

IRISH CENTRE FOR HUMAN RIGHTS

Introducing Timelines into the Irish International Protection System: A Path Towards Accountability and Transparency

A Submission to the Minister for Justice

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Foreword by Siobhán Mullally

This Submission highlights the continuing delays and failings in the international protection system in Ireland. The right to seek and to enjoy asylum from persecution is a fundamental human right, recognised in the Universal Declaration of Human Rights and in multiple human rights instruments. In Ireland, however, seeking asylum is a long and difficult process.

As this important Submission reveals, the median processing time for a first instance decision from the International Protection Office is more than 17.6 months. The median time for a decision on an appeal is 9 months. This protracted time spent waiting for a determination of one's claim to asylum, brings with it uncertainty, distress and further trauma.

As we know, to borrow the words of Edward Said, 'the essential sadness of exile can never be surmounted.' The rupture that comes with leaving one's place, seeking a better place in the world, brings anxiety, loneliness and many increased risks – of exploitation, of anxiety and ill health. Separation from families, and the many obstacles imposed by the State on family reunification, adds greatly to the sadness experienced by persons seeking protection.

The length of time waiting, living in Ireland's institutionalised system of Direct Provision, adds to the precariousness of refugee lives, to the deep sense of being stripped of agency, of control, of individual autonomy and of the potential for human flourishing.

These delays, the waiting times and enforced life in limbo, are the result of policy choices, failures to allocate sufficient resources to ensure that a fair and timely determination process is in place. Of particular concern is the continuing failure to ensure that vulnerability assessments take place, on an ongoing basis. The State's obligations to guarantee non-discrimination, reasonable accommodation and a disability inclusive international protection system, remain unrealised.

Clear, precise recommendations are set out here, identifying the steps needed to move from policy reports and recommendations to effective implementation. Providing clear timelines for decision-making, and transparency throughout the process, is essential to complying with core requirements of the rule of law – of due process, natural justice and fairness.

Too often, in the context of asylum, we see such core requirements set aside, compromised to reinforce the power of the State, and the continuing ‘deportability’ of those not yet citizens. This Submission sets out the urgent steps necessary to ensure a fair asylum process, and to protect the human rights of all persons seeking international protection, without discrimination.

A handwritten signature in black ink, reading "Siobhán Mullally". The signature is written in a cursive, flowing style.

Siobhán Mullally

Established Professor of Human Rights Law and Director of the Irish Centre for Human Rights at the School of Law, National University of Ireland, Galway and United Nations Special Rapporteur on trafficking in persons, especially in women and children

Foreword by Mohammad Shafiq

It is evident that whenever there are human rights violations or threats to life by any means; there will be waves of migration to countries and continents. Ireland is one of the EU Member States, where migrants and asylum seekers come into the State following hardships and are embraced by the government.

Ireland is among those countries in Europe where accommodation, health, and educational services seem better than other European States. Several asylum seekers who experienced the asylum processes in other European states, agreed and were happy with the situation here. One reason for this might be the gravity of the security, economic and social circumstances of their origin countries. Secondly, the people of Ireland are really kind and genuinely devoted to respecting human rights.

As I am one of the Sanctuary scholars at NUI Galway, I came to Ireland in June 2019, before the pandemic when the asylum process was normal. However, due to COVID-19 the process has become more lengthy and uncertain, which has negatively affected the wellbeing of applicants. For example, I had a substantive interview in January 2020, for a whole day, and they said it would take an additional half an hour to complete the interview, but I had thought that the entire story was finished. However, now I am living here with an unknown future. I know asylum seekers; who have been here for extended times with uncertain futures, for five years, even ten years!

The people of Ireland treat asylum seekers with kindness, affection, and respect. The government has provided me with the opportunity to work, study, and build their career to integrate into society. I am full heartedly grateful to the University of Sanctuary Scholarship.

Movement of Asylum Seekers in Ireland and Irish Refugee Council are in contact with asylum seekers and help them to share their issues and problems with the Department of Justice. United Nations Migration Agency - Ireland (IOM) further helps with legal assistance, family reunification, and voluntary return. I am a focal point volunteer with IOM Ireland as well. Here in Galway, other local community centers provide legal, educational and financial assistance for vocational training to asylum seekers in finding

jobs, i.e., Galway Local employment service, Galway and Roscommon Education and Training Board (GRETB), Jesuit Refugee Service (JRS), and Croi Na Gaillimhe.

As a suggestion, I would likely say, avoid 'bureaucracy.' Even to renew a Temporary Residence Certificate (TRC), asylum seekers sometimes have to send several emails. Also, categorize the urgency of applications as in some cases, an applicant may experience mental distress due to delays and uncertainty in the international protection processes. COVID -19 had a double impact on asylum seekers; in addition to the health concerns that are shared by the general public, the uncertainty and delays in the process were exacerbated.

Once again, thanks to the people of Ireland, who help asylum seekers and give them the opportunity of education and work to integrate into Irish society, and to those who consider asylum seekers as family members.

In solidarity,

A handwritten signature in black ink, appearing to read 'MS', with a horizontal line extending to the right.

Mohammad Shafiq

NUIG University of Sanctuary Scholar and LLM Candidate at the Irish Centre for Human Rights

Poem by Evgeny Shtorn

Stolen time
has an ability to thicken,
and to block endless corridors,
through which memory rushed to the rescue
(sometimes the memory has mercy).

Instead of water, from the microphone of the shower,
hygiene gel poured into the eyes,
corroding the mucous membrane,
digging into the wounds,
burning out with its anti-bacterially
every possible life.

Stolen time
like stolen money,
are much more expensive
in the market for non-happened miracles.
There is no queue behind them,
this is not a scarce commodity,
because few can afford it.

When I watch the evening news
I see that the stolen money,
you can still invest:
in a pleasant pastime,
into glitter and jewels,
into heavenly palaces.
Only with the stolen money
in the investment package
stolen time is always required.
This radioactive element
destroys not only those
from whom it was stolen, but also those
who steals it.
(time, as you know, does not spare anyone at all).

Endless corridors of memory
stuffed with heavy objects -
it's someone's time
someone's stolen time
Bunched up in this unlimited territory
where no one is comfortable.
Even rats refuse to inhabit these gloomy corners.
Stolen time
burns down with the house,
warming no one,
and not making anyone happy.

A handwritten signature in black ink, appearing to read 'Evgeny Shtorn', with a stylized, cursive script.

Evgeny Shtorn
*LGBT Activist, Organiser, Scholar and Poet
Movement of Asylum Seekers Ireland*

Executive Summary

The history of international protection in Ireland is relatively short, but this short history has largely been characterised by a culture of distrust and questionable practices. Among these is a lack of communication and transparency regarding time frames.

Currently, the median processing time for a first instance decision from the International Protection Office is 17.6 months. The median time for a decision on an appeal is 9 months. As a result of lengthy and uncertain timelines, asylum seekers who are awaiting a decision experience higher levels of psychological distress and face an increased risk of mental illness. From a human rights point of view, this practice is unacceptable. As students of the Irish Centre for Human Rights, we suggest the following changes as necessary steps towards a fair, accountable, and transparent international protection system.

1. Anyone who has been in the system for longer than two years (from the date when the time limits are implemented) should be granted permission to remain without prejudice to their ongoing protection application.
2. Ireland should opt-in to the Recast Asylum Procedures Directive, which guides a European Standard for asylum procedures, and ensure its transposition into national legislation in a timely manner.
3. The time limit of 4 months for Phase One Accommodation, as proposed by the White Paper, should be placed on a statutory footing.
4. A statutory time limit of 6 months should be introduced for the first instance decision by the International Protection Office.
5. In the event that an asylum seeker appeals their first instance decision, a statutory time limit of 6 months should be introduced for the decision by the International Protection Appeals Tribunal.
6. A statutory time limit not exceeding one month should be introduced for the granting of the Ministerial Decision after a recommendation has been made by the relevant Tribunal.

7. Asylum seekers should be granted the legal right to request an extension of the time limit for the processing of their application, under extenuating circumstances.
8. An online portal to be created, which includes an interactive timeline, in which an asylum seeker can see the progress of their application, and have direct access to relevant information, should be created.
9. An auditing mechanism should be implemented to ensure the quality of decision making in the status determination process.
10. All interpreters working in the status determination procedure should be accredited and receive training specific to the asylum context.
11. Further resourcing and staffing should be supplied to the Legal Aid Board to support asylum seekers from the beginning of the status determination process.
12. Vulnerability assessments should be consistently conducted for all asylum seekers and for these assessments should inform special procedural guarantees which may be required, such as the prioritisation of an application.

