

**THE VULNERABILITY ASSESSMENT TOOL AND DISABILITY IN DIRECT PROVISION:
SUBMISSION TO MINISTER O'GORMAN AND MINISTER RABBITTE**

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Submission to Minister O’Gorman and Minister Rabbitte: The Vulnerability Assessment Tool and Disability in Direct Provision

Introduction

This submission addresses the development of the vulnerability assessment tool relating to disabled child and adult asylum seekers living in the Direct Provision system. Disabled asylum seekers have *particular* protection and disability specific related rights that are equally the mandate of, and require the urgent attention of, both Mr Roderic O’Gorman T.D., Minister for Children, Equality, Disability, Integration and Youth and Ms Anne Rabbitte T.D., Minister with responsibility for Disability.

It is imperative that a strategic and purposive ‘disability lens’ is applied to the development and implementation of the vulnerability assessment tool. This is necessary to ensure that the human rights of disabled asylum seekers are fulfilled, in accordance with the State’s obligations under the European Communities (Reception Conditions) Regulations 2018 (Regulations of 2018), and the UN Convention on the Rights of Persons with Disabilities (CRPD).

1. Definition of Disability and Reasonable Accommodation

When referring to disability in this submission, the CRPD definition of disability is used. Article 1, (purpose) of the CRPD states that:

“persons with disabilities include those who have long-term physical, mental, intellectual and sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

Furthermore, when referring to ‘reasonable accommodation’, the CRPD definition (Article 2), is used:

“reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

2. Vulnerability Assessment

Statutory Instrument No 230/2018 European Communities (Reception Conditions) Regulations 2018 (Regulations of 2018), became operational on 30th June 2018. This includes a legal obligation on the State to develop a vulnerability assessment tool, and sets out categories of vulnerable groups, including disabled asylum seekers. The State is required to provide access

to the vulnerability assessment tool within the first thirty days, following an application for international protection. Currently, this legal obligation is not being fulfilled.

A 'vulnerable person' is defined as;

*“ a person who is a minor, an unaccompanied minor, **a person with a disability**, an elderly person, a pregnant woman, a single parent of a minor, a victim of human trafficking, a person with a serious illness, a person with a mental disorder, and a person who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence”* (Regulations of 2018 s.2(5)).

A recipient with special reception needs is defined as a;

“recipient who is vulnerable and who has been assessed, in accordance with Regulation 8, as being in need of special guarantees in order to benefit from his or her entitlements, and to comply with his or her obligation, under these Regulations (Regulations of 2018, s.2(1)).

The ratification of the CRPD is also of relevance. Child and adult asylum seekers with disabilities should, as equal rights bearers, have their rights protected under the CRPD in the same way as other disabled individuals in Ireland (Barry, 2020, p. 284). States are required to integrate the rights of persons with disabilities across all aspects of institutions and work and this, ‘includes a State’s asylum policies’ (O’Sullivan & Ferri, 2020, p.284).

3. Current Piloting of the Vulnerability Assessment in Baleskin Reception Centre

The vulnerability assessment tool is currently being developed and piloted in the Baleskin Reception centre. Little public information is available, however, on this process. The progress on the introduction of the vulnerability assessment tool is noted. However, the significant delay in the development and rollout of the vulnerability assessment tool has limited disabled asylum seekers (and other vulnerable groups) in accessing their rights to special reception conditions and to reasonable accommodation. It has also increased the risks faced by disabled asylum seekers in the context of the COVID-19 pandemic.

The vulnerability assessment tool must be accessible to all of the groups listed in the legislation as vulnerable within 30 days of application of the international protection application. It is also critical that disabled asylum seekers are able to access the vulnerability assessment beyond the initial reception stage. We need to be aware that a disabled person’s support needs and particular vulnerabilities do not remain static over time, and can change due to a variety of factors, such as changes to health and personal situations. Access to the vulnerability assessment and appropriate related access to support services based on the grounds of the

assessment, needs to be available not just as a ‘once off activity’ but to be available multiple times as is needed by an individual. In addition, access to the vulnerability assessment tool should be ensured retroactively for all those currently living in Direct Provision, who have not been given access to a vulnerability assessment.

