



ONE SIZE DOESN'T FIT ALL

A legal analysis of the direct provision and dispersal system in Ireland, 10 years on.

EXECUTIVE SUMMARY



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CONTEXT - BACKGROUND AND RATIONALE

The policy of direct provision and dispersal for asylum seekers and those seeking humanitarian leave to remain was first introduced as a pilot scheme in November 1999 as a reaction to the higher numbers of people coming to Ireland to claim asylum. By April 2000 it was a nationwide policy. 'Direct provision' is the system set up by the State to accommodate on a full board basis people who have come to Ireland in order to seek asylum. They are dispersed to accommodation centres in various locations around the country where they are expected to stay while awaiting a determination on their status. While a person lives in direct provision he/she receives only €19.10 per week and €9.60 for his/her child.

In 2003 FLAC issued a report entitled *Direct Discrimination?* which examined the setting up of the direct provision and dispersal scheme. The report found that direct provision "is gravely detrimental to the human rights of a group of people lawfully present in the country and to whom the government has moral and legal obligations under national and international law" (FLAC 2003). FLAC recommended that the scheme of direct provision should be "abandoned immediately"; however, seven years on the same situation continues. In this report FLAC revisits the scheme of direct provision and dispersal in the context of changes in social welfare legislation, the reduction in the number of asylum seekers and the long periods of time people remain in direct provision accommodation.

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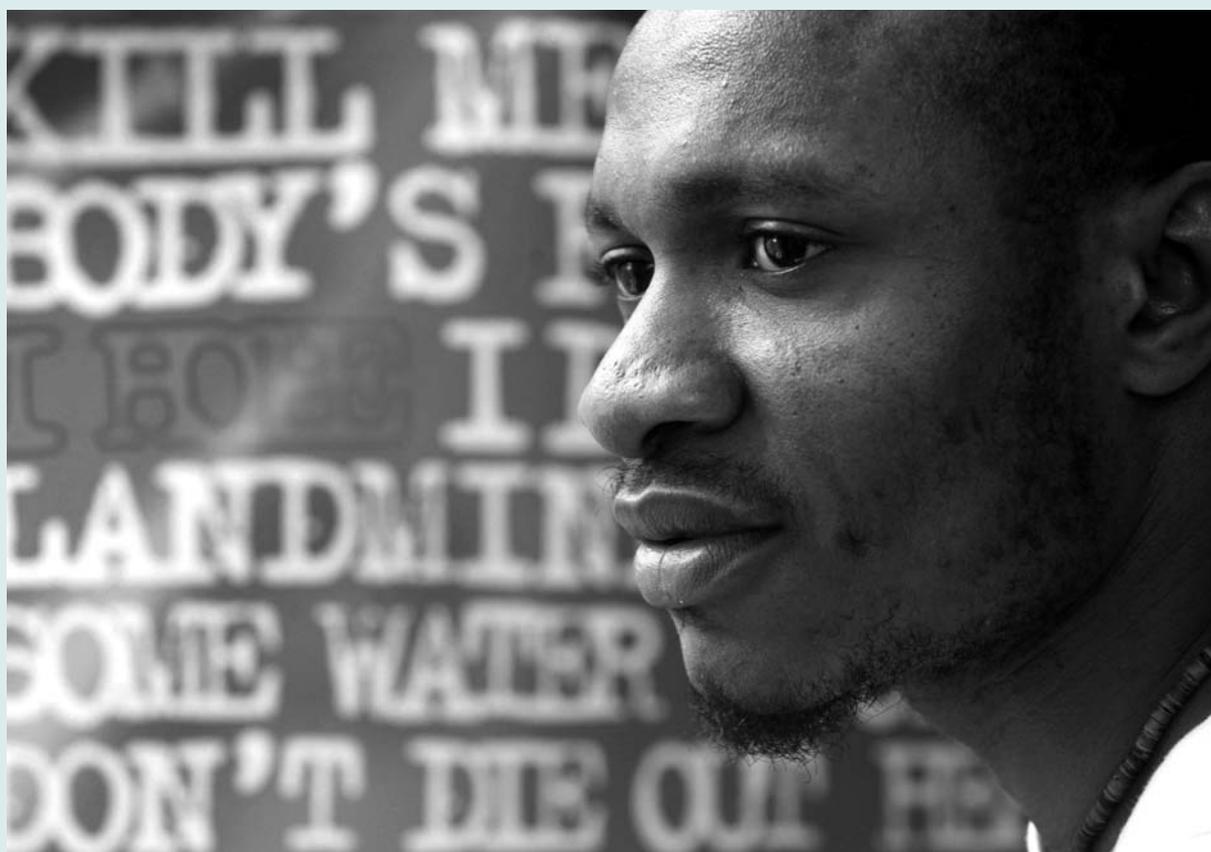
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REPORT OBJECTIVES

