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The System of Direct Provision for Asylum Seekers

Shadow Report submitted to the Committee on the Elimination of Racial Discrimination (CERD)
for its Consideration of the Combined Fifth to Ninth Periodic Reports of Ireland
(CERD/C/IRL/5-9), November 2019

Submitted by Dr Liam Thornton, UCD School of Law (individual submission, personal
capacity) on 20 August 2019.

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Introduction

Liam Thornton is an assistant professor in law in UCD School of Law. One of Liam's key research interests pertains to the system of 'direct provision' for persons seeking international protection in Ireland. You can access Liam's publications on the system of direct provision at www.liamthornton.ie.

Key issues/recommendations

- (1) Alternate solutions to accommodating persons seeking asylum and ensure persons are not exposed to prolonged communal living, to ensure full respect, protection and fulfilment of rights to shelter, private and family life and human dignity.
- (2) Emergency accommodation should be used for only the most limited of time periods, and rights of persons seeking asylum should be fully vindicated.
- (3) Rates of social assistance payments to asylum seekers must be based on comparable rates of social assistance payments to persons who are habitually resident in Ireland. All child asylum seekers must be entitled to child benefit.
- (4) Asylum seekers should have a right to work after a period of no more than six months. Ireland should re-consider the prohibition on asylum seekers entering publicly funded employment.

- Issues and relevant recommendations in the previous cycle

Direct Provision for asylum seekers

CERD/C/IRL/CO/3-4 paragraph 20

- Relevant paragraphs in the State party's report

CERD/C/IRL/5-9 paragraph 100-110

- Implementation of the recommendations

Has the State taken all necessary measures to improve the living conditions of asylum-seekers by providing them with adequate food, medical care and other social amenities including also a review of the direct provision system?

The extension of the remit of the Office of the Ombudsman¹ and the Ombudsman for Children² to enable asylum applicants to make a complaint is welcome. The McMahon Report,³ which sought to make life in direct accommodation more respectful of the rights of asylum applicants, partly achieved some of its limited aims. The placement of the system of direct provision for asylum seekers on a legislative footing,⁴ the increases in weekly payments to asylum seekers,⁵ and the adoption of national standards for accommodation centres,⁶ are also welcome developments since UN CERD's last consideration of Ireland's report. The introduction of a limited right to work, after 9 months, for some asylum seekers, is another additional measure contributing to protecting socio-economic rights.⁷ As of June 2019, 2,633 international protection applicants have been granted a right to work or right to enter self-employment.⁸ As of July 2019, 1,267 applicants have entered employment or are self-employed, including 896 persons who are in the direct provision system.⁹ An August 2019 commitment by the Government to review the system of direct provision, including establishing an interdepartmental committee exploring whether social and economic rights for asylum seekers be protected within the general Irish social welfare system is welcome.¹⁰ The 2019 extension of rights for certain asylum applicants to enter University on a *free fees* basis, coupled with entitlement to an educational grant, further respects and protects access to education.¹¹

¹ Office of the Ombudsman, [The Ombudsman and Direct Provision: The Story So Far](#) (2018) and [Update for 2018 \(2019\)](#).

² Ombudsman for Children, [Annual Report 2017](#) (2018), pp. 38 to 45 and [Annual Report 2018](#) (2019), pp. 37-38.

³ Working Group on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers: Final Report (June 2015) ([McMahon Report](#)). I have expressed a number of concerns surrounding the lack of wholly rights based recommendations on direct provision, see [Thornton \(2015\)](#). There are disagreements regarding the degree to which the McMahon Report recommendations have been implemented. The Department of Justice has argued that the vast majority of recommendations are implemented, see, [Third and Final of Progress Report on Improvements to the Protection Process](#) (2017) and compare with Nasc, the Refugee & Migrant Rights Centre, who have argued that implementation has been slow and in places piecemeal ([Working Paper on the Progress of Implementation of the McMahon Report](#) (2017)).

⁴ European Communities (Reception Conditions) Regulations 2018, [SI 2018/230](#).