4. Invisibility of Disability in Direct Provision: Disability Disaggregated Data

Disabled child and adult asylum seekers are a largely ‘invisible disabled population group’ within the Irish international protection system (Barry, 2020, p.481). This ‘invisibility’ is further compounded by asylum seekers’ increased vulnerability due to physical, mental, intellectual or sensory impairments, isolation and lack of support networks (Crock et al, 2017, p.3). ‘Invisibility’ can result in the neglect of needs and cause human rights violations to exist (Fidian-Quasmiyeh et al, 2016, p.421). Therefore, it is imperative to focus on the rights and needs of the most vulnerable groups of asylum seekers as ‘they face structural inequalities and greater risk of their rights being violated’ (O’Sullivan et al, 2020, p.273).

The lack of disability-disaggregated data related to Direct Provision is a serious concern. Urgent attention needs to be given to establishing accurate, best practice disaggregated disability data collection, in Direct Provision. This requires the use of the CRPD’s broad framing of disability, and measures that specifically include visible, invisible, and multiple disabilities in the data collection process with full attention given to data protection rights and obligations.

Ferri links the lack of data on disability with a ‘lack of political awareness of the challenges people with disabilities face in the context of migration’ (Ferri, 2017, p.91). As AIDA notes, interacting with vulnerable groups seeking international protection, ‘presupposes an understanding of who they are and what they need’ (AIDA 2017, p.7). The absence of disaggregated data hinders the development of an understanding of the specific needs arising and contributes to a lack of appropriate planning for reasonable accommodation. As such, this also raises concerns as to how the State is meeting its obligation of reasonable accommodation and non-discrimination under the CRPD in respect to disabled asylum seekers.

5. Disability Audit and Barriers to Identification of Disability in Direct Provision

In conjunction with the development of a vulnerability assessment tool, a disability audit of Direct Provision should be undertaken as a matter of urgency. This will ascertain the particular barriers to the identification of disabled people currently and ensure accessibility and effective implementation of the vulnerability assessment tool.

The vulnerability assessment tool needs to build in awareness of the potential barriers to asylum seekers 'self-disclosing' disability. Some non-exhaustive examples of these barriers include fear that identifying as a person with a disability may have negative implications for a person's asylum claim. There may also be socio-cultural stigmas and negative lived experiences attached to the concept of 'disability', and a person may be worried about disclosing disability in case of not being seen as a 'productive' future citizen. Further issues that can cause disability to remain 'hidden' and need to be accounted for in the development of the vulnerability assessment tool are Gender and Sexual Based Violence (GSBV) related disabilities, torture related disabilities, and mental health disabilities. Individuals may have recently acquired their disability (ies) on their transit journey, or as part of the reason for displacement such as during violence and conflict, or on the transit journey to seek international protection itself. Disability may have been a cause of persecution and stigma in a person's country of origin and indeed be an issue of stigma within the person's lived experience of disability in Direct Provision.

Barriers to identification of disability include a lack of formal procedures to identify disabled people: the use of health screenings; a reliance on self-identification; and a lack of training for staff in identifying people who require support (Burns, 2017, p.1475). Emphasis must be placed on processes to ensure inclusion in the vulnerability assessment tool of those who may not be easily identified, including those who have less visible or invisible disabilities. It is vital that these particular barriers are mapped and accounted for, and that actions to mitigate these barriers are built into all processes of the vulnerability assessment tool. The European Asylum Support Office (EASO) guidelines state that the vulnerability assessment must 'be possible at a later stage, if vulnerabilities are not apparent earlier' (EASO, 2017, p.39).