The main objectives of this report are to:

- Explain the operation and administration of the direct provision and dispersal scheme in a clear and factual manner.
- Examine the impact of changes in social welfare law which affect the social welfare entitlements of direct provision residents. In particular, the report seeks to clarify the law around the Habitual Residence Condition as it applies to direct provision residents.
- Consider the application of government anti-poverty and social inclusion strategies to asylum seekers or those seeking subsidiary protection under the EU Qualification Directive¹ or humanitarian leave to remain.
- Analyse the scheme of direct provision and dispersal from a human rights and equality perspective with reference to both Irish law and international human rights instruments.
- Raise issues of concern expressed by people living in direct provision.
- Make recommendations on how the scheme could be improved.



¹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted



OUTLINE OF REPORT

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The first chapter of the report sets out the establishment of the direct provision and dispersal scheme and examines how it continues to work. The report looks at how the scheme operates on an administrative rather than a legislative basis. The Department of Justice, Equality and Law Reform, through the Reception and Integration Agency (RIA), is responsible for the scheme's operation. The obligations of the private contractors who run the accommodation centres are considered and the inspections process is examined. Another main focus of the first chapter is the way in which the complaints procedure operates when a resident is accused by a member of the centre staff of infringing the House Rules of the accommodation centre.

Chapter 2 looks at direct provision as part of the Supplementary Welfare Allowance scheme. The social welfare entitlements

of direct provision residents are examined with a particular focus on the Habitual Residence Condition, an extra qualifying condition introduced in May 2004. Government anti-poverty and social inclusion strategies and plans, targeting people in the various stages of the "lifecycle", are considered in light of the position of direct provision residents; almost a third are children under 18 years of age while the vast majority are people of working age.

The third and final chapter looks at the human rights of direct provision residents under both Irish and international law. A number of rights are examined in the report, including the right to food, housing, health and work as well as freedom of expression and association. Certain rights, as they apply to women and children, are considered in more depth. Views from direct provision residents around these issues are also expressed in this chapter.

CONCLUSIONS

The Department of Justice, Equality and Law Reform maintains that direct provision is the best way to fulfill its international obligations to people seeking asylum. While it has accepted responsibility for housing people while they remain in the asylum, subsidiary protection or humanitarian leave to remain process, it has made further commitments to protect and promote the human rights of individuals in direct provision under international law.

The provision of full-board accommodation to direct provision residents is contracted out to private companies which are profit-making entities. The Department of Justice, Equality and Law Reform spends huge amounts of money on the system. In fact four out of five of the highest paid contractors to the Department are direct provision accommodation providers (Ahern 18 February 2009).

The number of individuals entering Ireland to seek asylum in 2009 is at its lowest since 1996 (RIA statistics October 2009). The number of applications for asylum received by October 2009 (2354) represents a 27 per cent decrease on the same month in 2008 (3242). There is a stark contrast between the decline in the number of asylum applications and the increase in the number of people who are living in direct provision - some 6640 at the end of October 2009. Instead of the number of people in direct provision decreasing in line with the fall in the number of asylum applications, the number in direct provision has remained relatively high in comparison.

