who have been granted permission to seek Judicial Review. However, Judicial Review is still a very lengthy process, contributing to the length of stay in Direct Provision for some people.

We can conclude that a primary cause of the length of stay for residents in Direct Provision is due to systemic factors within the asylum process.

#### 4. Institutional Human Rights and Equality Issues

The principle of international protection may be seen in the 1951 Convention on the Status of Refugees (Refugee Convention), as amended by its 1967 Protocol, which grants the right to protection to those who fulfil its definition of a refugee.<sup>38</sup> European Union regulations that apply to persons seeking asylum in Ireland consist of the Asylum Qualification Directive,<sup>39</sup> the Asylum Procedures Directive,<sup>40</sup> the Recast Dublin III Regulation,<sup>41</sup> the Eurodac Regulation,<sup>42</sup> the Temporary Protection Directive,<sup>43</sup> and the Migration Statistics Regulation.<sup>44</sup>

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<sup>36</sup> These figures are calculated from the Irish Naturalisation and Immigration Service, Deportation Orders outstanding by Nationality for Persons with a failed Asylum Claim Grouped by No. of Persons (end January 2014), provided 6 June 2014.

<sup>37</sup> An application for leave to seek judicial review in asylum related cases must be made on notice to the State. These applicants are considered to be part of an 'Asylum Pre-Leave List.'

<sup>38</sup> Convention relating to the Status of Refugees, signed 28 July 1951, entered into force 22 April 1954, 189 UNTS 150, ratified by Ireland 29 November 1956, as amended by the Protocol relating to the Status of Refugees, signed 31 January 1967, entered into force 4 October 1967, 606 UNTS 267, ratified by Ireland 6 November 1968.

<sup>39</sup> Asylum Qualification Directive (2004/83/EC), which protects persons who qualify as refugees or for subsidiary protection. It provides minimum standards for the rights of those protected.

<sup>40</sup> Asylum Procedures Directive (2005/85/EC), which sets out the minimum standards for procedures to determine refugee status and subsidiary protection. It provides specifically for the right of the applicant to remain in the Member State pending the examination of their application (Art. 7); the right to legal assistance and representation (Art. 15); and the right to an effective remedy where adverse decisions are made (Art. 39).

<sup>41</sup> Recast Dublin III Regulation (No. 604/2013), which determines the Member State that is responsible for examining an application for international protection lodged in one of the Member States. It provides for the transfer of asylum seekers from one Member State to another where appropriate for their claims to be heard.

<sup>42</sup> Eurodac Regulation (No. 2725/2000), which established an EU asylum fingerprint database, assisting in the operation of the Dublin Regulations.

<sup>43</sup> Temporary Protection Directive (2001/55/EC), which set minimum standards of temporary protection in the event of a mass influx of displaced persons.

Other international and regional human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR),<sup>45</sup> the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (UNCAT),<sup>46</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>47</sup> the Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>48</sup> and the Convention on the Rights of the Child (CRC)<sup>49</sup> do not specifically provide for rights to international protection, but do provide that rights apply to all persons, including asylum seekers. As well as the applying to any person within its jurisdiction regardless of their nationality or status, certain articles of the European Convention on Human Rights (ECHR)<sup>50</sup> have also been applied specifically to how people live within asylum processes.<sup>51</sup>

The concerns that the Commission has around the length of time spent by asylum seekers in Direct Provision centres have been backed up by many international treaty monitoring bodies, some of which are set out below.

In 2011, the UN Committee on the Elimination of all Forms of Racial Discrimination expressed its concern at ‘...the negative impact that the policy of ‘Direct Provision’ has had on the welfare of asylum seekers who, due to the inordinate delay in the processing of their applications, and the final outcomes of their appeals and reviews, as well as poor living conditions, can suffer health and psychological problems that in certain cases lead to serious mental illness.’ The Committee ultimately called for a review of the Direct Provision system.<sup>52</sup>