A disability audit should be comprehensive in scope and include an audit of all physical buildings, information and communication systems used in Direct Provision centres. In keeping with Article 4(3) CRPD, disabled people and their representative organisations should be centrally involved in designing and conducting such an audit. It should also specifically include an audit of the emergency accommodation buildings used to house asylum seekers with disabilities who potentially face additional access issues and vulnerabilities in emergency accommodation settings. Disabled people sharing rooms with strangers, and sharing inaccessible bathrooms, when they may require private accessible bathrooms to attend to daily disability related health needs (such as bladder and bowel programmes for example), are some of the difficulties faced. Any audit undertaken, must also address the roles of carers for people with disability in Direct Provision.

6. Multiple Disabilities, Psychosocial Disabilities and Trauma

Vulnerability assessments should also consider the overlap of multiple disabilities. Since trauma and culture shock can affect asylum seekers in the initial reception period, it is

imperative that the vulnerability assessment be accessible beyond the initial and often traumatic reception stage (Barry, 2020, p.190).

According to Conte, disabled asylum seekers are at 'heightened risk of violence, including domestic abuse, and discrimination' (Conte, 2016, p.328). Flanagan also asserts that asylum seekers with disabilities are at increased risk of being 'dehumanised, degraded, humiliated and objectified than their non-disabled counterparts' (Flanagan, 2015, p.5). In addition, many asylum seekers living in Direct Provision may come from very traumatic backgrounds including being victims of trafficking and torture, and may have subsequently acquired disabilities during these traumatic experiences.

The Irish Refugee Council (IRC) highlighted that barriers to accessing specialist services for the treatment of torture or trauma can act to worsen existing vulnerabilities, and potentially causes new vulnerabilities (IRC 2017, p.6). Notably, the recent Day report recommended to the Government that the vulnerability assessment tool include a separate mental health assessment, and 'provide the basis for delivery of targeted mental health support which is trauma informed and gender sensitive' (Government of Ireland, 2020, p.70). Trauma and the high prevalence of mental health issues and psychosocial disabilities, need to be expressly addressed in the vulnerability assessment tool.

Unaccompanied and separated children with disabilities, who have aged out and been moved to Direct Provision, face particular challenges navigating the Direct Provision system as young disabled adults. Particular attention needs to be given to ensure these disabled young people are included in the vulnerability assessment processes.

There needs to be awareness of, and training embedded, in the vulnerability assessment process that an individual's psychosocial disability needs do not remain static and are not homogenous in experience. Trauma informed models of support must be included in the vulnerability assessment tool. Child specific supports for children with psychosocial disabilities must be in place, with positive action taken to ensure effective and timely access to such supports.

7. Expert Led Vulnerability Assessment Tool

The vulnerability assessment tool should be carried out by expert professionals independent to IPAS. In a recent report on the vulnerability assessment, the Irish Refugee Council recommended the designation of a body such as the Health Service Executive (HSE) to conduct the vulnerability assessments (IRC, 2020, p.4). As suggested above with respect to the disability audit,⁸⁵ is crucial that disabled people are recognised as experts by experience who can provide input into how the assessment tool should be carried out. It is of the utmost importance that the vulnerability assessment is carried out by who are aware of the many nuanced layers and barriers when identifying vulnerability and disability when responsible for undertaking the vulnerability assessments.

It is vital to clarify the scope and content of expert training to be provided specifically in relation to the identification of vulnerabilities and the very different contexts and categorisation of vulnerability, such as victims of torture or child or adult asylum seekers with disabilities. This includes being aware of and explicitly considering invisible and less visible disabilities. Experts on various areas of disability need to be involved in all aspects of ensuring the additional reception needs are met and that reasonable accommodations are ensured for asylum seekers with disabilities, as is the State's legal requirement under the vulnerability provisions of the Regulations of 2018 and under the CRPD.