In October 2009, 32 per cent of residents had lived in direct provision accommodation for more than three years; 19 per cent of residents for between two and three years; 24 per cent between one and two years and 25 per cent for less than a year (RIA statistics October 2009). Of that 25 per cent, only 12 per cent were there for less than six months, the maximum length of time the Government originally intended that a person should spend in direct provision accommodation.

The direct provision and dispersal system as it currently operates lacks transparency. The requisite number of inspections (as specified by RIA itself) is not carried out, the information collected at information clinics is not recorded and RIA does not keep an accurate register of complaints, made by either centre staff or residents. There are inadequacies in the system of complaints which need to be addressed if the scheme is to operate in a fair and efficient manner.

The introduction of the Habitual Residence Condition resulted in direct provision residents being restricted in accessing certain social welfare payments, including Child Benefit, which had previously been open to them. The Department of Social and Family Affairs applied a blanket ban, based on the Habitual Residence Condition, to people living in direct provision who could not satisfy the condition under any circumstances. FLAC, through a number of social welfare appeals, established that this was a misapplication of the law. The Chief Social Welfare Appeals Officer issued decisions stating that each individual case

should be decided on its own merit and in accordance with the factors laid down in legislation. Even with this, only a small number of direct provision residents would qualify for any social welfare payment over the basic €19.10 because of the height of the barriers imposed by the legislation.

Coming too late for the main report, in December 2009, in proposing changes in social welfare law to implement Budget 2010, the government took the opportunity to push through an amendment which seeks to deny any person in direct provision the right to be recognised as habitually resident.

Direct provision residents are disadvantaged through the prohibition on working and the small amount of money given to them each week. The direct provision allowance has not risen since its introduction ten years ago. Furthermore, this group of people has not been included as a target group in anti-poverty and social inclusion strategies.

The direct provision system may fulfill the letter of the State's commitment to "house homeless people who have pitched up on our shores and over whose heads we have an obligation to put roofs", as the obligation was phrased by the Secretary General of the Department of Justice, Equality and Law Reform, Mr Seán Aylward, at the Oireachtas Public Accounts Committee on 8 October 2009. However, it does not comply with the rights enshrined in international human rights law in a broader sense.

Everyone has the right to be respected, to live free from discrimination and inequality and to enjoy certain basic and fundamental rights. The direct provision system does not provide an environment conducive to the enjoyment or fulfillment of the most basic human rights, including the rights to health, food, housing and family life. It also has negative repercussions on the right to education and the right to work as well as to freedom of expression, freedom of movement and freedom of association.

Direct provision has resulted in individuals, who have spent years in the system awaiting a decision on status, becoming institutionalised. The system as it currently operates has a negative impact on mental health and the ability to lead a 'normal' life. It is an unfair system which does not adequately address the needs of the vulnerable group of people for whom it is meant to provide. The 'provision' is superficial and meets only the very basic requirements of a person who has left his/her country in order to seek protection and safety in Ireland. In order to truly discharge its duties under domestic and international human rights law, the State must put in place a system which allows people a reasonable standard of living and the chance to live in dignity.



RECOMMENDATIONS

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Ten years after its introduction, direct provision has failed to adequately protect the rights of those seeking asylum and protection in Ireland. Given that failure, it should be abolished as a system. While the system remains in place, however, the following recommendations should be put into effect.

OVERARCHING RECOMMENDATIONS

- The State should respect, protect and promote the fundamental human rights of people regardless of their immigration status.
- Following on from this, the State should carry out an audit of its policy of direct provision and dispersal to ensure it meets human rights standards in Irish law and in international human rights treaties that Ireland has ratified.
- A greater level of care needs to be taken to guarantee the rights of those in direct provision who are particularly vulnerable, whether by reason of their age, gender, disability, health, sexual orientation or other attribute.
- The Department of Justice, Equality and Law Reform needs to operate the direct provision and dispersal system in a fair and transparent way. Residents must be given a voice in decisions made about them and an objective and fair hearing if difficulties arise in the administration of the system.
- In making any decision to relocate a person, account should be taken of his/her physical and mental health, cultural, religious and other background and the potential for conflict within a direct provision centre because of the person's ethnicity or history in his/her country of origin.