In her 2011 report on Ireland, the UN Independent Expert on the Question of Human Rights and Extreme Poverty, Magdalena Sepúlveda Carmona, noted the Direct Provision system in Ireland limits the autonomy of asylum seekers and impedes their family life, as most accommodation centres have not been designed for long term reception of asylum seekers and are not conducive to family life. In her report Ms Sepúlveda Carmona noted that, at the time of her visit, more than a third of people living in Direct Provision had been there longer than three years, in a system had originally been designed to house people for a period of six months and not for extended periods of time.<sup>53</sup>

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<sup>44</sup> Migration Statistics Regulation (No. 862/2007), which established common rules for the collection and compilation of statistics on asylum and immigration within the EU in order to assist in the development of fair and effective policies in this area.

<sup>45</sup> International Covenant on Civil and Political Rights, signed 16 December 1966, entered into force 23 March 1976, 999 UNTS 171, ratified by Ireland 8 December 1989.

<sup>46</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed 10 December 1984, entered into force, 26 June 1987, 1465 UNTS 85, ratified by Ireland, 11 April 2002.

<sup>47</sup> Convention for the Elimination of All Forms of Discrimination against Women, signed 18 December 1979, entered into force, 3 September 1981, 1249 UNTS 13, ratified by Ireland 23 December 1985.

<sup>48</sup> Convention for the Elimination of Racial Discrimination, signed 7 March 1966, entered into force, 4 January 1969, 660 UNTS 195, ratified by Ireland 29 December 2000.

<sup>49</sup> Convention on the Rights of the Child, signed 20 November 1989, entered into force, 2 September 1990, 1577 UNTS 3, ratified by Ireland 28 September 1992.

<sup>50</sup> European Convention on the Protection of Human Rights and Fundamental Freedoms, signed 4 November 1950, entered into force 3 September 1953, CETS 5, ratified by Ireland 25 February 1953.

<sup>51</sup> See, for example, the judgment of the Grand Chamber of the European Court of Human Rights in the case of *M.S.S. v Belgium and Greece*, Application No 30696/09, 2011.

<sup>52</sup> UN Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the 3rd and 4th periodic reports of Ireland, April 2011, CERD/C/IRL/CO/3-4, at para. 20.

<sup>53</sup> Independent Expert on the Question of Human Rights and Extreme Poverty, Report of the Independent Expert on the Question of Human Rights and Extreme Poverty following: Mission to Ireland, 2011, at para. 90.

Council of Europe Commissioner Thomas Hammarberg, during a visit to Ireland in 2007, expressed concerns about the 'lack of recreational facilities, overcrowding and problems of safety' in some centres.<sup>54</sup> In a follow up visit in 2011, Commissioner Hammarberg noted criticisms of the Direct Provision system 'for its negative consequences regarding mental health, family relationships and integration prospects'.<sup>55</sup> In 2012, the newly appointed Commissioner Nils Mužnieks, in his letter to then Minister for Justice, noted 'excessively lengthy asylum procedures' and the concerns of the Office of the United Nations High Commissioner for Refugees and non-governmental organisations over 'the negative consequences of this scheme on mental health, family relationships and integration prospects, and its detrimental impact on asylum-seeking children'.<sup>56</sup>

In 2013, the European Commission against Racism and Intolerance (ECRI) in its fourth report on Ireland states:

ECRI's also notes with concern that residents of the Direct Provision centres have little control over their everyday life (cooking, cleaning, celebrating important events), which in many cases impacts negatively on their family life. Moreover, very few activities are organised in the centres (although it has to be noted that the inhabitants, who have freedom of movement can participate in activities outside the centres). ECRI considers that, whereas the centres can serve a very useful role in providing necessary secure accommodation at a short notice, they are unsuitable for lengthy periods of stay; in particular they risk causing harm to the mental health of the residents. ECRI notes that it has been reported that 90% of asylum seekers suffer from depression after 6 months in the Direct Provision system and that they are 5 times more likely than an Irish citizen to be diagnosed with a psychiatric illness. Furthermore, contracts with service providers do not impose any obligations on them to organise activities or train staff so as to acquire necessary intercultural skills.<sup>57</sup>

At the recent examination of Ireland's fourth periodic report under the International Covenant on Civil and Political Rights in July 2104, the UN Human Rights Committee concluded:

The Committee is concerned at the lack of a single application procedure for the consideration of all grounds for international protection, leading to delays in the

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The independent expert reminds Ireland that asylum seekers and refugees must be guaranteed the enjoyment of all human rights, including the right to privacy and family life, an adequate standard of living, and adequate standards of physical and mental health rights that complement the provisions of the 1951 Convention relating to the Status of Refugees, at para. 91.