Introduction

The history of international protection in Ireland is relatively short, but this short history has largely been characterised by a culture of distrust and questionable practices.¹ On 29 October 2020, the Irish Government pledged to end Direct Provision,² and in so doing it has taken the first of many steps in ensuring that those who seek international protection in Ireland are treated with the respect they deserve, and guaranteeing their human rights. However, a reformation of the reception conditions in Ireland, and the support services provided to those seeking international protection, will not solve many of the pervasive issues if the processes through which their applications are decided upon are not also reformed. As expressed by the Movement of Asylum Seekers in Ireland (MASI):

*The lack of any time limit or timeline for how long the process will take is one of the most damaging aspects of life in the direct provision and asylum system in Ireland. There must be a time limit placed on how long a person seeking asylum can be left waiting for a decision on their case, and there must be consequences for the failure of the IPO to provide a final decision within a reasonable time frame.*³

Expanding on this insight, from a human rights perspective, this Submission highlights the effect that long wait times have on international protection applicants in Ireland, and advocates for the insertion of well-defined time limits into the International Protection Act 2015 ('IPA') as a necessary step towards a fair, accountable, and transparent international protection process in Ireland.

The first section of the Submission provides the contextual background of the current Irish international protection system. Informed by an interdisciplinary analysis, the second section emphasises the detrimental and manifold effects that prolonged and uncertain wait times have on international protection applicants. The third section provides a

¹ Irish Refugee Council, 'Difficult to Believe: The Assessment of Asylum Claims in Ireland' (2012) <<https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=44da13e8-e2ea-443c-88c9-6d56de59f801>> Accessed 21 April 2021. See also section 6.1.

² Government of Ireland, 'Programme for Government - Our Shared Future' (29 October 2020) 76 <<https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>>.

³ Movement of Asylum Seekers in Ireland (MASI), 'Submission to Justice & Equality Joint Committee' (27 May 2019) 12.

breakdown of separate phases of the status determination process and provides recommendations for the inclusion of time limits in the IPA. Section 4 highlights the importance of accountability, recognising Ireland's obligations under international law. The fifth section focuses on the need for transparency throughout the status determination process and recommends a digital solution through which desirable standards for transparency can be achieved. Cognisant of the fact that statutory time limits are not the only essential components of a fair status determination process, section 6 recommends several safeguards which are necessary to ensure the quality of the decision-making process. The concluding section provides a summary of recommendations.

1. Contextual Background

Taking into context the current political climate within Ireland, in particular the release of the long-awaited White Paper in February 2021, which provided the beginnings of a roadmap to abolish the current system of Direct Provision, this Submission advocates for the inclusion of explicit time limits within the International Protection Act 2015. Informed by current European Union ('EU') Law and International Human Rights Law ('IHRL'), this Submission further advocates for a more transparent international protection procedure through which the rights of international protection applicants are safeguarded, and the government is held to a higher standard of accountability.

1.1 Day Report

In 2019, an Advisory Group led by Dr. Catherine Day was established by the government to carry out an end-to-end review of the international protection system in Ireland and to make recommendations as to how the system, which had proved to be “dysfunctional”,⁴ could be reformed. The outcome of this endeavour, The Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process 2020 ('Day Report'), which primarily informed the White Paper, includes a detailed and extensive chapter on recommendations for a 'shorter decision-making process'.⁵ It highlights that the current delays in the system are largely due to the legacy cases from the transition to a single procedure system provided for in the International Protection Act 2015.⁶ It also acknowledges the need for increased resourcing of the International Protection Office (IPO) and the International Protection Appeals Tribunal (IPAT), along with sufficient and relevant training for staff as some of many prerequisites that need to occur for the status determination process in Ireland to be shortened in a sustainable way.⁷ This Submission seeks to build upon the work and recommendations of the Day Report in relation to the shortening of the decision-making

⁴ Government of Ireland, 'Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process' (September 2020) 5.

⁵ Ibid, ch 3.

⁶ Ibid, 48.

⁷ Ibid, 48-49.

process, concentrating and elaborating on the need for specific time limits within the IPA 2015 and greater transparency throughout the status determination process.

1.2 White Paper

In response to the recommendations made in the Day Report, the Irish Government produced a White Paper in February 2021, that commits to end the system of Direct Provision and proposes a new integration and accommodation model that is “centred on a not-for-profit approach.”⁸ This Submission welcomes the White Paper’s commitments to reform reception conditions. However, despite the detailed recommendations that the Day Report provides for achieving a shorter status determination process, the White Paper mentions reforms for the status determination process only in passing: “Important work will also proceed in tandem in the Department of Justice to reduce processing times for International Protection applications.”⁹ Due to the Department of Justice’s relative lack of contribution to the White Paper, clear and strong commitments to reform the status determination process and the length of the said procedure itself are lacking.

Acknowledging that Direct Provision falls within the Department of Children, Equality, Disability, Integration and Youth’s mandate and has gained public traction after the “Ask about Direct Provision” campaign;¹⁰ the lack of meaningful input and collaboration from the Department of Justice in the White Paper brings into question the intent of the Irish Government to commit to an effective reform of the international protection system as a whole.

This Submission highlights that the precarious and uncertain position of international protection applicants will remain unchanged. It is not only the reception conditions that have detrimental effects on both applicants for international protection’s mental and physical health but also the undetermined, precarious position they are forced to live in while they await a decision. This Submission highlights that through a respectful,

⁸ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 7.

⁹ Ibid,7.

¹⁰ Ask About DP Campaign <<https://askaboutdirectprovision.wordpress.com/>> accessed 10 May 2021.

transparent procedure which provides accountability to all parties, the dignity and humanity of international protection applicants will be better protected.

1.3 Department of Justice Plan 2021

As the White Paper predominantly focuses on the provision of a new accommodation model and integration services and does not include detailed reforms of the status determination procedure, the Department of Justice's Plan for 2021 offers some insight into how they propose to reform this procedure.

In the Foreword to the White Paper, the Minister states that one of the duties of the Department of Justice is to “treat those who seek refuge on our shores, or to make a new home for themselves in ours, with respect.”¹¹ This Submission proposes that legislating for time limits for each stage of the international protection procedure is integral to this duty being fulfilled. Furthermore, open communication lines between decision-making bodies and international protection applicants, in addition to ensuring the quality of the decision-making process, are of utmost importance.

The fourth goal of the Justice Plan is to “Deliver a fair immigration system in the digital age.” The reformation of the status determination process for international protection applicants fits squarely within this goal. The system, as it currently stands, is far from fair. The present procedure in Ireland leaves applicants in a state of limbo, as they are provided no basis for how long they will be waiting on such a life-altering decision. This Submission recommends the implementation of an online portal to increase transparency and communication between parties involved.¹²

The Justice Plan undertakes to create pathways for an “agile system for international protection applicants.”¹³ Accordingly, introducing statutory time limits for each phase of the status determination process would ensure accountability and sustainability of an

¹¹ Department of Justice, ‘Justice Plan 2021’ (February 2021) 2.

¹² This is further elaborated on in section 5.

¹³ Department of Justice, ‘Justice Plan 2021’ (February 2021) 38.

“agile” system for international protection applicants, and would safeguard against another backlog occurring and history repeating itself.

This Submission welcomes the recognition by the Department of Justice that the international protection procedure requires an end-to-end review.¹⁴ This Submission asserts that the new design, which is to be formulated by the Department of Justice,¹⁵ needs to include time limits for different phases of the procedure on a statutory footing. This is an imperative legislative change, which would ensure the integrity and transparency of the new design.

The Justice Plan recognises “potential opt-ins to the Common European Asylum System”. In the context of the length and quality of the status determination process, the relevant CEAS Directive is the Recast Asylum Procedures Directive, which holds Member States accountable to make the first instance decision of the asylum application within 6 months.¹⁶ This Submission recommends that the Irish system should be aligned with this EU standard and place a 6-month time limit for the first instance decision on a statutory footing. Therefore, Ireland ratifying the Recast Asylum Procedures Directive is a necessary step in ensuring Government accountability, which is currently lacking in the Irish system.

1.4 Clearing the Backlog

The Department of Justice reported that, at the end of January 2021, there were 5,279 cases pending at the IPO, 1,345 of whom have been waiting for more than 2 years.¹⁷ The Day Report further indicates that at the end of July 2020 there were 5,374 cases pending in the IPO.¹⁸ It notes that of the 7,151 people who were in the application system as of

¹⁴ Department of Justice, ‘Justice Plan 2021’ (February 2021) 39, objective 177.

¹⁵ Ibid, 39 objective 178.

¹⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 (Recast Asylum Procedures Directive) art 31.

¹⁷ Dáil Éireann Debate, 11 March 2021, parliamentary question no 173 by Deputy Thomas Gould <https://www.oireachtas.ie/en/debates/question/2021-03-11/173/#pg_173> accessed 10 May 2021

¹⁸ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process’ (September 2020) 31.

July 2020, 2,961 had been in it for 2 years or more.¹⁹ These statistics point to a backlog that debilitates the Irish system.