8. Carers in Direct Provision

The question of carers for persons with disabilities, including children, needs to be addressed. A full assessment of the situation of carers, (including child carers and siblings acting as carers), needs to be undertaken urgently. Specific questions to be addressed include:

- What supports do those caring for disabled asylum seekers have in Direct Provision?
- Do asylum seekers who act as carers in Direct Provision have access to carers allowance?
- Are child carers in Direct Provision offered any specific supports?
- Does the HSE provide carers, personal assistants or healthcare assistants to work in Direct Provision as it does in the general community setting?
- Do people who act as carers in Direct Provision have access to safe working spaces, equitable conditions and equipment to carry out their caring duties?
- Do disabled people in Direct Provision have access to respite care services?
- Are special disability products and services such as continence aids, assistive items, hoists, occupational therapy and physiotherapy services provided and delivered to asylum seekers with disabilities in Direct Provision?

9. Additional Disability Related Costs of Living

It is also important to consider that some asylum seekers with disabilities may have specific additional health needs as a result of their disability. There can also be additional disability related costs associated with being disabled that need to be considered. The location of Direct Provision Centres or other reception facilities needs to be addressed, with particular attention to ensuring effective access to specialist and other public health services. As recommended in the Day report, full payment of child benefit would assist parents with children with disabilities in managing costs of disability as would the introduction of full social welfare payments.

10. Covid-19 and Direct Provision

The Irish Human Rights and Equality Commission (IHREC) highlighted that persons with disabilities living in Direct Provision face extra barriers complying with government public health advice, such as social distancing while living in Direct Provision (IHREC, 2020, p.11). Some child and adult asylum seekers with disabilities may have specific health conditions that increase their risk of Covid-19 infection. They may also face additional barriers, 'accessing self care and preventative measures against Covid-19' (OHCHR, 2020, p.31). The recent Day Report stated that 'congregated settings are ill equipped to deal with outbreaks of disease' (Government of Ireland, 2020, p.20). The Covid-19 pandemic has highlighted the urgent need to immediately end the institutionalisation of asylum seekers, including child and adult asylum seekers with disabilities in congregated Direct Provision centres.

The failure to implement the vulnerability assessment tool, or the State's obligations under the CRPD, has added to the difficulties encountered and risks endured by people with disabilities living in Direct Provision and Emergency Accommodation Centres during the COVID-19 pandemic.

Conclusion

The recent Day Report (Government of Ireland, 2020) maps a clear and costed plan to end Direct Provision, and specifically recommended that the vulnerability assessment tool be implemented without delay. The Government's recent statement committing to end Direct Provision by 2023, and its intention to roll out the vulnerability assessment tool are both to be highly commended. The purposive, strategic use of a disability lens in the development and rollout of the vulnerability assessment tool, is essential to meeting the State's obligations under the RCD vulnerability provision (Regulations of 2018), and the Convention on the Rights of Persons with Disabilities. It is an opportunity for Ireland to lead the way as an example to other EU States on delivering a best practice, expert led vulnerability assessment tool, that respects and fulfils the rights of child and adult asylum seekers with disabilities.

Ireland is due to submit its first State Report to the CRPD Committee in early 2021. However, in the recent release of the 'Draft Initial Report under the Convention on the Rights of Persons with Disabilities' (Government of Ireland, 2020) there is no reference to child and adult asylum seekers with disabilities in Direct Provision. Disabled asylum seekers in the Irish protection system need to be included in all actions taken to implement the CRPD, including in the reporting process to the UN CRPD Committee. Disabled asylum seekers are one of the most vulnerable groups of disabled people in Ireland. Disabled asylum seekers are currently largely

invisible in the Irish protection system, as well as being largely invisible to the wider Irish disability sector. It is vital that those with lived experience of disability in Direct Provision are involved in all aspects of the development and rollout of the vulnerability assessment tool.

As discussed with Minister Rabbitte on the 25th of November 2020 at a Centre for Disability Law and Policy (CDLP) meeting, if there is any assistance that the CDLP or the Irish Centre for Human Rights can provide in the development of the vulnerability assessment tool, we are always available to be of assistance.

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