<sup>54</sup> Council of Europe: Commissioner for Human Rights, Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Ireland 26 - 30 November 2007, 30 April 2008, CommDH(2008)9, at para. 107.

<sup>55</sup> Council of Europe: Commissioner for Human Rights, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Ireland from 1 to 2 June 2011, 15 September 2011, CommDH(2011)27, at para. 39.

<sup>56</sup> Council of Europe: Commissioner for Human Rights, Letter to Mr Alan Shatter, TD, Minister for Justice, Equality and Defence, 9 November 2012, Ref: CommHR/SG/sf 115-2012.

<sup>57</sup> Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Ireland (fourth monitoring cycle): Adopted on 5 December 2012, 19 February 2013, CRI(2013)1, at para. 115.

processing of asylum claims and prolonged accommodation of asylum seekers in Direct Provision centres which is not conducive to family life. It also regrets the lack of an accessible and independent complaints mechanism in Direct Provision centres (arts.2, 17 and 24).

The Committee recommends that the State party take appropriate legislative and policy measures to establish a single application procedure with a right of appeal to an independent appeals body without further delay, including the adoption of the Immigration, Residence and Protection Bill. It should also ensure that the duration of stay in Direct Provision centres is as short as possible and introduce an accessible and independent complaints procedure in Direct Provision centres.<sup>58</sup>

The Human Rights Committee also expressed its concern that victims of trafficking who exercise their right to apply for asylum are held in Direct Provision centres.<sup>59</sup> In 2013, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) also expressed concerns that victims of trafficking, including victims of trafficking for sexual exploitation, are also accommodated by the State in mixed-gender Direct Provision centres where they risk retaliation, grooming, further sexual exploitation and trauma.<sup>60</sup>

In the recent case of *C.A. and T.A v The Minister for Justice*, Mac Eochaidh J. noted that the lack of oral evidence, and the fact that the applicants' evidence was disputed, meant that he could not rule as to whether in this particular case the applicants' constitutional and ECHR rights had been violated because of the conditions and or length of stay in Direct Provision.<sup>61</sup>

Mac Eochaidh J. found that both the complaints handling procedure and some of rules in the 'Reception & Integration Agency (RIA) House Rules' were unlawful. Mac Eochaidh J. held that, while RIA is entitled to inspect rooms in Direct Provision centres, the unannounced nature of the inspections was not proportionate. Mac Eochaidh J. also found that requiring somebody to sign in to their home on a daily basis is disproportionate and RIA's need to ensure capacity management at Direct Provision centres could be achieved in a less restrictive manner.<sup>62</sup> The outright ban on residents having guests in their home was also found to be a disproportionate interference with a person's constitutional rights and their rights under the European Convention on Human Rights.

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<sup>58</sup> UN Human Rights Committee (HRC), Concluding observations on the fourth periodic report of Ireland, 19 August 2014, CCPR/C/IRL/CO/4, at para. 19.

<sup>59</sup> UN Human Rights Committee (HRC), Concluding observations on the fourth periodic report of Ireland, 19 August 2014, CCPR/C/IRL/CO/4, at para. 20. Note that Ireland has obligations of prevention and obligations to provide support services to victims under the Council of Europe Convention on Action Against Trafficking and the 2011 EU Directive Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

<sup>60</sup> GRETA (2013) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round, Strasbourg: Council of Europe, p.46. Note that a RIA 'Policy and Practice Document on Safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment' is in operation in all Direct Provision centres.

<sup>61</sup> *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* (Record No. 2013/751/JR), see para. 3.1 and paras 6.1 to 12.6.