It is the objective of this Submission to advocate for time limits to be incorporated into the IPA for each phase of the status determination process. For these time limits to be effective, the pressing issue of the backlog must be addressed. Therefore, this Submission is premised on the recommendation that anyone who has been in the Irish international protection determination procedure, as of the dates when the time limits are implemented, for more than 2 years, shall be granted humanitarian permission to remain without prejudice to their ongoing international protection claims. This recommendation, emphasised in the Day Report²⁰ and subsequently disregarded in the White Paper, is also supported by migrants' rights-based organisations, such as MASI,²¹ Irish Refugee Council (IRC),²² and Nasc.²³

In addition to being a remedy for the backlog, this recommendation is also strongly rooted in respect for the human rights of international protection applicants. The second section gives an overview of the detrimental effects that living in a perpetual state of uncertainty can have on a person and further underlines the urgency for granting permission to remain to international protection applicants who have been in precarious and uncertain situations for prolonged periods of time. It is, therefore, the authors' belief that international protection applicants, who have been forced to live in a state of uncertainty for more than 2 years in reception conditions now widely held as manifestly inappropriate, are deserving of permission to remain.

¹⁹ Government of Ireland, 'Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process' (September 2020) 33.

²⁰ Ibid, s 6.2.

²¹ MASI, 'Statement on White Paper to end Direct Provision' (26 February 2021) <<https://www.masi.ie/2021/02/26/statement-on-white-paper-to-end-direct-provision/>> accessed 20 April 2021.

²² Irish Refugee Council, 'Press Release: Irish Refugee Council welcome White Paper, focus now on implementation' (26 February 2021) <<https://www.irishrefugeecouncil.ie/news/irish-refugee-council-welcome-white-paper>> accessed 20 April 2021.

²³ Nasc, 'Nasc welcomes the publication of the White Paper on Ending Direct Provision' (26 February 2021) <<https://nascireland.org/news/2021/nasc-welcomes-publication-white-paper-ending-direct-provision>> accessed 20 April 2021.

The assertion in the White Paper that the backlogs and prolonged periods spent in the system are attributable to the international protection applicant fails to paint the whole picture.²⁴ We acknowledge as does the White Paper that there can be delays that are due to circumstances of individual cases (such as difficulty obtaining documents);²⁵ however, it is necessary to point out that the backlog was exacerbated when the Irish system moved to the single procedure in 2015, which shows that the majority of the delays in the Irish international protection procedure are systematic.²⁶

The same mistake, made in the transition from the old procedure to the single procedure, cannot be made again. Without a formal, systematic approach to clearing the backlog of cases which exist in the current system, there is a risk of history repeating itself. This Submission aligns with the Day Report upon the recommendation of the establishment of a “one-off, simplified, case-processing approach” for all those who have been in the system for more than 2 years. However, this Submission recommends the 2 years should start upon the implementation of the proposed revised legislation.²⁷ The introduction of statutory time limits within the legislation reinforces the justification of this “one-off” approach as this proposed legislative reform’s purpose is to ensure that there is never a new instance of “backlog” cases.

²⁴ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 50.

²⁵ Ibid.

²⁶ The need for addressing this is also highlighted from a protection applicant’s perspective in a Consultation Report by Nasc dated 2018.

“Or, the problem is, with the new law: why do they put the old cases in the new system (single procedure under the IPO)? For example, I for myself, I went to the High Court in 2016, and I was waiting for the appeal... And they put my case with the new law. With the new system...”

<<https://nascireland.org/sites/default/files/BMM-Consultation-Full-Website-FINAL.pdf>>

²⁷ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process’ (September 2020) 87.

2. The Detrimental Effects of Lengthy and Uncertain International Protection Procedures on International Protection Applicants

2.1 The Current Situation in Ireland

The Day Report highlights how “the length of time people spend waiting for a decision is still the single biggest problem to be overcome”.²⁸ As of December 2020, the median processing time for a first instance decision from the IPO is 17.6 months and 12.7 months for prioritised cases.²⁹ The median time for a decision on an appeal from the IPAT is 9 months.³⁰ As of January 2021, there are 5,279 cases pending with 2,646 applicants waiting 12-24 months and 1,345 waiting more than 24 months for a first instance decision.³¹ Concerns regarding these delays in the international protection procedure have been raised by numerous stakeholders including NGOs, organisations, academics, and asylum seekers as elaborated on in the following sections. Long and uncertain wait times affect various aspects of international protection applicants' life and wellbeing.

2.2 Waiting in Limbo

Long periods of waiting for decisions leave international protection applicants in a state of limbo; they can spend years with little to no control over the way they live their life and unable to plan for the future. The core issues which this Submission aims to address are the delays in the processing of applications and the lack of communication while processing these applications, which combined puts international protection applicants in a prolonged state of uncertainty.

2.2.1 Prolonged Precarious Immigration Status

Due to the nature of the international protection procedure and the impact the decision has on the applicant's life, waiting for this decision impedes on both their wellbeing and

²⁸ Government of Ireland, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (September 2020) 48.

²⁹ Dáil Éireann Debate, 27 January 2021, parliamentary question no 632 by Deputy Catherine Connolly <https://www.oireachtas.ie/en/debates/question/2021-01-27/632/#pg_632> accessed 10 May 2021.

³⁰ Ibid.

³¹ Dáil Éireann Debate, 11 March 2021, parliamentary question no 173 by Deputy Thomas Gould https://www.oireachtas.ie/en/debates/question/2021-03-11/173/#pg_173 accessed 10 May 2021.

their ability and motivation to integrate into the receiving country, while their future there remains uncertain. International protection applicants may be hesitant to fully integrate into a society from which they may be suddenly removed; as Bjertrup and others note, they are “forced into a situation where responsibility for and control over their own lives has been taken away from them. Their existence and future are uncertain, and many experience a constant fear of being deported.”³²

While awaiting their decision, international protection applicants have temporary resident status in Ireland.³³ Due to this precarious immigration status, there are many aspects of day-to-day life in which they are unable to fully participate. Although the White Paper and Programme for Government commit to alleviating these hindrances,³⁴ international protection applicants are currently unable to obtain a driver’s license,³⁵ have great difficulty opening up a bank account, and experience restrictions regarding their right to work.³⁶ While these restrictions may be justified in a temporary situation, in reality, they tend to impede the agency of international protection applicants for months or years due to delays in the system.

2.2.2 Uncertainty Due to Lack of Transparency

While the long wait times for a decision that international protection applicants face is an issue in its own regard, the lack of communication during the process adds to the uncertainty experienced by international protection applicants. In Ireland, there is currently very little communication between the IPO or IPAT and the international

³²Pia Juul Bjertrup and others, ‘A Life in Waiting: Refugees’ Mental Health and Narratives of Social Suffering after European Union Border Closures in March 2016’ (2018) 215 *Social Science & Medicine* 53, 58.

³³ International Protection Act 2015 s 17.

³⁴ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 63 and Government of Ireland, ‘Programme for Government - Our Shared Future’ (29 October 2020) 76 <<https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>>

³⁵Nasc, ‘Driving Licenses for Asylum Seekers’ <<https://nascireland.org/news/2021/driving-licences-asylum-seekers#:~:text=Asylum%20seekers%20in%20Ireland%20are,education%20courses%20and%20become%20independent>> accessed 20 April 2021.

³⁶Department of Justice, ‘Minister McEntee announces reduced 6 month waiting period for international protection applicants to access work’ <<http://www.justice.ie/en/JELR/Pages/PR21000016>> accessed 20 April 2021.

protection applicants themselves on the progress of their application. As highlighted by the Joint Committee on Justice and Equality, “very often individuals must wait months or, in some cases, even years with no update.”³⁷ This creates a situation in which international protection applicants are left in the dark and have no idea when they will receive their decision. As expressed by an international protection applicant in Ireland:

*I think that (known time limits/guidelines for application process) would be helpful. It's not nice to be waiting in a limbo. Not knowing whether you're going or you're coming. You don't know, you don't have a direction. So, I would prefer rather knowing than not knowing. If it's gonna take three years, let me know, then I know.*³⁸

Under the IPA, after 6 months of waiting for a first instance decision from the IPO, an asylum seeker can request the Minister to “provide the applicant with information on the estimated time within which a recommendation may be made.”³⁹ However, in addition to placing the responsibility on the international protection applicant, this estimated time provided may be arbitrary as there is no guarantee or obligation of the IPO to meet this timeframe.⁴⁰ This provision does not solve the motif of uncertainty and lack of transparency present throughout the process, to efficiently combat this issue “applicants should have access to timeframes and information regarding their application at all stages of the process.”⁴¹ The Day Report recommends an ICT system that tracks the process of an international protection case and allows for the international protection applicants to track the progress of their application.⁴² This would simultaneously provide an accessible platform for regular communication, improve the efficiency of the procedure and remove some of the uncertainty faced by international protection applicants.⁴³

³⁷ Joint Committee on Justice and Equality, ‘Report on Direct Provision and the International Protection Application Process’ (32/JAE/47 December 2019) 46.

³⁸ Nasc, ‘Beyond McMahon-the Future of the Irish Asylum Reception System’ (2018) <<https://nascireland.org/sites/default/files/BMM-Consultation-Full-Website-FINAL.pdf>> accessed 15 April 2021.

³⁹ International Protection Act 2015 s 39(5).

⁴⁰ Ibid, s 39(6).

⁴¹ Joint Committee on Justice and Equality, ‘Report on Direct Provision and the International Protection Application Process’ (32/JAE/47 December 2019) 46.

