



Submission on Asylum Seekers, Migrants and Direct Provision.

Information note for

The Human Rights Committee's CCPR Review of Ireland

under the

**United Nations International Covenant on Civil and Political
Rights**

by

The Movement of Asylum Seekers in Ireland (MASI)

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About the author: I have been in the Direct Provision System since the 1st November 2017. I became involved in the Movement of Asylum Seekers in Ireland (MASI) since then on a voluntary basis. I write this submission on behalf of MASI. It is informed by both our collective experience of the Irish asylum system, and my work as a PhD researcher at the Technological University Dublin where I am currently working on a project titled *Institutionalised Inhumanity: Direct Provision and the threshold for inhuman treatment*.

About the Movement of Asylum Seekers in Ireland (MASI): The group was formed by asylum seekers in 2014 to advocate for their needs as a collective. Today, the group includes asylum seekers, past asylum seekers, and enjoys the support of people from all walks of life in Ireland. Apart from consistently raising issues that matter to us in public forums, the group provides peer to peer support to asylum seekers in Ireland. MASI was recently awarded the Human Rights Award 2021 by the Bar Council of Ireland in recognition of our work. The group remains 100% voluntary and does not accept or apply for State funding to maintain independence.

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Introduction

This brief submission will focus exclusively on matters relating to asylum seekers and migrants that are of concern to MASI. Other civil society groups would have addressed a broad range of issues and we have endorsed the submission by the Irish Council for Civil Liberties (ICCL). Key issues of interest to MASI that we wish the Human Rights Committee are outlined below.

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

1. It is concerning for MASI that Ireland has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. As the ICCL submission points out, this effectively limits mechanisms available to safeguard the protections afforded by Article 7. Of particular concern for MASI is the treatment of asylum seekers which may undermine Article 7. In 2016, the Irish Government evicted an asylum-seeking woman from the Direct Provision accommodation system because another EU State was responsible for her application.¹ This left her destitute and depending on the kindness of strangers and the situation evoked a sense of ‘hopelessness and despair’ as per doctor’s opinion upon examining her. The experience of material deprivation resulting from expulsion from an accommodation centre has been found to breach Article 3 of the European Convention on Human Rights (ECHR), provisions of which mirror Article 7 of the United Nations International Covenant on Civil and Political Rights. In **V.M. and Others v. Belgium**, the European Court of Human Rights found that such an eviction from an accommodation centre which left the asylum seekers with no means of sustenance amounted to inhuman or degrading treatment within the meaning of Article 3 of the ECHR. Thus, the fact that the Irish government has evicted an asylum seeker from Direct Provision without ensuring that they have means of sustaining themselves while they remain in the State warrants an inquiry into the operation of the Direct Provision system. If it is inhuman or degrading treatment in Belgium, it would be the same in Ireland. Importantly, MASI is not aware of how many asylum

¹ See paragraph 5-6 in *MAH v Minister for Justice* [2021] IEHC 302 [6-37] (Burns J) retrieved 29th May, 2022 from <https://www.casemine.com/judgement/uk/6098ccbf4653d014f363af82>

seekers have been evicted from the Direct Provision system and were left destitute since the system was introduced in the year 2000. And Ireland does not provide legal aid for asylum seekers to take judicial reviews in the high court. An effective remedy as envisaged in Article 2 of ICCPR where a breach occurs in the operation of the Direct Provision system would be elusive.

Recommendation

The State Party should:

- **Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of urgency.**
- **Establish an independent commission of inquiry into breaches of human rights of people who are and have been through the Direct Provision system.**
- **Provide legal aid for asylum seekers to have meaningful participation in the inquiry.**
- **Provide legal aid for asylum seekers to take judicial reviews of any government decision issued to them.**

Article 14: All persons shall be equal before the courts and tribunals.

2. Irish law makes it difficult for migrants to challenge decisions in the high court. Section 5 of the Illegal Immigrants (Trafficking) Act, 2000) provides that a decision of the Minister to refuse to grant refugee status after a recommendation from the appeals tribunal can only be questioned by way of judicial review. An application for leave to apply for judicial review must be made within 14 days from the date the person was notified of the decision. Since Ireland does not provide legal aid for asylum seekers to apply for judicial review, even after a government advisory group called for government to provide legal aid for judicial reviews,² the short timeframe within which an asylum seeker can challenge a decision in court makes attaining legal recourse difficult. In no other area of Irish law other than in immigration related matters do people have such a short timeframe within which to submit an