<sup>62</sup> *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* (Record No. 2013/751/JR), para. 8.10.

In relation to the complaints handling process within centres, Mac Eochaidh J. stated that it was not acceptable that RIA should be the final arbitrator in disputes between the residents and accommodation providers, saying that applicants are entitled to have an independent complaints handling procedure. The Commission finds the current complaints mechanism within the Direct Provision system lacks the independence to ensure that complaints are handled fairly and impartially, and is too limited in its scope to deal with alleged breaches of human rights that may arise.<sup>63</sup> This is compounded by the fact that asylum seekers are largely excluded from the ambit of the Ombudsman<sup>64</sup> and the Ombudsman for Children.<sup>65</sup>

The Reception Conditions Directives established minimum standards for the reception of asylum seekers. The Recast Directive strengthens certain provisions of the original Directive.<sup>66</sup> The Recast Directive requires that reception conditions should not impair the private or family life of asylum seekers, that families should be housed together as far as possible, that asylum seekers should have an adequate standard of living, that they are protected from violence and from threats to their physical and mental health, and that they have access to healthcare.<sup>67</sup> Vulnerable persons such as children, victims of trafficking, elderly people and disabled persons have specific rights.<sup>68</sup>

The Recast Directive specifically requires that asylum seekers be granted a limited right to work where first-instance decisions have not been made within nine months.<sup>69</sup> It also provides for procedural rights of asylum seekers when appealing a decision by a Member State to refuse support, as well as the right to access legal assistance for such support or welfare benefits.<sup>70</sup>

Ireland has opted out of both of these Directives, and it may appear that no obligation therefore exists to meet these minimum standards. . If Ireland was to opt into this Directive, the explicit rights contained therein would be directly effective in Irish law and readily enforceable for Direct Provision residents. It is important to note, however, that human rights standards continue to apply under the ECHR, under EU law and under the UN standards that Ireland has signed up to.

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<sup>63</sup> The Ombudsman's *Guide to Internal Complaints Systems*, 1999, section 4, provides: 'Complaints which have not been resolved by the original decision maker should be examined objectively by persons not involved with the original decisions or actions. The examination should have regard not only to the rules governing the scheme but also to considerations of equity and good administrative practice.'

<sup>64</sup> Ombudsman Act 1980, section 5(1)(e), 'The Ombudsman shall not investigate any action taken by or on behalf of a person [...] if the action is one [...] taken in the administration of the law relating to aliens or naturalisation.'

<sup>65</sup> Ombudsman for Children Act 2002, section 11(1)(e)(i), 'The Ombudsman for Children shall not investigate any action taken by or on behalf of a public body [...] if the action is one [...] taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship.'

<sup>66</sup> Reception Conditions Directives (2003/9/EC and 2013/33/EU)

<sup>67</sup> Directive 2013/33/EU, Arts. 7.1, 12 and 17–19.

<sup>68</sup> Directive 2013/33/EU, Arts. 21–25.

<sup>69</sup> Directive 2013/33/EU, Art. 15.

<sup>70</sup> Directive 2013/33/EU, Art. 26.

## 5. Effects on Family Life and on Children

The Government originally envisaged that a person would remain in the Direct Provision system on 'a short-term basis (not more than six months)'.<sup>71</sup> As we know, stays in Direct Provision centres have become considerably longer than this. In the Commission's view, Direct Provision is not in the best interests of children. It is not clear how the right enshrined in Article 24 of ICCPR is ensured through the forced residency of the child with her or his family in a Direct Provision centre for many years where the psychological and social integrity of the child and his or her family is at issue.<sup>72</sup> Equally, it is unclear how the right to family life is safeguarded under Article 17 of ICCPR, particularly given the long delays in asylum processing.<sup>73</sup>

Article 8 of the European Convention on Human Rights enshrines the right to private and family life and it is also unclear if the system of Direct Provision is in compliance with this article, which states that any interference with the right to family life must be 'necessary and proportionate' and must not be interfered with except 'in accordance with the law'.<sup>74</sup>

Many residents in Direct Provision experience a lack of autonomy in relation to food choices. Most residents are accommodated in centres where meals are provided on a full-board basis and residents are not allowed to cook for themselves or store food in their rooms.<sup>75</sup> Residents have criticised the food provided in Direct Provision centres as 'inedible, of poor quality, monotonous, bland, and culturally inappropriate'.<sup>76</sup> Concerns have also been raised in relation to a lack of

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<sup>71</sup> Press release issued by then Minister for Justice, Equality and Law Reform, John O' Donoghue. Reported in Irish Times, 28 March 2008.