⁴² Government of Ireland, ‘Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process’ (September 2020) 139 para 2.1.

⁴³ See section 5.

2.3 Mental Health

As outlined above, both prolonged precarious immigration status and lack of transparency throughout the international protection procedure fills the lives of international protection applicants with uncertainty and lack of control, leaving them stuck in a state of limbo; the following studies illustrate the detrimental effects this can have on one's mental health. A study undertaken in Denmark on the relationship of "prolonged periods of waiting for an asylum decision and the risk of psychiatric diagnoses" found that lengthy asylum procedures are correlated with an increase in the risk of mental illness, and concluded that "[h]ost countries should consider that long asylum-decision waiting periods could lead to mental illness among refugees."⁴⁴ A similar study in Sweden focused on the "mental health and quality of life among protection applicants and refugees living in refugee housing facilities in Sweden"; this study found that international protection applicants awaiting a decision experience higher rates of psychological distress, in terms of "clinically significant levels of symptoms of depression, anxiety and risk of having PTSD,"⁴⁵ than those who have received a decision.⁴⁶ Furthermore, a study on international protection applicants in Australia found that there was a significant decrease in symptoms of psychological distress in the months after refugee status had been granted, showing that "psychological wellbeing is dependent on the certainty of a predictable future."⁴⁷

For international protection applicants who have experienced trauma, uncertainty throughout the international protection procedure can be particularly harmful, presenting barriers to trauma recovery, while some international protection applicants describe the

⁴⁴ Camilla Hvidtfeldt, Jørgen Holm Petersen, and Marie Norredam, 'Prolonged periods of waiting for an asylum decision and the risk of psychiatric diagnoses: a 22-year longitudinal cohort study from Denmark' (2020) 49(2) *International Journal of Epidemiology* 400, 400.

⁴⁵ Anna Leiler and others, 'Mental health and quality of life among asylum seekers and refugees living in refugee housing facilities in Sweden' (2019) 54 *Social Psychiatry and Psychiatric Epidemiology* 543, 549.

⁴⁶ *Ibid.*

⁴⁷ Pia Juul Bjertrup and others, 'A Life in Waiting: Refugees' Mental Health and Narratives of Social Suffering after European Union Border Closures in March 2016' (2018) 215 *Social Science & Medicine* 53, 58.

procedure itself as “a kind of trauma.”⁴⁸ As illustrated in a German study involving Bosnian refugees who had experienced trauma and were living in “legal limbo”: “Complicated asylum procedures or provisions of only ‘temporary’ protection trigger existential fears, reexperiencing of trauma and feelings of hopelessness and deep despair and can actively contribute to further destabilise survivors.”⁴⁹ The lack of control which international protection applicants experience in the international protection determination procedure is particularly damaging when it restricts agency and forces passivity over prolonged periods of time.⁵⁰ International protection applicants “spoke of their life as only consisting of sleeping and eating,”⁵¹ and articulated their grievances: “As we kill time, time kills us.”⁵²

It is evident that delays in asylum procedures, such as those that inhibit the Irish procedure, prolong the experience of these harmful effects on the mental health of international protection applicants.

2.4 Employment

The right to work is a fundamental human right recognized in various international legal instruments including the International Covenant on Economic, Social and Cultural Rights, which Ireland has ratified.⁵³ In *N.V.H. v Minister for Justice*, O’Donnell J highlighted that “work is connected to the dignity and freedom of the individual”⁵⁴ and drew

⁴⁸ Bridget M Haas, ‘Citizens-in-Waiting, Deportees-in-Waiting: Power, Temporality, and Suffering in the U.S. Asylum System’ (2017) 45(1) *Ethos* 75, 84.

⁴⁹ Sabine Luebben, ‘Testimony work with Bosnian refugees: living in legal limbo’ (2003) 31(4) *British Journal of Guidance & Counselling* 393.

⁵⁰ See Lasse S Hansen, “‘It’s Not Even the Leaders out Here Who Have Any Say at All in How Long They’re Gonna Have to Wait’: A Study of Waiting Time, Power, and Acceptance’ (2020) 29 *Time & Society* 1128 and Pia Juul Bjertrup and others, ‘A Life in Waiting: Refugees’ Mental Health and Narratives of Social Suffering after European Union Border Closures in March 2016’ (2018) 215 *Social Science & Medicine* 53,58.

⁵¹ Pia Juul Bjertrup and others, ‘A Life in Waiting: Refugees’ Mental Health and Narratives of Social Suffering after European Union Border Closures in March 2016’ (2018) 215 *Social Science & Medicine* 53, 57.

⁵² Joint Committee on Justice and Equality, ‘Report on Direct Provision and the International Protection Application Process’ (32/JAE/47 December 2019) 64.

⁵³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1967) 993 UNTS 3 (ICESCR) art 6.

⁵⁴ *N.V.H. v Minister for Justice* [2017] IESC 31 at [15].

from a General Comment of the Committee on Economic, Social and Cultural Rights which asserted that, “[t]he right to work is essential for realizing other human rights [...]”.⁵⁵

Prior to the implementation of the Recast Reception Conditions Directive, international protection applicants were not given the right to work. In the judgment in *N.H.V v Minister for Justice*, the Court declared this prohibition on the right to work to be unconstitutional,⁵⁶ and subsequently the Recast Reception Conditions Directive was transposed into Irish law in 2018. Presently, international protection applicants who have not received a first instance decision after 6 months can apply for access to the labour market.⁵⁷ If successful, the permission received is valid for 12 months and can be renewable if the applicant is still awaiting a final decision after 12 months.⁵⁸ There are calls from various stakeholders, including the Day Report, to change the permission to access the labour market after a maximum of 3 months.⁵⁹

It is also important to note that receiving permission to access the labour market is just one of the many deterrents international protection applicants face regarding the right to work. While this Submission does not fully address the issue of employment and the numerous barriers faced by international protection applicants, such as lack of recognition of credentials and work experience, access to childcare, and language, a recent report by Doras expands on this issue and calls for reform in Ireland.⁶⁰

⁵⁵ Committee on Economic Social and Cultural Rights, General Comment No.18 on the Right to Work (2005) para 1.

⁵⁶ *N.V.H. v Minister for Justice* [2017] IESC 31 at [21].

⁵⁷ SI No 230/2018 European Communities (Reception Conditions) Regulations 2018, regulation 11(5).

⁵⁸ Department of Justice, ‘Permission to Access the Labour Market’

<<http://www.inis.gov.ie/en/inis/pages/labour-market-access>> accessed 20 April 2020.

⁵⁹ See Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 77 and Doras, ‘Getting Right to Work: Access to Employment and Decent Work for International Protection Applicants in Ireland’ (2020) 37 and MASI, ‘Statement on changes to the right to work for asylum seekers’ (2021) <https://www.masi.ie/2021/01/28/statement-on-changes-to-the-right-to-work-for-asylum-seekers/>.

⁶⁰ Doras, ‘Getting Right to Work: Access to Employment and Decent Work for International Protection Applicants in Ireland’ (2020) <<http://doras.org/wp-content/uploads/2020/03/Doras-Getting-Right-to-Work-e-copy.pdf>> accessed 15 April 2021.

The Day Report highlights how “applicants for international protection can make an important economic contribution to Ireland [...] and their psychological health and well-being can also benefit from being able to take up employment”⁶¹ This statement explicitly shows how employment opportunities benefit both the international protection applicant and the Irish economy. A study has also shown that “simply providing asylum seekers access to the labour market while waiting for a decision is not sufficient to facilitate economic integration of refugees” and has proved that “waiting longer in limbo for the asylum decision strongly reduces the employment integration of refugees.”⁶² While granting international protection applicants permission to the labour market during the protection procedure is a step in the right direction, leaving these individuals in a perpetual and prolonged state of limbo negatively affects their job prospects, as there are numerous obstacles they must overcome, and has a negative effect on their economic integration.

2.5 Social life and wellbeing

Lengthy and uncertain international protection procedures can also negatively affect the social lives and wellbeing of applicants.

2.5.1 COVID-19

In a time where the COVID-19 pandemic has negatively impacted most social relationships, it is possible to empathise with international protection applicants and gain an insight into the isolation and uncertainty felt by them every day. An international protection applicant and Direct Provision resident describes these feelings of loneliness and enforced idleness as:

You know when you've got so much time on your hands, you think a lot. And when you think a lot, the stress just builds up, and at the end of the day, you get depressed. You just look around, we're

⁶¹ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process’ (September 2020) 76.

⁶²Jens Hainmueller, Dominik Hangartner and Duncan Lawrence ‘When lives are put on hold: Lengthy asylum processes decrease employment among refugees’ (2016) 2(8) Science Advances 4.