⁵ The current rates are currently €38.80 per adult per week, and €29.80 per child, per week, see further: See further: Liam Thornton, '[Understanding the Increases in Direct Provision Allowance](#)' (17 July 2017), and, '[Enhancing the Rights of Asylum Seekers in Budget 2019](#)' (10 October 2018).

⁶ Department of Justice and Equality, [National Standards for accommodation offered to people in the protection process](#) (August 2019).

⁷ See, Reg. 11 and Reg. 12 of [SI 2018/230](#).

⁸ [Statement of Deputy Secretary General of the Department of Justice](#), Oonagh Buckley, to the Joint Oireachtas Committee on Justice and Equality, 19 June 2019.

⁹ [Parliamentary Question No. 364](#), Response of Minister Charlie Flanagan, 11 July 2019.

¹⁰ Government of Ireland, [Spending Review 2019: Direct Provision](#) (August 2019), pp. 53-55.

¹¹ Department of Education, [Pilot Support Scheme: 2019](#). This followed the introduction by several Irish universities offering persons in the asylum system supported access to higher education, see: <https://ireland.cityofsanctuary.org/>.

■ Problems

Acknowledging the significant improvements on rights and entitlements for persons seeking asylum in Ireland since UN CERD's last review, significant concerns remain as regards Ireland's compliance with various freely accepted obligations under CERD.

(i) **Segregated and abnormal accommodation provision for asylum seekers (Art. 3 & Art. 5(e)(iii) CERD)**

As of July 2019, there are 6,082 asylum seekers in direct provision accommodation. Of these 700 persons have been granted protection or residence status.¹² Despite the significant criticisms levelled at communal living, a substantive shift away from the institutionalised nature of shelter and accommodation for asylum applicants has never been fully considered by Ireland.¹³ The former Ombudsman and the Irish Human Rights and Equality Commission and, have emphasised the need for a very time-limited communal accommodation system.¹⁴ The Special Rapporteur for Children has called for the abolition of direct provision given its significant impact on rights to private and family life.¹⁵ The most intimate aspects of life, when to eat and what to eat, what to cook, who one should share their personal space with, are all grievously violated by the system of direct provision. Acknowledging, that about 1/3 of asylum applicants now have facilities to cook for themselves,¹⁶ this does not address the fact that the thirty-nine accommodation centres are situated, in the main, away and apart from the population. That recently introduced standards may benefit asylum seekers in two years' time, misses the significant point regarding how rights violating such standards have the potential to be, when a person is subjected to mass communal living for significant periods of time. As of 9th July 2019, over 59% of persons have been in direct provision for 12 months or more, with over 23% of persons in direct provision for more than three years.¹⁷ The August 2019 commitment for an interdepartmental review, should substantively examine alternatives to communal accommodation provision for persons seeking asylum. In *X and X (no. 1)*,¹⁸ the failure of the Department of Justice to provide accommodation and other material reception conditions to persons seeking protection for a period of five weeks, was declared to be a breach of Reg. 4 of the 2018 Regulations.¹⁹ Damages of €1,500 or €750 each were awarded for this breach.²⁰

(ii) **the use of 'emergency accommodation' for asylum seekers (Art. 3 & Art. 5(e)(iii) CERD)**

The commencement of the 2018 Regulations coincided with the exhaustion of accommodation capacity

¹² Minister for Justice and Equality, Charlie Flanagan, [Dáil Debates](#), 11 July 2019. It should be noted that the body responsible for managing the system of direct provision, the Reception and Integration Agency, failed to produce duration of stay statistics between [December 2017 and September 2018](#). The last 'official statistics', other than through Parliamentary questions, of persons in direct provision, date from November 2018.