<sup>72</sup> Article 24(1) of ICCPR states 'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.' Article 18(2) of the Convention on the Rights of the Child (CRC) is also relevant insofar as it sets out how States Parties should assist parents in the performance of their child-rearing responsibilities and should develop facilities and services for the care of children. Article 22(1) of the CRC states that appropriate measures should be in place to ensure that children seeking refugee status receive 'appropriate protection and humanitarian assistance in the enjoyment of applicable rights' while Article 27(1) states that States should recognise the right of every child to a 'standard of living adequate for the child's physical, mental, spiritual, moral and social development'.

<sup>73</sup> Article 17 of ICCPR states: 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.

<sup>74</sup> Article 8 of the European Convention on Human Rights states (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

<sup>75</sup> Reception and Integration Agency, *Direct Provision Reception and Accommodation Centres, House Rules and Procedures* (2009) p.14. See Keelin Barry, *What's Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision* (2014). See also Claire Breen, 'The Policy of Direct Provision in Ireland: A Violation of Asylum Seekers' Right to an Adequate Standard of Housing' *International Journal of Refugee Law*, 20, no. 4 (2008): 611–636.

<sup>76</sup> Keelin Barry, *What's Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision* (2014), p.7.

nutritional food available for people who may have a particular dietary requirement.<sup>77</sup> Parents of young children experience a lack of parental control over when they can wean their babies onto solid food.<sup>78</sup> A wind-down and discontinuation in the number of self-catering centres was announced by RIA in 2011 ‘...in line with RIA's plans to achieve greater value for money for the taxpayer, and ensure optimum use of RIA's bed space capacity’.<sup>79</sup>

Although the absolute number of child applicants for international protection has decreased, children now constitute a higher proportion of applicants than ten years ago. At the end of September 2014, there were 4,494 people living in Direct Provision accommodation centres. Of this number, 1,522 were below the age of 18.<sup>80</sup> There are 133 unregistered children of asylum seekers, a small number of whom are Irish citizens. These children’s continued residence is dependent on the progress of their parents’ cases, leading to the legally problematic situation of the accommodation of Irish citizens in Direct Provision. No data is available on how long these children have been in Direct Provision.

Article 22 of the UN Convention on the Rights of the Child (CRC) states:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status... whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.<sup>81</sup>

States are specifically required to assist separated children in finding their parents and other members of their families.<sup>82</sup> Article 3 of the CRC states the ‘best interests of the child’ must be a primary consideration in all actions concerning children. The CRC also states that children are entitled to non-discrimination regardless of migration status (at Article 2), and that each child should be entitled to support in order to achieve developmental potential (at Article 6). The CRC Committee has stated in a number of concluding commentaries that the rights under the Covenant apply to all children within the jurisdiction of a State regardless of their immigration and nationality status.<sup>83</sup> The Committee has said that asylum seeking children, whether in the care of their parents or unaccompanied, should have full access to a range of services<sup>84</sup> and asylum seeking families should

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<sup>77</sup> Samantha Arnold, *State Sanctioned Poverty and Social Exclusion: The case of children in state accommodation for asylum seekers*, (2012), pp.20-22.

<sup>78</sup> FLAC, *One Size Doesn't Fit All: A legal analysis of the Direct Provision and dispersal system in Ireland, 10 years on* (2009), p.104.

<sup>79</sup> See RIA website at <http://www.ria.gov.ie/en/RIA/Pages/NB10000054>, last accessed on 9 December 2014.