*crying in our rooms. Close the door and just cry the whole day, because you don't have anything better to do.*⁶³

Despite the similarities that can be observed between these situations, which provides a glimpse into the limbo experienced by international protection applicants, who remain disproportionately affected throughout the pandemic, as summarised by Evgeny Shtorn:

*Yet, those who are in Direct Provision not only are at more danger than those who have the privilege to self-isolate in their own houses (even rented ones or those on mortgage). Their fears regarding their future, their asylum cases, their social and economic development are now added to the fears and uncertainty that we all are going through. Their sense of unpredictability – that is probably the most terrible thing you have to carry on while living in Direct Provision – is multiplied by the unpredictability that is brought by this virus.*⁶⁴

While it is impossible to fully understand the international protection applicant experience, and it is important to not minimise the hardship they face every day, it is our belief that Covid 19 has provided an opportunity to understand the effects that an uncertain future, isolation, and restricted agency can have on one's wellbeing. Through the current Irish system, international protection applicants are being forced to live in an exacerbated state of limbo, indefinitely.

2.5.2 Family

The Universal Declaration of Human Rights (UDHR) states that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.”⁶⁵ This concept of the family declared in the UDHR is also seen in numerous other international human rights treaties such as Article 23 of the International Covenant on

⁶³ Nasc, 'Beyond McMahon-the Future of the Irish Asylum Reception System'(2018) <<https://nascireland.org/sites/default/files/BMM-Consultation-Full-Website-FINAL.pdf>> accessed 15 April 2021.

⁶⁴ Evgeny Shtorn, 'OPINION: Ireland's Lockdown Highlights Cruelty of Direct Provision' (*JOE.ie*, 2020) <<https://www.joe.ie/politics/direct-provision-ireland-covid19-697042>> accessed 1 April 2021.

⁶⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 16.

Civil and Political Rights⁶⁶, Article 10 of the ICESCR⁶⁷, and the preamble of the Convention on the Rights of the Child.⁶⁸ International protection applicants in Ireland may be separated from family members who have remained in their country of origin or have been split up during their journey to Europe. Due to this, family reunification is often a priority for individuals who have received a positive international protection decision. Additionally, the EU Family Reunification Directive, which Ireland has not opted into, recognizes that family reunification “helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion...”⁶⁹

In a recent report by AkiDwa, this issue of family separation is one of the key concerns of female international protection applicants.⁷⁰ Some international protection applicants may feel “a profound sense of grief about the loss of family members through death in the war, dislocation or leaving them behind”.⁷¹ Additionally, the loss of family as a support network may also affect international protection applicants. As expressed by a participant in the AkiDwa study:

*[Y]ou end up feeling stressed, depressed, thinking like if I was back home I had my loved ones close, my family, those people who support you. Sometime you find that here is hard for you to find those people that will support you in the journey of your life.*⁷²

⁶⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁶⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1967) 993 UNTS 3.

⁶⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁶⁹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (2003) OJ L/251/12(Family Reunification Directive).

⁷⁰ AkiDwa, ‘Let’s Talk: Mental Health Experiences of Migrant Women’ (January 2020) <<https://akidwa.ie/wp-content/uploads/2020/01/LetsTalk2.pdf>> accessed 10 April 2021.

⁷¹ Ibid 23.

⁷² Ibid.

Prolonged wait times for international protection decisions prevent the reunification of families in Ireland, as individuals with a temporary immigration status are not eligible for family reunification.⁷³

⁷³ Department of Justice, 'Family reunification for recognised refugees' <<http://www.inis.gov.ie/en/INIS/Pages/WP07000026>> accessed 10 April 2021.

3. Statutory Time Limits

3.1 EU Legislation (Recast Asylum Procedures Directive)

The Recast Asylum Procedures Directive was established as a component of the second phase of the Common European Asylum System (CEAS).⁷⁴ The stated purpose of this Directive is to “establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.”⁷⁵ It includes certain safeguards for international protection applicants as it seeks to harmonize procedural guarantees and to ensure that the quality of decision making is upheld. As a governing legislative instrument of EU asylum law, the Recast Asylum Procedures Directive “aims at setting out the conditions for fair, quick and quality asylum decisions”.⁷⁶ These characteristics are integral to ensuring that the rights of international protection applicants are prioritised.

Ireland has opted out of the Recast Asylum Procedures Directive and is only bound by its 2005 predecessor⁷⁷, in accordance with Protocol No.21 of the Treaty of the Functioning of the European Union.⁷⁸ Ireland and Denmark are currently the only two EU Member States to not have ratified this Directive.⁷⁹

While there are many aspects of the Recast Asylum Procedures Directive which would improve the Irish status determination process, for the purpose of this Submission attention will be paid primarily to Article 31 (Examination Procedure) as it imposes explicit time limits on Member States. Article 31(3) ensures “that the examination procedure is concluded within 6 months of the lodging of the application.” Article 31(3) further allows

⁷⁴European Commission, ‘Common European Asylum System’ (Migration and Home Affairs) <https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en> accessed 12 April 2021.

⁷⁵Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *OJ* 2013 L180/60 art 1.

⁷⁶ European Commission, ‘Common European Asylum System’ (Migration and Home Affairs) <https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en> accessed 20 April 2021.

⁷⁷ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *OJ* 2005 L326/13.

⁷⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *OJ* 2013 L180/60 para 58.

⁷⁹ *Ibid*, para 58 & 59.

Member States to ‘extend the time limit of 6 months set out in this paragraph for a period not exceeding a further nine months,’⁸⁰ under the following circumstances:

- a) complex issues of fact and/or law are involved
- b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;
- c) where the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations [...].⁸¹

The Directive further states that the maximum time limit for the examination process shall be 21 months.⁸² In line with the provisions of the Directive, this Submission underlines the importance of time limits due to the assurance and structure they provide to the international protection system. Accordingly, we strongly argue that Ireland adopts the Directive and transposes it into national legislation as soon as possible. The following sections outline the ways through which Ireland could transpose this Directive into national legislation, specifically focusing on the provision of statutory time limits for each phase of the status determination process.

3.2 International Protection Act 2015

This section focuses on the three different phases of the international protection procedure in Ireland: the first instance decision, the International Protection Appeals decision, and the Ministerial Declaration, and advocates for specific time limits for each phase to be put on a statutory footing. Additionally, it argues that a time limit for the Reception and Integration Centre period should also be included in Irish legislation.

3.2.1 Reception and Integration Centre Phase

The Direct Provision centres have been the most controversial aspect of the international protection system in Ireland and the target of much scrutiny. Following the recommendations of the Day Report, the McMahon Report, as well as findings of NGOs

⁸⁰ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 art 31(3).

⁸¹ Ibid.

⁸² Ibid, art 31(5).

and researchers, the White Paper pledged to end Direct Provision. Although we are in agreement with various stakeholders who receive the commitments of the White Paper as a positive development, we believe that it is important to lay down some of the practical aspects of the introduction of “Reception and Integration Centres” and the transition of international protection applicants to “Accommodation in Community.”⁸³ Although it is beyond the scope of this Submission to advocate in detail for better reception conditions for international protection applicants, we would like to briefly underline the Government’s responsibility to ensure that the standards set out by the Reception Conditions Directive are met in “Reception and Integration Centres.”

In addition to being an environment that is not conducive to a life wherein the international protection applicants can realize their potential and meet their basic needs, the Direct Provision Centres are detrimental to their wellbeing as they are a source of uncertainty. This is due to the fact that the length of stay in the Direct Provision Centres is not determined from the lodging of the international protection applicant.⁸⁴ Illustratively, the McMahon Report points to the discrepancy between the intended temporary duration of stay in Direct Provision centres and the long-term stay it ended up becoming for many international protection applicants.⁸⁵ The latest statistics provided by the International Protection Accommodation Service (IPAS),⁸⁶ are dated November 2018 and indicate that the average length of stay in state provided accommodation is 23 months.⁸⁷ Addressing this issue, The Day Report recommends that the stay in initial reception centres should be limited to 3 months and the applicants who have not received their decision during this

⁸³ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021), s 4.8.1.1-2.

⁸⁴ Please refer to Section 3 for further details on detrimental mental and physical effects of unspecified waiting periods.

⁸⁵ Government of Ireland, ‘Working Group to Report to Government 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), 46 s 1.38.

⁸⁶ Formerly, the Reception and Integration Agency (RIA).

⁸⁷ Department of Justice and Equality, ‘Reception and Integration Agency Monthly Report’, November 2018 18.

period should be transferred to individual accommodation with financial support from the state.⁸⁸

In line with the available literature, we believe that the commitment of the Government, as iterated in the White Paper, to limit the time spent in “Reception and Integration Centres” as 0-4 months is a positive development. We appreciate the Government taking the recommendations of stakeholders into account and introducing a limit for the time spent in institutionalised accommodation.⁸⁹ However, we would like to reiterate that the previous commitment of 6 months regarding stays in Direct Provision lacked genuine force and effectiveness, and new commitments risk further victimising international protection applicants unless they are safeguarded. Therefore, in order for new developments to bring in the level of structure and certainty to the asylum procedure that the international protection applicants need, we believe that it is necessary to legislate for this time period and introduce measures through which the international protection applicant can remedy their situation in the event that the deadline for their transition to “Accommodation in Community” has passed.⁹⁰

In order to safeguard an easy and dignified transition from the “Reception and Integration Centres” to “Accommodation in Community,” a level of economic freedom and autonomy for the international protection applicants are of paramount importance.⁹¹ The integration of international protection applicants to the Irish society and their access to the labour market are, therefore, integral steps toward the sustainability of the abolition of the Direct

⁸⁸ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process’ (September 2020) recommendation 4.2.