² See page 50 and page 57 of the Report of the Advisory Group on the provision of support including accommodation to persons in the international protection process. Retrieved 29th May, 2022, from https://www.justice.ie/en/JELR/Catherine_Day_Group_Report.pdf/Files/Catherine_Day_Group_Report.pdf

application for judicial review. The fact that the high court is given discretion to decide if an application can be heard when submitted outside of the short deadline gives little comfort to an asylum seeker who would first have to raise money, consult with a lawyer, and then apply for judicial review. Bearing in mind that some asylum seekers are not allowed to work thus raising the money to pay for legal fees may be a herculean task. It is discriminatory to impose this rule only on immigration related cases, especially in circumstances where legal aid is not provided. It cannot be said that all people within the territory of Ireland are equal before the courts when access to courts is deliberately made difficult for asylum seekers and other migrants.

Recommendation

The State Party should:

- **Repeal Section 5 of the Illegal Immigrants (Trafficking) Act, 2000).**

Or

- **Amend the section to increase the timeframe within which to apply for judicial review.**

Article 17: Undue interference with privacy, family, home or correspondence...

3. Asylum seekers who cannot provide for their basic needs such as food, and shelter, are accommodated in Direct Provision centres across Ireland. The centres are run by for profit companies on behalf of the Irish government. In 2014, the high court found that the rules operated in Direct Provision breached the right to privacy and private family life.³ This was after a mother in Direct Provision complained about the rules enforced in the centres allowing staff to enter bedrooms unannounced for inspection; not being allowed guests in her room; and being required to notify staff of intended absences. These rules were not imposed on her family only. They applied to many asylum seekers in the Direct Provision system. The Irish State has

³ See paragraph 8.8 and 8.9 in *CA v Minister for Justice and Equality* retrieved 29th May, 2022, from <https://www.casemine.com/judgement/uk/5da059a74653d07dedfd6180>

never apologised to all affected asylum seekers for the undue interference with their right to privacy. Throughout the case, the State maintained that their conduct was justifiable. While the government committed to abolishing the system of Direct Provision and replacing it with a human rights compliant reception system, the State has not acknowledged past wrongdoing by way of an apology to affected people and redress. This is important when the State deliberately and systematically deprived a group of people of their fundamental human right. States have an obligation to protect people from undue interference with their rights.

Recommendation

The State Party should:

- **Publicly apologise to asylum seekers who were subjected to the rules that have been found to have undermined their right to privacy.**
- **Honour the commitment to phase out the Direct Provision system and replace it with a system that allows asylum seekers to live independently in the community, and is not segregated in a congregated institutional environment that is anything but a home.**

Article 24: Protection of children

4. MASI wishes to express concern over missing children who entered Ireland as asylum seekers and disappeared without a trace. Latest reports suggest that 39 unaccompanied minors disappeared without a trace since entering the asylum process in the past 5 years.⁴ And this number goes to hundreds when you go back even further.⁵ Safety concerns are not limited only to missing asylum-seeking children. Children in Direct Provision have expressed concerns for their safety, lack of privacy, experiences of racism, and are ashamed to let their friends know that they

⁴ See 'Fears over fate of 39 young asylum seekers who have vanished since 2017', Retrieved 29th May, 2022, from <https://www.independent.ie/irish-news/news/fears-over-fate-of-39-young-asylum-seekers-who-have-vanished-since-2017-41538464.html>

⁵ See 2010 report '500 children seeking asylum went missing from care in decade' Retrieved 29th May, 2022, from <https://www.irishtimes.com/news/500-children-seeking-asylum-went-missing-from-care-in-decade-1.615944>

live in Direct Provision or that they are asylum seekers.⁶ These concerns merit a response from the Irish State.

Recommendation

The State Party should:

- **Sponsor an independent review of the child protection mechanisms for unaccompanied asylum-seeking minors to identify best practice to prevent disappearances.**
- **Remove all children from segregated, congregated, and institutional set-up which gives rise to the exclusion, lack of privacy and safety concerns for them. They need a home environment and Direct Provision is not it.**

Article 26: Equality before the law and prohibition of discrimination.