<sup>80</sup> Reception and Integration Agency, *Monthly Statistics*, September 2014, p.8.

<sup>81</sup> UN Convention on the Rights of the Child, Article 22.1.

<sup>82</sup> UN Convention on the Rights of the Child, Articles 20 and 22.2.

<sup>83</sup> In Concluding Observation, Qatar, CRC, UN Doc. CRC/C/111 (2001) 59, the Committee stated that ‘children within its [Qatar’s] jurisdiction enjoy all the rights set out in the Convention without discrimination’, para.296(a).

<sup>84</sup> See also, Concluding Observations, CRC, United Kingdom of Great Britain and Northern Ireland, UN Doc. CRC/C/GBR/CO/4 (2008), paras. 70-71.

not be discriminated against in accessing welfare entitlements that could affect the children of that family.<sup>85</sup> In all dealings with asylum seeking children, the Committee on the Rights of the Child has said the best interests of the child is to be the primary consideration and special care needs to be taken of already disadvantaged groups within society, including refugee and asylum seeking children.

In relation to unaccompanied children or children separated from their parents who are seeking asylum, in its 2006 Concluding Observations on Ireland’s second report under the Convention on the Rights of the Child, the Committee expressed concerns that ‘unaccompanied children or children separated from their parents might still not receive adequate guidance, support and protection during the asylum process, in particular with respect to access to services and an independent representation’.<sup>86</sup> The Committee recommended that the State ‘ensure that the same standards of and access to support services applies whether the child is in the care of the authorities or their parents.’<sup>87</sup>

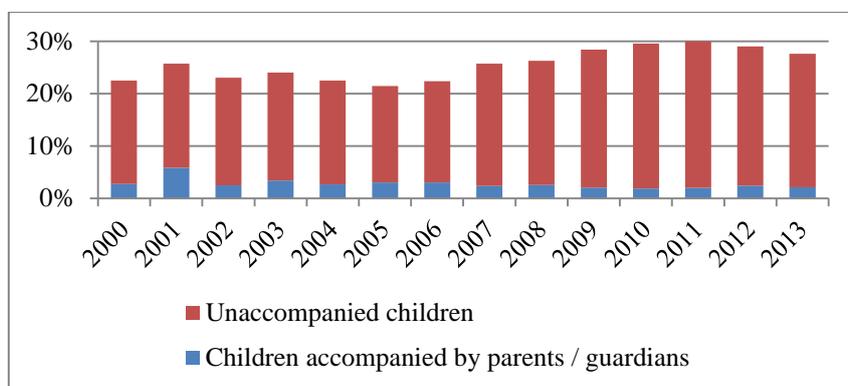


Figure 4. Proportion of applicants who are children<sup>88</sup>

Ireland’s opting out of the Reception Conditions Directive (2003/9/EC and 2013/33/EU) also has implications for the protection of children, as vulnerable persons. Under EU Law, the non-EU relatives of dependent EU citizens can have a derivative right to remain in the European Union.<sup>89</sup> This only applies if their removal would force the EU citizen to leave with them, such as in the case of parents of EU citizen children. Irish citizens are entitled to reside in the State and have the right under the Constitution to the care and companionship of their family members within the State, whether those family members are children, spouse or parents.<sup>90</sup>

<sup>85</sup> CRC Concluding Observations, United Kingdom of Great Britain and Northern Ireland, UN Doc. CRC/C/121 (2002) 23, para. 142(b); CRC Concluding Observations, Canada, UN Doc. CRC/C/15/Add.215 (2003), para. 47(e).

<sup>86</sup> Concluding Observations, CRC, Ireland, UN Doc. CRC/C/IRL/CO/2 (September 2006), para. 64.

<sup>87</sup> Concluding Observations, CRC, Ireland, UN Doc. CRC/C/IRL/CO/2 (September 2006), para. 65.

<sup>88</sup> Office of the Refugee Applications Commissioner, *Annual Report 2013*, pp. 55 and 58.