⁸⁹ This is in line with the recommendations of the Day Report, as well as rights-based organisations including but not limited to Irish Human Rights and Equality Commission (IHREC), Movement of Asylum Seekers Ireland (MASI), Nasc, and Irish Refugee Council. These organisations advocated for the introduction of limited time periods for the stays of protection applicants who have not received their decisions in Direct Provision.

⁹⁰ Detailed recommendations for safeguards and effective remedies are discussed in section 6.

⁹¹ It must be noted that inequalities in access to housing are prevalent in Ireland and that the Irish Human Rights and Equality Commission (IHREC) includes “refugees” amongst disadvantaged groups of people for which special reference needs to be made for access to social housing. See Irish Human Rights and Equality Commission, ‘Discrimination and Inequality in Housing in Ireland’ 78.

Provision. Accordingly, article 15 of the Recast Reception Conditions Directive obliges Member States of the EU to ensure “that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged.”⁹² Relevantly, in their submission to United Nations High Commissioner for Human Rights as a stakeholder for Ireland’s Universal Periodic Review, Irish NGO Doras voiced the need to legislate for the access of international protection applicants to the labour market by appealing to Ireland’s obligations under Article 6 of the International Covenant on Economic Social and Cultural Rights, which guarantees the right to work.⁹³ Building on the aforementioned necessity for safeguards, we welcome the recent Statutory Instrument adopted by Minister Helen McEntee,⁹⁴ which transposes Article 15 of the Recast Reception Conditions Directive in Irish law.⁹⁵ This instrument goes beyond what is stated in the Directive by pledging “to reduce the timeframe for labour market access from 9 to 6 months, and to extend the validity of a labour market permission from 6 to 12 months” for international protection applicants.⁹⁶ Although we are in agreement with migrants’ rights-based organisations such as MASI⁹⁷ that a 6 month long exclusion from the labour market would nevertheless hinder the independence and autonomy of international protection applicants, we recognize that these provisions could be exemplary for the introduction of well-defined timeframes for other matters that greatly relate to their mental and physical wellbeing, including but not limited to the time spent in Reception and Integration Centres.

⁹² Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/1 art 15.

⁹³ Doras, ‘Submission to the United Nations Human Rights Council, 12th Session of the Working Group on the UPR,’ 2011 4.

⁹⁴ S.I. No. 52/2021- European Communities (Reception Conditions) (Amendment) Regulations 2021.

⁹⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/1 art 15.

⁹⁶ Also mentioned in the Justice Plan 2021, as a goal for the first quarter (see Department of Justice, ‘Justice Plan 2021’ (February 2021) 40)).

⁹⁷ MASI, ‘Statement on changes to the right to work for asylum seekers’ (28 January 2020)

<<https://www.masi.ie/2021/01/28/statement-on-changes-to-the-right-to-work-for-asylum-seekers/>> accessed 12 April 2021.

3.2.2 International Protection Office Phase

Although the authors appreciate the steps taken in the White Paper, we would like to propose further changes that put the human rights of international protection applicants in its focus. In particular, the Day Report discusses the need to shorten the International Protection Office (IPO) process.⁹⁸ The data provided by IPAS in 2018 showed that 24.5% of all residents spend more than 3 years in the system.⁹⁹ The White Paper offers an insight into the cases processed in the last quarter of 2020 and asserts that “the median overall time [...] to a first instance decision is 20.3 months.”¹⁰⁰ Although these numbers could indicate an improvement despite recent hindrances due to the Covid-19 pandemic, they are, unfortunately, not in line with the EU standards as the Recast Asylum Procedures Directive aims for a first instance decision 6 months after the lodging of the application (with a possibility of extension to 9 months).¹⁰¹ We would, therefore, like to point out that the sheer length of decision processes negatively affects the mental and physical health of international protection applicants and the Government takes necessary steps to ensure the efficiency of the system.

We would like to stress that waiting for an international protection decision is, in and of itself, a stressful and uncertain situation. The fact that the 6 months (with the possibility of extension to 9 months) time limit, as set by the Recast Asylum Procedures Directive, is frequently passed exacerbates the situation for many international protection applicants. Therefore, we advocate for Ireland to opt into the Recast Asylum Procedures Directive and legislate for a clearly defined 6 month time limit for the first instance decision, while also ensuring that remedies can be sought by international protection

⁹⁸ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process’ (September 2020) 48.

⁹⁹ Department of Justice and Equality, ‘Reception and Integration Agency Monthly Report’, November 2018 16.

¹⁰⁰ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) s 11.3.

¹⁰¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60.

applicants in the event that the deadlines have passed.¹⁰² In other words, independent of the length of the decision making period, we believe that there is merit in defining and legislating for a time period and holding the relevant authorities accountable.

We further realise that not all decisions can be made within the defined period of 6 to 9 months and that extension can also benefit the international protection applicant.¹⁰³ Nevertheless, we believe that providing open communication channels and greater transparency regarding the nature of and reasons for delays is necessary.¹⁰⁴ Preferably, the IPO should notify the international protection applicant in the event that their decision is delayed. This development would introduce a higher degree of structure and certainty to the protection system and thus alleviate some of the mental strain on international protection applicants. In similar grounds, we are pleased to see that the Justice Plan 2021 as developed by the Department of Justice sets “deliver[ing] a fair immigration system for a digital age” as their Goal #4. However, although the objectives intended for migrants and citizenship applicants are timely and apt, it must be noted that international protection applicants often face a greater level of uncertainty and difficulty obtaining information regarding their application. Therefore, in line with the objectives of the Department of Justice, we believe that developing digital solutions through which international protection applicants can access information regarding the status of their application would be an important step towards a more efficient and fair system.¹⁰⁵

We are disheartened by the accusatory tone in the White Paper of the Government concerning delays in the system.¹⁰⁶ We implore all relevant authorities to keep in mind that the application and waiting procedures for international protection can be draining, disorienting, and demoralising. Additionally, there could be several external factors that

¹⁰² See section 3.3.

¹⁰³ The protection applicant may be unable to prepare for / attend their interview or find it difficult to obtain and submit documents in a timely manner. See more in the paragraph below.

¹⁰⁴ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 50.

¹⁰⁵ See more on recommendations for digital solutions at section 5.2.2.

¹⁰⁶ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 50.

inhibit an international protection applicant's ability to prepare for their interview or submit relevant documents. Therefore, it must be expected that a certain number of protection applications will not be resolved in a timely manner. However, it must be the Government's responsibility to take various measures to reduce the number of these delayed applications; such as front-loaded legal aid, quality and accredited interpretation services, etc.¹⁰⁷

3.2.3 International Protection Appeals Tribunal Phase

In line with our recommendations concerning the first instance IPO decision, timelines regarding the appeals should also be put on a statutory footing. The Recast Asylum Procedures Directive does not provide a time limit for the appeals decision to be made and notes that "Member States may lay down time limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority."¹⁰⁸ While this Directive does not include a European standard for the length of time a decision should be, we recommend that a statutory time limit for this phase needs to be introduced in the International Protection Act. A statutory obligation on the protection applicant to lodge their appeal within a certain time limit after a negative decision already exists within the IPA.¹⁰⁹ This highlights the asymmetry in the levels of accountability between the applicant and the determining authorities.

There are numerous European countries which have placed time limits for appeals on a domestic statutory footing. An ECRE and AIDA report highlights that "these time limits may range from one month in Poland or 2 months in Hungary and Serbia, to five months in France and 6 months in Greece and Italy."¹¹⁰ Although the time limits in these countries vary based on the specifics of their overall protection regimes, we would like to underline that they are crucial in terms of introducing structure and predictability to the system.

¹⁰⁷ Please see section 6 for more details on recommended safeguards.

¹⁰⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 art 46(10).

¹⁰⁹ International Protection Act 2015 s 41(2)(a).

¹¹⁰ AIDA, 'The length of asylum procedures in Europe' (2016) <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-DurationProcedures.pdf> 9.

While the data for 2020 has been greatly impacted by the COVID-19 pandemic, in 2019 the average processing time for an appeal to the IPAT was 23 weeks and in 2018 it was 154 days.¹¹¹ The White Paper highlights that “the proposed model is based on the assumption of 3,500 new International Protection applicants per annum and that their applications would be largely processed to decision at first instance within 6 months, and on appeal to International Protection Appeals Tribunal (IPAT), within a further 6 months, in line with the recommendation of the Advisory Group.”¹¹² In December of 2020, The Minister for Justice stated that the IPAT “had set as an objective this year that the average processing times, where an oral hearing is required, would be reduced to 90 working days” but mentioned that this had not been possible due to the COVID-19 pandemic.¹¹³

Section 3.4.2 of the Day Report, looks at shortening the IPAT process and notes various changes that would need to be met, as per the advisory group’s discussion with the IPAT, to ensure that appeals could be processed within a mandatory deadline of 6 months.¹¹⁴ Considering that these changes highlighted in the Day Report would be made, the Day Report recommends that “the IPAT should have a fixed timeframe of 6 months for the delivery of its decisions.”¹¹⁵

Considering the average length of time for a decision from the IPAT in 2018 and 2019, the targets set by the Minister for Justice, and the recommendation set out in the Day Report, this Submission recommends that Ireland also legislate for a time limit of 6 months for the delivery of the IPAT decision.