5. While Irish law prohibits discrimination, the State does engage in discriminatory practices in the treatment of asylum seekers. MASI notes positive changes that have been introduced such as allowing asylum seekers to open bank accounts. For many years Irish banks had refused to open bank accounts for asylum seekers by requiring documentation that many asylum seekers couldn't have. Even when EU law required them to facilitate opening of bank accounts for asylum seekers and to have regard for the unique situation of asylum seekers in relation to documentation. Asylum seekers successfully litigated against the Irish State's refusal to issue a driving licence to asylum seekers. Today, asylum seekers in Ireland can obtain a driving licence. These two examples highlight that change is possible, even if it has to come through the courts. It should not be necessary for asylum seekers to litigate against the State in order to enjoy equal treatment in the territory. It should shame the State when a person who left their own country due to rights violations has to fight against the

⁶ See report from the Ombudsman for Children, 'Direct Division', Retrieved 29th May, 2022, from <https://www.oco.ie/app/themes/oco/images/direct-division/pdf/Ombudsman-for-Children-Direct-Division-Report-2020.pdf>

host government in court for equal treatment. The discriminatory nature of the State towards asylum seekers became more pronounced in response to the Russian invasion of the Ukraine. Since the European Union activated the Temporary Protection Directive, the Irish State appears to be under the impression that the response to war gives the Irish State licence to suspend all prohibition of discrimination obligations. Both the Temporary Protection Directive, and the EU Directive of Reception Conditions for Asylum Seekers make provisions for the provision of material supports for respective beneficiaries. None makes the provision that a beneficiary of one directive should be prioritised over the beneficiary of the other piece of legislation. What MASI has been seeing in Ireland is the government putting all measures in place to ensure that beneficiaries of the Temporary Protection Directive have prompt access to documentation needed to access public services. While asylum seekers who are beneficiaries of the EU Directive on Reception Conditions for Asylum Seekers wait longer for access to same. For example, figures released in April showed that about 1200 asylum seekers had not completed the application process which means they did not have the appropriate documentation required to access public services.⁷ Asylum seekers are waiting for weeks and months for the government to issue the Temporary Residency Card that is given to them by the Department of Justice. This card is also used when applying for PPS card which is used to claim the weekly allowance, and both cards are then used to apply for the medical card to access healthcare. Additionally, children also have difficulty accessing education while they wait for months for the government to issue this documentation and pay weekly allowances.⁸ Considering that some asylum-seeking parents were waiting for the Irish state issued documents before Russia invaded the Ukraine, it is laudable that the government has been able to issue PPS numbers to 33 000 Ukrainians so that they can access public services promptly.⁹ This is great for Ukrainians. For asylum seekers who are predominantly African,

⁷ See statement from the Irish Refugee Council highlighting delays in accessing the asylum procedure here <https://www.irishrefugeecouncil.ie/press-release-irish-refugee-council-calls-for-clarity-and-action-on-the-registration-of-asylum-applications>

⁸ See asylum seeking parents expressing difficulty over waiting for 4 months for documentation here <https://dublininquirer.com/2022/03/09/with-system-for-housing-people-seeking-asylum-overburdened-state-has-turned-to-temporary-centres-with-lower-standards>

⁹ See here <https://www.rte.ie/news/2022/0527/1301557-ukrainian-refugees/>

Middle Eastern, and Asian,¹⁰ it suggests that the Irish State does not care about their needs for access to the same documents. Both beneficiaries of the Temporary Protection Directive, and EU Directive on Reception Conditions for Asylum Seekers are issued with documentation from the same government departments who have proved to be more organised in ensuring the one group has better access than the other. The outcome being that child who arrives in Ireland from the Ukraine will have access to documents promptly so they can start school while asylum seekers must wait for longer. In Irish law, the children have same right to access education. But the delay in issuing documents to one group denies them access and creates different outcomes. This should be avoided. Article 6 (1) of the EU Directive on Reception Conditions for Asylum Seekers requires that a document, such as the Temporary Residency Card that is issued by the Department of Justice, must be issued within 3 days from when an asylum claim is lodged.¹¹ Thus, the delays are not only discriminatory but also breach EU law.

Recommendation

The State Party should:

- **Employ adequate resources for the registration of asylum claims, issuing of all other documents needed by an asylum seeker to access public services, and ensure parity in delivery of services. Issuing documentation to 33 000 in a short space of time people vs less than 2000 asylum seekers waiting for same shows it can be done if the political will is there.**

Conclusion.

It is MASI's hope that the very simple asks that have been outlined will inspire both the Irish State and the Human Rights Committee to take action. Of particular concern are our observations around instances where the operation of the Direct Provision system has undermined fundamental human rights including the prohibition of inhuman and degrading

¹⁰ See page 7 for breakdown of nationality of asylum seekers in Direct Provision here <https://assets.gov.ie/216705/9664a159-502b-42db-b94c-f1d1e4eb9c3a.pdf>

¹¹ See EU Directive on Reception Conditions for Asylum Seekers here <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>

treatment, and the right to privacy which includes private family life. That warrants an apology; an independent inquiry; and redress measures for the established breaches.