<sup>89</sup> C-34/09 *Ruiz Zambrano v. Office National de l’Emploi*, 8 March 2011, ECR I-1177. Irish case law must be now reinterpreted in the light of the CJEU’s judgment in *Zambrano*, which protected the rights of European citizen children to the support of their parents.

<sup>90</sup> In the case of *Fajujonu v. Minister for Justice* the Supreme Court held that the non-national parents of an Irish citizen child had a derivative right to reside in Ireland. The threshold by which the State could decide to

Dr Carol Coulter, representing the Child Care Law Reporting Project, has brought to light the concerns of judges and legal representatives on the suitability of Direct Provision for long-term care of children.<sup>91</sup> In her Interim Report in 2013, Dr Coulter says that it is not ‘unreasonable to speculate’ that the experiences that led people to claim asylum, along with the significant time spent in Direct Provision accommodation, has led to individuals (all female single parents) to be admitted to psychiatric facilities.<sup>92</sup>

The government-appointed Special Rapporteur for Children, Dr Geoffrey Shannon, has also expressed concerns about the effects of the system of Direct Provision on children.<sup>93</sup> He notes:

Significant child protection concerns exist – single parents may be required to share with strangers, and teenage siblings of opposite genders may have to share one room... Over a third of residents in the system of Direct Provision are children, and these children are growing up in “state-sanctioned poverty” with parents unable to adequately care for them. It has been argued that the system of Direct Provision alienates children and is an unnatural family environment which is not conducive to their positive development.<sup>94</sup>

In 2013, the Northern Ireland High Court held that it would not be in the best interests of a child asylum seeker to be returned to the Republic, with Direct Provision being a major factor in this determination.<sup>95</sup> While Stephens J. did not find that the application system for international protection or the reception conditions of asylum seekers in Ireland constituted inhuman and degrading treatment, he clearly stated that the system of Direct Provision is contrary to the best interests of the child as (1) the family would be forced to live in a communal Direct Provision hostel whereas they would be entitled to their own accommodation and budget, and be able to cook their own meals in Northern Ireland and (2) there are significant physical and mental health issues amongst asylum seekers in Direct Provision in Ireland due to the significant amount of time they have to spend in this system.<sup>96</sup>

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deport the non-national parents of a citizen child, according to the Court, was that it must have a ‘grave and substantial reason associated with the common good’. *Fajujonu v. Minister for Justice* (1990) 2 IR 733.

<sup>91</sup> See Child Care Law Reporting Project (CCLRP), Vol.1, Case 19, *Emergency care order for children in Direct Provision centre*; CCLRP, Vol.3, Case 3, *Emergency Care Order for 8-year-old born and reared in Direct Provision centre*; CCLRP, Vol.3, Case 16, *Mother in Direct Provision opposes discharge of Emergency Care Order*.

<sup>92</sup> Carol Coulter, *First Interim Report: Child Care Law Reporting Project* (2013), pp.20 and 27.

<sup>93</sup> Geoffrey Shannon, *Fifth Report of the Special Rapporteur for Children*, (2011), pp. 31-32 and Geoffrey Shannon, *Seventh Report of the Special Rapporteur for Children*, (:2014), pp. 56-60. In his fifth report, Dr Shannon also called for an independent complaints mechanism, operated by either Health Information and Quality Authority (HIQA) or the Ombudsman for Children.

<sup>94</sup> Geoffrey Shannon, *Seventh Report of the Special Rapporteur for Children* (2014), p.56.

<sup>95</sup> *In the Matter of an Application for Judicial Review by ALJ and A, B and C* (2013) NIQB 88.

<sup>96</sup> *In the Matter of an Application for Judicial Review by ALJ and A, B and C* (2013) NIQB 88, at paras. 102-103.