¹¹¹ Dáil Éireann Debate 27 June 2019, parliamentary question no 84 by Deputy Robert Troy <<https://www.oireachtas.ie/en/debates/question/2019-06-27/84/>> accessed 10 May 2021 and AIDA, ‘Republic of Ireland: Regular Procedure’ (2021) <https://asylumineurope.org/reports/country/republic-ireland/asylum-procedure/procedures/regular-procedure/#_ftn21> accessed 10 May 20

¹¹² Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 49.

¹¹³ Dáil Éireann Debate 10 December 2020, parliamentary question no 33 by Deputy Bernard J Durkan <[https://www.oireachtas.ie/en/debates/question/2020-1210/33/?highlight\[0\]=covid&highlight\[1\] covid](https://www.oireachtas.ie/en/debates/question/2020-1210/33/?highlight[0]=covid&highlight[1] covid)> accessed 10 May 2021.

¹¹⁴ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process’ (September 2020) 50.

¹¹⁵ Ibid, 206 recommendation 3.8.

3.2.4 Ministerial Declaration

As per section 39 of the International Protections Act 2015 “an international protection officer will produce a written report containing a recommendation on your application for international protection.”¹¹⁶ On appeal, section 46 of the IPA states that the IPAT must make a recommendation that an applicant is given either a refugee or subsidiary protection declaration.¹¹⁷ If the IPO or IPAT recommendation is positive, the Minister for Justice must make a formal declaration that protection has been granted. Receiving this declaration is of critical importance for international protection applicants as the provisions under Part 8 of the IPA, including permission to reside, employment and social welfare entitlements, and family reunification, are only available to “qualified persons,” i.e. those who either have a refugee declaration or subsidiary protection declaration in force.¹¹⁸ Currently, section 47 of the IPA states that the Ministerial Declaration must be made “as soon as possible.”¹¹⁹ There is no statutory time limit for when the Minister, done via the Ministerial Decision Unit (MDU), has to make this declaration, which has led to further unnecessary delays in the status determination process. Accordingly, the authors contest the current practice of the issuance of the Ministerial Declaration as a separate, lengthy phase of the status determination process. This section further advocates that it would be in the best interest of international protection applicants for the declaration to be made within a strictly defined time period after a positive IPO and IPAT recommendation, which ensures that the human rights and wellbeing of the international protection applicant are not negatively impacted by a further avoidable waiting period. The authors recommend that a period not exceeding 1 month would be apt, as this limit would give the MDU time to make its declaration while ensuring that the lives of international protection applicants are not negatively impacted.

¹¹⁶ International Protection Act 2015 s 39(1).

¹¹⁷ Ibid, s 46.

¹¹⁸ Ibid, part 8.

¹¹⁹ Ibid, s 47.

The Minister for Justice stated that in 2017, the average processing time for a Ministerial Declaration was 26 days, in 2018 it was 58 days and in 2019 it was 79 days.¹²⁰ It is clear in the past 3 years there has been a rise of 32.91% and that wait times fluctuate greatly from year to year. Statistics for 2021 are unavailable due to the COVID-19 situation. However, as indicated by the Day Report, the MDU is now situated in the IPO, significantly reducing the time between the IPO decision and the Ministerial Declaration which had previously added 2 to 4 months to the decision-making process.”¹²¹ While this is undoubtedly a positive reform, we would like to point to the possibility that the MDU could revert to their previous practice. It is important to assert that such delays have serious consequences for individuals who have been recommended refugee or subsidiary protection statuses, as they need to have received their Ministerial Declaration in order to avail themselves of their entitlements, as mentioned above.

Section 47 of the IPA sets out the current law in Ireland regarding refugee declarations and subsidiary protection declarations. As per section 47(1), the Minister for Justice, upon receipt of a positive recommendation from the IPO or IPAT, will give a refugee declaration. Similarly, 47(4) states that a subsidiary protection declaration will be made by the Minister upon a positive recommendation from the IPO or IPAT.¹²² As stipulated in section 47(2), regarding refugee declarations, and section 47(5), regarding subsidiary protection declarations, the Minister will refuse to give a declaration if the application is withdrawn, there was a negative IPO recommendation and the applicant did not appeal, if the appeal was withdrawn, or if the IPAT appeal decision was negative.¹²³ Section 47(3) states that the Minister can refuse to give a refugee declaration to an applicant who is a refugee on the conditions that:

¹²⁰ Dáil Éireann Debate 7 July 2020, parliamentary question no 622 by Deputy Marian Harkin <<https://www.oireachtas.ie/en/debates/question/2020-07-07/622/?highlight%5B0%5D=mdu&highlight%5B1%5D=mdu&highlight%5B2%5D=mdu&highlight%5B3%5D=mdu#pq-answers-622>> accessed 10 May 2021

¹²¹ Government of Ireland, 'Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process'(September 2020) 49.

¹²² International Protection Act 2015 s 47(4).

¹²³ Ibid, s 47(2) & 47(5).

(a) there are reasonable grounds for regarding him or her as a danger to the security of the State, or
*(b) the person, having been by a final judgement convicted, whether in the State or not, of a particularly serious crime, constitutes a danger to the community of the State.*¹²⁴

Notably, there is no provision in the IPA in which the Minister can refuse to give a subsidiary protection declaration to an applicant who is recommended by the IPO or IPAT to be eligible for subsidiary protection.¹²⁵

Section 47(3) of the IPA stipulates that the Minister can refuse to give a refugee declaration to a refugee due to a well-founded concern regarding the security of the state and the community.¹²⁶ However, there are very few cases in which the Minister would apply this provision as there is a high threshold which must be met. Furthermore, many of the concerns regarding security would ideally be addressed during the status determination procedure. When the IPO and IPAT are determining whether an international protection applicant would be granted refugee status, they are participating in a legal procedure governed by the 1951 Refugee Convention and its 1967 Protocol, which Ireland has ratified.¹²⁷ Under the 1951 Convention, even if an individual qualifies as a refugee under the definition in Article 1A, Article 1F allows for their exclusion from refugee status if they have “committed a crime against peace, a war crime, or a crime against humanity”, “has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee” and/or “has been guilty of acts contrary to the purposes and principles of the United Nations.”¹²⁸ The Recast Qualifications Directive, which Ireland has not opted into, also states the EU standard for circumstances in which an individual may be excluded from refugee status, at Article 12,

¹²⁴ International Protection Act 2015 s 47(3).

¹²⁵ Ibid, s 47(4).

¹²⁶ Ibid, s 47(3).

¹²⁷ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (1951 Refugee Convention) and Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

¹²⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (1951 Refugee Convention) art 1(f).

and subsidiary protection status, at Article 17.¹²⁹ Additionally, if an individual in Ireland is granted refugee status, as per Article 33(2) of the 1951 Refugee Convention, the prohibition of expulsion or return does not apply in cases in which “there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”¹³⁰ Due to these provisions under the 1951 Refugee Convention, security issues relating to an applicant’s activity outside of Ireland, highlighted under section 47(3) of the IPA will have been addressed by the IPO and IPAT during the status determination procedure and likely do not need to be readdressed by the Minister. Therefore, only security issues relating to their activity within the state, under section 47(3)(b), may still need to be considered by the MDU.

The Minister for Justice has asserted that “once the necessary due diligence has been carried out by the Ministerial Decisions Unit (MDU), a declaration of status will issue as soon as possible.”¹³¹ However, the authors note that if the actors involved in the international protection procedure are acting in good faith and are taking due care, as they should be, there is no need for an additional extensive assessment by the MDU. Likewise, in a judgment from the Supreme Court of Ireland, McKechnie J has stated that “the Minister has no independent role: he simply completes the process” and notes that he personally “reject[s] the view that somehow such a recommendation [from the IPO] is provisional or tentative and requires an additional step to be taken before the interests of the affected applicant is known.”¹³² Furthermore, under the Recast Asylum Procedures Directive and the Recast Qualifications Directive, there is no requirement for the Minister to review recommendations and provide the declaration of subsidiary protection or

¹²⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (2011) OJ L 337 (Recast Qualifications Directive) art 12 & 17.

¹³⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (1951 Refugee Convention) art 33(2).