¹³ For a range of significant reports on the damage to physical and mental health due to prolonged stays within direct provision accommodation, see inter alia: Free Legal Advice Centres (FLAC), [Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland](#) (2003) and FLAC, [One Size Doesn't Fit All - A Legal Analysis of Direct Provision, 10 years On](#) (2009). Irish Refugee Council (IRC), [State Sanctioned Child Poverty and Exclusion](#) (2012); NASC, the Refugee & Migrant Rights Centre, [What's Food Got to Do with It: Experiences of Asylum Seekers in Direct Provision](#) (2014). See also, [Statement by the Movement of Asylum Seekers in Ireland and testimony of Mr. Christopher Sibanda](#), Joint Oireachtas Committee on Justice and Equality, 29 May 2019.

¹⁴ Emily O'Reilly, "Asylum Seekers in our Republic: Why Have we Gone Wrong?" 102 *Studies*, Summer 2013 (former Ombudsman, now European Ombudsman); See also, Irish Human Rights and Equality Commission, [Policy Statement on Direct Provision](#) (Dublin, 2014).

¹⁵ Geoffrey Shannon, [Fifth Report of the Special Rapporteur for Children](#), (Dublin: 2011), pp. 31-33 and p. 42 and Geoffrey Shannon, [Eleventh Report of the Special Rapporteur for Children](#), (Dublin: 2018), pp. 35-36 and pp. 45 to 47.

¹⁶ Minister for State, David Stanton noting that as of April 2019, "over 2,200 applicants across eight centres were availing of the independent living model. In addition, almost 1,400 other applicants have access to other self-catering facilities with food provided by the contractor or the applicant themselves." See, , [Parliamentary Question 255](#) (10 July 2019).

¹⁷ Minister of State, David Stanton, [Parliamentary Question 255](#) (10 July 2019).

¹⁸ *X and X (no. 1) v Minister for Justice and Equality* [2019] IEHC 133.

¹⁹ *X and X (no. 1) v Minister for Justice and Equality* [2019] IEHC 133, para. 14.

²⁰ *X and X (no. 2) v Minister for Justice and others* [2019] IEHC 226 (03 April 2019), para. 3.

in direct provision centres. For the first time since the introduction of the system of direct provision for protection applicants, some had to be placed in hotels and guesthouses. The legal obligation upon the Minister for Justice and Equality, is that use of such emergency accommodation is to be for “as short as possible” and the emergency accommodation must meet the basic needs of the international protection applicant.²¹ Direct provision accommodation centres are now at maximum capacity and there are over 1,000 protection applicants who are in emergency accommodation, in hotels and guesthouses, outside of the formal direct provision system.²² The slight increase in persons seeking asylum were predicted by the McMahon Report in 2014.²³ Reports from the Movement of Asylum Seekers in Ireland (MASI) have noted significant concerns with emergency accommodation, with persons not having access to laundry facilities, persons having very restricted eating times, emergency accommodation providers imposing curfews on grown men and women, along with reports of shouting at persons by proprietors of emergency accommodation.²⁴

(iii) the differential social assistance rates between asylum seekers and others in Ireland (Art. 5(e)(iv) CERD)

Since March 2019, the weekly payment for asylum seekers has increased to €38.74 per week for adults, and €29.80 per week for each child to persons who reside in communal direct provision accommodation centres.²⁵ Usually, two payments of €100 are provided every six months to protection seekers in direct provision accommodation, so as to enable purchase of clothing, through an ‘exceptional needs payment’.²⁶ Persons seeking asylum who do not reside in direct provision accommodation centres are not entitled to these payments. Asylum seekers cannot qualify for any other social assistance payment in Ireland, due to the habitual residence requirement in Irish social welfare law.²⁷ This worryingly includes asylum seekers being denied access to child benefit, as this benefit is denied to persons, including asylum seekers, who are not habitually resident. The rate of child benefit, is generally €140 per child per month.²⁸ The extent of prolonged exposure to rates of social assistance well-below minimum social assistance rates for others within Irish society is deeply concerning. Acknowledging that accommodation and food needs are delivered directly to persons seeking protection, the rate of social assistance have nevertheless been described as “paltry” by Mr. Justice Max Barret, judge of the Irish High Court.²⁹

(iv) the limitations on right to work for asylum seekers (Art. Xx)

Persons subject to procedures for removal to another EU country under the “Dublin system” are denied any right to enter the labour market, regardless of the time that they have been in Ireland. Whether this is permitted under the EU Reception Directive (Recast) will be determined by the Court of Justice of the European Union in the coming months.³⁰ CERD Committee has previously indicated that ensuring a

²¹ Reg. 4(6) of the 2018 Regulations.