## 6. Recommendations on Future Asylum and Direct Provision Policy

Although we can conclude that a primary cause of the length of stay for residents in Direct Provision is due to systemic factors within the asylum process, it is the Commission's view that the system of Direct Provision is not in the best interests of children, has a significant impact on the right to family life and has failed to adequately protect the rights of those seeking protection in Ireland. If the current system continues to be used, it should be only for the shortest possible time, in keeping with human dignity and autonomy and in accordance with the highest safeguards of rights. While recognising many previous recommendations made by legal activists and civil society working with people in Direct Provision, the Commission makes the following ten recommendations as a matter of priority:

1. A significant problem as documented above is that of delays in the asylum process. The Commission acknowledges the recent improvements in asylum adjudication decision-making times but recognises an urgent need to address delays in access to Judicial Review and the backlog at the High Court. The Commission stresses the importance of adhering to due process, to natural and constitutional justice requirements, and to fair procedures in any modifications to existing mechanisms. **The Commission supports the introduction of a 'single protection procedure' whereby a person seeking protection can apply for both refugee status and/or subsidiary protection in tandem. The Commission also recommends that those who are the subject of Deportation Orders which cannot be implemented are given leave to remain and serious consideration be given by the State to settling any cases which are subject to delay in High Court proceedings.**
2. Delays in asylum adjudication should not be a reason for continued stay in such centres where alternatives to such accommodation exist. **While the system remains in place, the Commission recommends that the basis for Direct Provision be placed on a statutory footing and recommends the introduction of a time limited period (6-9 months) after which any person who has not yet received a decision, on either first instance or appeal, should be able to leave Direct Provision, live independently, access relevant social welfare payments and employment.**
3. The Commission is concerned at the lack of protection for the right to private and family life and for children. **The Commission recommends that existing families are moved out of Direct Provision Centres and enabled to access self-catering accommodation, at the earliest possible opportunity, and any new families are not accommodated in Direct Provision Centres.**
4. While recognising current resource constraints, the Commission is concerned at the lack of personal autonomy afforded to residents in Direct Provision around the preparation of food. **The Commission recommends respecting residents' right to prepare and cook food appropriate to their culture, diet and individual needs during time spent in Direct Provision.**

5. The Commission is concerned at the lack of protection for vulnerable persons within the system of Direct Provision. **The Commission recommends that victims of trafficking are accommodated in appropriate single gender facilities with access to a range of necessary support services, in keeping with the State's obligations of prevention and obligations to provide support services to victims under the Council of Europe Convention on Action Against Trafficking and the 2011 EU Directive.**
6. Submissions from civil society organisations working in the area have consistently called for an increase to the weekly Direct Provision allowance of €19.10 per adult and €9.60 per child, which has not been increased since the year 2000. **The Commission awaits recommendations in relation to this from the government-led Working Group on Direct Provision and strongly recommends that the weekly allowance be increased to a realistic amount that ensures dignity, respect and autonomy for individuals.**
7. The Commission is concerned that the internal complaints mechanism currently in place in Direct Provision centres, under the auspices of the Reception and Integration Agency, lacks independence and is not an appropriate and effective remedy for the purpose of ensuring adequate protection of residents, particularly given the delegation of a public function to private bodies. **The Commission recommends that an independent appeals mechanism, to include resident representation and independent members, is established to judge on complaints in relation to conditions, food, accommodation and other matters and the RIA 'House Rules and Procedures' document be revised as a matter of priority.**
8. The Commission regards the effective exclusion of complaints regarding the asylum system and Direct Provision from the ambit of the Ombudsman and the Ombudsman for Children as being incompatible with the principle of non-discrimination. **The Commission supports the repeated calls from the Office of the Ombudsman and the Ombudsman for Children to extend their remit to include the investigation of issues relating to asylum processes (as against decisions of the asylum determination process).**
9. **The Commission recommends that Ireland should opt into the Recast Reception Conditions Directive of 2013** to ensure a minimum standard of provision for asylum seekers, leading to the practice that, after a period of 6-9 months, people seeking international protection should be able to leave Direct Provision, live independently, access appropriate social welfare payments and seek employment.
10. The denial of a right to work for asylum seekers has a severe impact, particularly for those who have been in the asylum process for lengthy periods of time. **The Commission recommends that strong consideration be given to allowing Direct Provision residents to work and recommends that Direct Provision residents over the age of 18 receive education and training in preparation for seeking employment, once they leave the system.**