SPECIFIC RECOMMENDATIONS

Recommendations on the operation of the direct provision and dispersal system

- While the policy of direct provision remains, self-catering facilities should be used to full capacity. When renewing contracts with service providers, the RIA should give preference to self-catering facilities rather than accommodation centres which cater for the residents (section 1.4).¹
- Any assessment of direct provision in relation to value for money should take account of the whole cost of the system, including the long-term consequences for residents vis-à-vis health and social inclusion (section 1.5).
- The information contained in the Department of Justice, Equality and Law Reform should better reflect the operation of the RIA. This should include the number of people in direct provision, the cost, the number of inspections and information clinics and figures for complaints, transfers and expulsions. The RIA should also publish its annual report on its website (section 1.7).
- The mandatory number of inspections by both the RIA and the private inspection company should be carried out annually. An annual report listing the condition of all centres and any concerns raised by the inspectors should be made public. The inspection process should be transparent and should represent a thorough examination of the premises and conditions in which direct provision residents live. The inspection should therefore include a consultation with residents (section 1.7).
- RIA contracts, policies and procedures should be drawn up in line with the nine principles of Quality Customer Service which are binding on all government departments (section 1.8).
- The Direct Provision House Rules, Procedures and Services, a booklet outlining the obligations of the centre and the rights of residents, should be reviewed to address the concerns of direct provision residents (section 1.9).
- The RIA should ensure that statistics are kept on the number of complaints made by residents and that these complaints are fully investigated and resolved to the residents' satisfaction. These complaints should not be available to any other part of the Department of Justice, Equality and Law Reform and adequate safeguards to ensure anonymity should be put in place (section 1.10).
- The complaints procedure in direct provision centres should be reformulated using the Ombudsman's guidelines (section 1.10.2).

⁴ Section references are to sections in the main report.

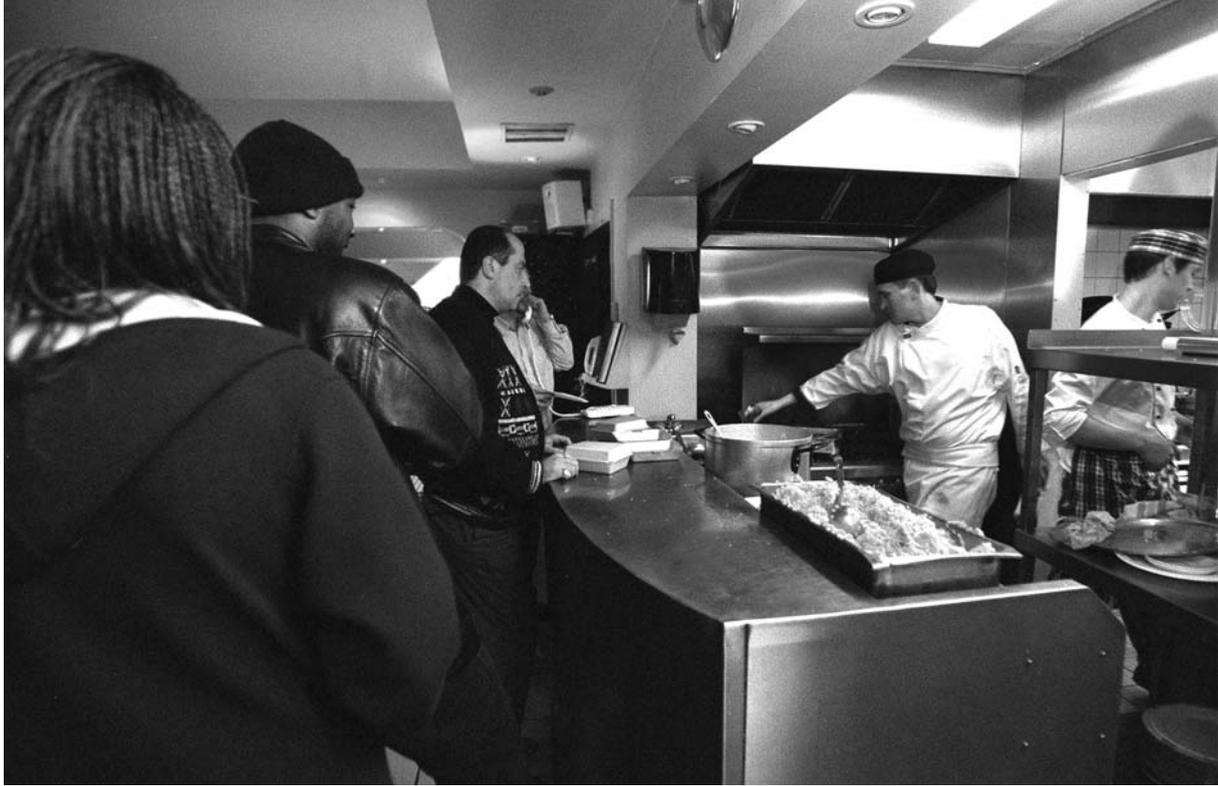
Recommendations on the operation of the social welfare system

