

Presentation to Department of Justice & Equality

FLAC recommendations on reform of Direct Provision

FLAC would firstly like to recognise and thank the Department of Justice and Equality for inviting us here to take part in this consultation.

FLAC is a human rights organisation promoting equal access to justice for all. In the past FLAC has campaigned for the abolition or at least the reform of the direct provision system, as well as for the reinstatement of child benefit as a universal payment accessible by asylum seekers. FLAC published a comprehensive report, *One Size Doesn't Fit All*, in 2009 analysing the direct provision system from a human rights law perspective and it is to this report that my contribution today will speak.

FLAC is not feeding into the discussion around the protection system currently in place, but rather on the reform of the Direct Provision and dispersal system. Nonetheless, for asylum seekers' human rights to be fully realised by the State, the current protection system must of course ensure fairness, efficiency and independence.

While *One Size Doesn't Fit All* makes a host of useful and necessary recommendations for the state to consider, today I will focus on three areas within the operation of direct provision and dispersal system that FLAC recommends for consideration by the Working Group to be established by Minister Frances Fitzgerald.

Firstly, the **right to work** needs to be established for asylum seekers. Currently direct provision residents are prohibited from working under section 9(4)(b) of the Refugee Act 1996. FLAC recommends that the Government opt in to the European Union Reception Directive, where "Member States cannot deny applicants for asylum access to the labour market and vocational training six months after they have lodged their application". There is flexibility within this Directive for the State to define more clearly how this would work.

Secondly, there is huge concern around the current **complaints procedure** within direct provision in terms of independence and impartiality, as well as in terms of the levels of confidence among people using the procedures, namely asylum seekers. The mechanism currently operated by the Reception and Integration Agency deals with complaints against Service Providers referred to the Agency.

There are many human rights concerns which tend to undermine confidence in the complaints mechanism, such as;

- The contractual nature of the Reception and Integration Agency's relationship with centre managers;
- No dedicated complaints section in the Reception and Integration Agency;
- No review of decisions by a more senior official;
- No record of complaints made by residents ;
- Lack of consideration for the constitutional right to due process and fair procedure;

- Disregard for rights under Article 6 of European Convention on Human Rights, which protects a fair hearing before an impartial adjudicator. Currently where transfer Orders/Expulsions have been decided there is no right to an oral hearing.

It is worth noting that the Ombudsman has published guidelines on best practice for an internal complaints mechanism which should be the basis for the direct provision complaints procedure which safeguards fair procedures, due process and credibility. The essential features of a good internal complaints system are:

- Accessibility
- Simplicity
- Speed
- Fairness and Independence
- Confidentiality and Impartiality
- Effectiveness
- Flexibility

FLAC recommends the following measures:

- Within RIA a separate unit should be set up to deal with complaints to address the shortcoming of lack of independence;
- The establishment of two separate components to the complaints procedure. An informal and formal resolution mechanism should be created laying out clear steps in each mechanism;
- Timeframes for the handling of complaints to ensure issues and complaints should be dealt with fairly and in a speedy and effective manner;
- There should be a clear right to appeal (oral hearing in cases of serious decisions around expulsion) on any decision issued by RIA or a centre manager;
- There should be strict record keeping of all complaints to ensure effectiveness of the system.

Lastly, FLAC wishes to raise the issue of **Child Benefit & Social Welfare payments** for asylum seekers.

Since 2009 there has been a distinction in Ireland between children residing in direct provision and those outside of that system. Child Benefit was originally a universal, non-means tested payment to ensure the best interests of the child were met by the State. Excluding children in direct provision from accessing this payment directly undermines this noble aim.

Since the introduction of the habitual residence condition in 2004 and in particular the right to reside test under social welfare law in 2009, asylum seekers are deemed to not have the legal right to reside in the State and therefore cannot satisfy the HRC. As a result asylum seekers and their children do not have access to any form of mainstream social protection outside of the inadequate direct provision allowances.

Currently the rates of the direct provision allowances do not meet the basic needs of asylum seekers to ensure an adequate standard of living and a life of dignity, especially given the rise in the cost of living since the direct provision allowances were introduced in 2000. This must be addressed by the Working Group urgently.

Further, asylum seeker children who have progressed through second-level education in Ireland are faced with huge obstacles in terms of access to third level education because they must pay enormous fees as non-EU students. This only compounds social disadvantage and marginalisation for these children.

- FLAC recommends that all people seeking protection have access to Child Benefit.
- FLAC also calls for the direct provision allowances to be increased in line with inflation to safeguard a person's dignity and a minimum essential standard of living. Further, in situations where they face destitution, the social protection system should permit asylum seekers access to supplementary welfare allowance on a discretionary basis.
- FLAC recommends that third level fees be abolished for asylum seekers once they have completed second level education in Ireland.
- Lastly, FLAC strongly recommends that the **terms of reference for the planned Working Group specifies that the Direct Provision and protection systems must respect, protect and promote the human rights of asylum seekers in compliance with the State's legal human rights obligations** at national, European and international levels.

You can download our report on Direct Provision, *One Size Doesn't Fit All* (2009) at <http://www.flac.ie/publications/one-size-doesnt-fit-all/>.

The report examines the system of direct provision in the context of government policy, domestic law and international human rights standards. Asylum seekers and those seeking subsidiary protection or humanitarian leave to remain, living in direct provision accommodation, experience high levels of poverty and are particularly susceptible to social exclusion.

There is a particular focus in the report on the impact of the Habitual Residence Condition on this vulnerable group, especially regarding their entitlement to access social welfare payments. FLAC assesses the direct provision system in a human rights context to determine whether the scheme is in compliance with international standards and norms, with due regard given to economic, social and cultural rights.

Yvonne O Sullivan
FLAC Policy & Advocacy Officer