²² [Statement of Deputy Secretary General of the Department of Justice](#), Oonagh Buckley, to the Joint Oireachtas Committee on Justice and Equality, (19 June 2019).

²³ [McMahon Report](#), paras 6.14 to 6.15.

²⁴ See: Cónal Thomas, [Asylum seekers forced to wash clothes in sinks at Dublin hotel](#), TheJournal.ie, Monday 19 August 2019, along with evidence collected and shared by MASI on social media platforms, dining times and curfews [here](#) (16 Aug. 2019), shouting at residents of emergency accommodation [here](#) (17 Aug. 2019)

²⁵ The legal basis for the payment is now Reg 2(1) of the 2018 Regulations. The payment for asylum seekers was initially introduced in April 2000 at a rate of €19.10 per adult, and €9.60 per child. The payment for children was raised to €15.60 in January 2017. In August 2017, the payment was raised for adults and children to a rate of €21.60 (the first increase for adult asylum applicants in 17 years). For further information on increases, see Liam Thornton, [Understanding the Increases in Direct Provision Allowance](#), July 17 2017 and Liam Thornton, [Enhancing the Rights of Asylum Seekers in Budget 2019](#), 10 October 2018.

²⁶ Reg. 2(1) of the 2018 Regulations and s.201 of the Social Welfare (Consolidation) Act 2005 ([as amended](#)).

²⁷ Section 246 of the Social Welfare (Consolidation) Act 2005 ([as amended](#)).

²⁸ Special rates are paid in respect of multiple births, see s.221(2) of the [Social Welfare \(Consolidation\) Act 2005](#) (as amended).

²⁹ [X and X \(no. 2\) v Minister for Justice and others](#) [2019] IEHC 226 (03 April 2019), para. 3.

³⁰ Case C-322/19, [K.S. & M.H.K. v IPAT and Others](#) (preliminary reference, decision pending). A subsequent preliminary reference on the same issues has also been communicated to the Court of Justice, see Decision of IPAT concerning the interpretation of Reg

right to work within six months for asylum seekers is necessary.³¹ The CERD Committee has expressed concerns relating to lack of proper access to employment opportunities for persons seeking asylum.³² Asylum seekers in Ireland are prohibited from being able to apply for any public sector job opportunity, so asylum seekers may only be employed in the private sector.

■ Recommendations

- (1) Alternate solutions to accommodating persons seeking asylum and ensure persons are not exposed to prolonged communal living, so as to ensure full respect, protection and fulfilment of rights to shelter, private and family life and human dignity.
- (2) Emergency accommodation should be used for only the most limited of time periods, and rights of persons seeking asylum should be fully vindicated.
- (3) Rates of social assistance payments to asylum seekers must be based on comparable rates of social assistant payments to persons who are habitually resident in Ireland. All child asylum seekers must be entitled to child benefit.
- (4) Asylum seekers should have a right to work after a period of no more than six months. Ireland should re-consider the prohibition on asylum seekers entering publicly funded employment.

2 and Reg. 11 of the 2018 Regulations, 1894919-ATLM-19, 03 April 2019, Cindy Carrol (Tribunal Member) (country of appellant not identified (on file with author).

³¹ Concluding Observations, CERD, Luxembourg, UN Doc. [CERD/C/LUX/CO/14-17](#) (2014), para. 13.

³² Concluding Observations, CERD, Cyprus, UN Doc. [CERD/C/CYP/CO/23-24](#) (2017), para. 21 and Concluding Observations, CERD, Moldova, UN Doc. [CERD/C/MDA/CO/10-11](#) (2017), para. 23.