- Direct provision was always intended as a short-term solution. Due to delays in the status determination process, those who still do not have a decision after one year should be treated as any other destitute person and given access to Supplementary Welfare Allowance (sections 2.1.1, 2.1.2 and 2.1.3).
- If full-rate Supplementary Welfare Allowance is not granted to persons awaiting a decision on their status, the direct provision allowance should be increased to €65 per week for an adult and €38 per week for a child in line with inflation (section 2.1.3).
- The guillotined measure which was rushed through the Dáil in the Social Welfare and Pensions (No.2) Act 2009, which denies any direct provision resident the right to be recognised as habitually resident in Ireland, should be re-introduced and debated by the Oireachtas in a measured way. (section 2.2 and Preface).
- Delays within the social welfare system should be minimised through a series of measures aimed at making better decisions at first instance and through improved co-operation between the Department of Social and Family Affairs, the Health Service Executive and the Social Welfare Appeals Office to ensure that appeals are processed in a timely fashion (section 2.2).
- More resources should be allocated to the Social Welfare Appeals Office as the current appeals processing wait along with the increase in the number of appeals received due to people's reliance on social welfare payments in times of recession, indicates the need for more staff to process the appeals (section 2.2).



Recommendations on the implementation of the State's human rights commitments

- The exemption in s.14 of the Equal Status legislation which permits unequal services to those in direct provision should be removed. This should be based on the principle of equality of services to those in direct provision, which should underpin all RIA activities (section 3.2).
- The State should adopt the approach of viewing asylum seekers as refugees who are simply awaiting a formal declaration rather than treating them with suspicion (section 3.3).
- The State should implement the principle of the "best interest of the child" in all decisions concerning children (section 3.4).
- The State should ensure equal treatment between all children receiving state care (sections 3.4 and 3.5).
- The State should provide for professional care in the accommodation facilities for separated children and assign a guardian ad litem to each separated child (section 3.5).
- The Department of Justice, Equality and Law Reform should examine its practices and procedures to ensure that no one is left homeless and destitute in violation of human rights obligations in both Irish and international law (section 3.6.3).
- The complaints and proposed expulsion procedures should be amended to ensure that the health difficulties of the person under review, including any mental health difficulties, are properly considered (section 3.6.3).
- No-one should be expelled from the direct provision system without a suitable alternative solution being offered (section 3.6.3).
- To respect their right to food, direct provision residents in Ireland should be given the necessary support, access to facilities and social assistance. Direct provision residents should be given the opportunity to choose, prepare and cook their own food appropriate to their culture, diet and individual needs (section 3.8).
- Parents should be given the resources and facilities to prepare food for their children. The decision as to what to feed their children should be the parents' alone. This also applies to the decision when to wean a child onto solid food (section 3.8.2).
- The RIA and private catering companies should ensure that the quality of food provided is of a high standard and is sufficiently nutritious. Healthy eating should be promoted and encouraged throughout the direct provision system (section 3.8).



- The Irish government should examine and adopt the Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security, as issued by the Food and Agriculture Organisation of the United Nations (adopted in 2004) (section 3.8).
- The government should adhere to the four interrelated and essential elements of the universally recognised right to health, namely availability, accessibility, acceptability and quality of healthcare services (section 3.9).
- A thorough needs assessment rather than a basic routine health screening should be carried out for each person when they apply for asylum (section 3.9).
- There is insufficient data available on the health needs of asylum seekers and refugees. More detailed information should be collected and collated. This should take into account the particular needs of vulnerable groups including women, children, disabled individuals and lesbian, gay, bisexual or transgendered persons (section 3.9).
- Health service providers should be culturally sensitive in relation to patients from other countries and backgrounds (section 3.9).
- The Health Service Executive should be allocated the necessary funds and resources to implement its Intercultural Health Strategy in full (section 3.9.1).
- In relation to the specific mental health needs of persons seeking asylum or another form of protection, the government should ensure that there are adequate mental healthcare facilities for all individuals, including direct provision residents (section 3.9.2).
- A health impact assessment should be carried out by the RIA in relation to the long-term consequences of living in the direct provision system (section 3.9.2.2).
- Women living in direct provision who are or who become pregnant should be given appropriate medical attention and aftercare (section 3.9.3).
- Women in direct provision should not be restricted in their reproductive rights, in particular with respect to family planning (section 3.9.3).
- Since a child's health is dependent on so many other rights, such as the rights to food, adequate housing and education, it is imperative that this right is not considered in

its narrowest meaning but is looked at in the light of the 'whole child' perspective usually favoured by the government (section 3.9.4).

- Direct provision residents should be granted temporary work permits if they are waiting longer than six months for a decision on their status (section 3.10).
- In consultation with direct provision residents and the NGOs which work with them, the government should give proper consideration to "opting-in" to the recast Reception Directive (section 3.10.1).
- Ireland should increase its efforts to ensure that non-denominational primary education is widely available in all regions, in view of the increasingly diverse and multi-ethnic composition of the population of the State (section 3.11).
- Residents should be consulted about any transfers where the move may have a direct or indirect impact on a child's education (section 3.11.1).
- Young adults who complete their Leaving Certificate and wish to access third-level education should be provided with opportunities to do so (section 3.11.2).
- In order for direct provision residents to avail of free English language courses or other free courses provided to them, they should have access to free childcare facilities (section 3.11.2).
- Education should be promoted and facilitated for direct provision residents (section 3.11.2).
- More relevant educational and personal development courses should be accessible to direct provision residents. The institutes of further education should consult with direct provision residents living in the locality in order to tailor these courses to their interests and needs (section 3.11.2).
- Direct provision residents should be allowed to have their qualifications recognised despite the fact they are currently not permitted to work. This step would help to accelerate their integration into the Irish labour market if status is then granted (section 3.11.2).
- The RIA and centre management should encourage and facilitate residents to form residents' committees in order to assist all sides involved in the direct provision system to maintain good lines of communication (section 3.13).
- NGOs and other interested persons should be allowed to access direct provision centres where their assistance or expertise is required or requested (section 3.13).
- Residents' views should be taken into account in matters concerning their lives (section 3.14).

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This report updates and elaborates on some of the key concerns about the system of direct provision and dispersal identified in FLAC's 2003 publication, *"Direct Discrimination?"* 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.



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