¹³¹ Dáil Éireann Debate, 13 October 2020, parliamentary question no 418 by Deputy Patricia Ryan <<https://www.oireachtas.ie/en/debates/question/2020-10-13/418/>> accessed 10 May 2021

¹³² *P.N.S & anor v Minister for Justice* [2020] IESC 11 at [82].

refugee status. The Recast Asylum Procedure Directive, under Article 11, describes the requirements for an international protection decision and states that the decision will be made by a “determining authority.”¹³³ In the context of Ireland’s international protection system, the IPO and the IPAT qualify as determining authorities and therefore the Ministerial Declaration is not a required step as per the EU standard for granting international protection. As the Ministerial Declaration in the current procedure under the IPA is more of a formality than a necessity, further reinforced by the fact that the Minister does not have the discretion to reverse a recommendation of the IPO or IPAT for subsidiary protection applicants, the authors argue that a respective refugee declaration or subsidiary protection declaration can be made within a strictly defined time limit following a positive recommendation by the IPO or IPAT. This reform would uphold the human rights of international protection applicants as the time they spend in the system would be significantly reduced without having practical impacts on their status determination procedure. The authors would like to reassert that a period not exceeding 1 month would be suitable as a time limit for the MDU phase, which would allow for potential additional vetting and prevent any impediment on the enjoyment of the rights and entitlements of qualified persons.

3.3 Possibility of Extensions for International Protection Applicants

Similar to the provision allowing extensions to the status determination procedure for member states present in the Recast Asylum Procedures Directive,¹³⁴ this Submission advocates for international protection applicants to be permitted an extension to their application under extenuating circumstances, given that “[o]verly short and inflexible timeframes [...] could result in a more cursory review of the relevant facts”¹³⁵ and ultimately disadvantage the international protection applicant. While the recommended time limits within this Submission are in line with the UNHCR guidelines to ensure “a reasonable length which permits the applicant to pursue the claim effectively, and the determining

¹³³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 art 11.

¹³⁴ Ibid, art 31.

¹³⁵ UNHCR, ‘UNHCR observations on the draft amendments to the Law on Refugees and Asylum and the Administrative Procedure Code of the Republic of Armenia’ (2020) 3.

authority to conduct an adequate and complete examination of the application,”¹³⁶ there are circumstances where the international protection applicant may need to extend the processing of their application due to factors outside of their control; such as health and trauma related issues, or disruptions in the gathering of relevant supportive documents. In circumstances where an international protection applicant is unable to progress with the procedure due to extenuating circumstances, the protection applicant should be permitted the opportunity to request an extension on their application to prevent these issues from affecting the outcome of their application.

¹³⁶ UNHCR, ‘Improving Asylum Procedures Comparative Analysis and Recommendations for Law and Practice- Key Findings and Recommendations’ (March 2010) 55
<<https://www.unhcr.org/en-ie/protection/operations/4ba9d99d9/improving-asylum-procedures-comparative-analysis-recommendations-law-practice.html>> accessed 15 April 2021.

4. Accountability

International protection is regulated by various treaties, EU law, and Irish domestic law, and there are numerous NGOs active in the area; despite this, “effective legal accountability mechanisms are however hard to find.”¹³⁷ The fact that Ireland has not opted into the Recast Asylum Procedures Directive further results in a gap in accountability and lack of enforcement regarding the length of the status determination procedure. The authors of this Submission believe that the concerns raised in previous sections are shared by the Department of Justice and the recommendations of the Submission will be welcomed. However, we would like to assert that the proposed reforms would require ongoing commitment in order to vindicate the rights of international protection applicants. Therefore, in addition to legislating for defined time limits in the International Protection Act of 2015, it is necessary to devise certain paths through which protection applicants can seek remedies and the Department can be held accountable in the event that the time limits are not met.

4.1 Obligations under International Human Rights Law

Ireland has numerous obligations under international human rights treaties to ensure the rights and protection of international protection applicants. Jurisprudence from the European Court of Human Rights (ECtHR) has addressed the issue of prolonged states of uncertainty for international protection applicants and the unreasonably long duration of international protection procedures. The European Convention on Human Rights Act 2003,¹³⁸ as amended, obligates every organ of the State to perform its functions in a manner compatible with the State's obligations under the European Convention on Human Rights (ECHR).¹³⁹ It is, therefore, apt to highlight that the introduction of defined time limits is necessary for the fulfilment of Ireland's obligations under Article 3 and 8 ECHR. Per Judge Sajó of the ECtHR: “[w]aiting and hoping endlessly for a final official

¹³⁷ HERE-Geneva and Danish Refugee Council, ‘Whose Responsibility? Accountability for Refugee Protection and Solutions in a Whole-of-Society Approach’ (December 2017) 8 <<https://www.unhcr.org/5a6703037.pdf>> accessed 15 April 2020.

¹³⁸ European Convention on Human Rights Act 2003, section 3(1).

¹³⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4.XI.1950) (ECHR).

decision on a fundamental existential issue in legal uncertainty caused by official neglect arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, and therefore it may be characterised as degrading."¹⁴⁰

Under Article 3 of the ECHR, which states a prohibition on torture or inhuman and degrading treatment, the Court has found that a violation where an asylum seeker is left in serious deprivation due to their living conditions, in tandem with a prolonged state of uncertainty as a result of the States failure to make a decision on their protection application in a timely manner.¹⁴¹ Additionally, the Court highlights that the "official indifference [of a state] in a situation of serious deprivation or want incompatible with human dignity" could amount to inhuman and degrading treatment in the event that an individual is dependent on state support.¹⁴² Under Article 8, the right to respect for private and family life, the Court has held that the state has "positive obligations [that] also include the competent authorities' duty to examine the person's asylum request promptly, in order to ensure that his or her situation of insecurity and uncertainty is as short-lived as possible."¹⁴³ Due to their precarious immigration status, the international protection applicant could not avail themselves of many services and opportunities, including but not limited to, enrolment in university, obtaining a driver's license, and gainful employment.¹⁴⁴ The state's failure to make a decision in a reasonable amount of time also impeded their family reunification process, further resulting in a violation of Article 8.¹⁴⁵ Article 13 ensures the right to an effective remedy and is applicable to status determination procedures.¹⁴⁶

¹⁴⁰ *M.S.S v Belgium and Greece* App No 30696/09 (ECtHR, 21 January 2011), Partly Concurring and Partly Dissenting Opinion of Judge Sajó.

¹⁴¹ *M.S.S v Belgium and Greece* App No 30696/09 (ECtHR, 21 January 2011) para 263.

¹⁴² *Tarakhel v Switzerland* App No 29217/12 (ECtHR, 4 November 2014) and *Budina v Russia (dec.)* App No 45603/05 (ECtHR, 18 June 2009).

¹⁴³ *B.A.C v Greece* App No 11981/15 (ECtHR, 13 October 2016) para 37.

¹⁴⁴ *Ibid*, para 43.

¹⁴⁵ *Ibid*, para 44.

¹⁴⁶ Council of Europe, Guide on Article 13 of the European Convention on Human Rights: Right to Effective Remedy (2020) para 119.

UN human rights bodies have addressed the systematic shortcomings of the Irish international protection procedure. The Committee on the Elimination of Racial Discrimination, in their 2020 Concluding Observations on Ireland, expressed concern over the “excessive waiting time in the application process” and made a recommendation to “[e]xpedite the processing of applications with a view to delivering the decision within 6 months.”¹⁴⁷ The Independent Expert on the Question of Human Rights and Extreme Poverty “calls on the State to fully implement the European Union Asylum Procedures Directive to ensure better protection of asylum seekers” and “to ensure that it has the appropriate resources to deal with all cases in a timely and fair manner.”¹⁴⁸

4.2 Obligations under EU Law

As a member state of the European Union, Irish legislation that falls within the scope of EU Law must ensure the rights set forth under the EU Charter of Fundamental Rights.¹⁴⁹ As per Article 18, individuals have the right to asylum with respect to the 1951 Refugee Convention and its 1967 Protocol.¹⁵⁰ Per Article 52(3), the meaning and scope of the Charter rights which correspond to rights guaranteed by the ECHR, “shall be the same as those laid down by the said Convention.”¹⁵¹ Under Article 4, individuals are to be protected from torture or inhuman or degrading treatment or punishment.¹⁵² In the context of family reunification, Article 9 of the Charter protects the right to found a family, the enjoyment of which, unreasonable lengths of time within the international protection procedure can negatively impact. Additionally, Article 41 of the EU Charter of Fundamental Rights, ensures the right to good administration, while Article 47 guarantees the right to effective remedy and to a fair trial.¹⁵³ The European Council on Refugees and Exiles (ECRE) has argued that lengthy asylum procedures could lead to a violation of

¹⁴⁷ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fifth to ninth reports of Ireland (23 January 2020) UN Doc CERD/C/IRL/CO/5-9 para 35 & 36.

¹⁴⁸ Human Rights Council, ‘Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona- Mission to Ireland’ (17 May 2011) UN Doc A/HRC/17/34/Add.2 para 92 & 93.

¹⁴⁹ Charter of Fundamental Rights of the European Union (2012) OJ C/325/02 art 51.

¹⁵⁰ Ibid, art 18.

¹⁵¹ Ibid, art 52.

¹⁵² Ibid, art 4.

¹⁵³ Ibid, art 41 & art 47.

these rights.¹⁵⁴ The Court of Justice of the EU, in a preliminary question referred by the High Court of Ireland, has also held that the right to good administration applies to international protection cases, highlighting “the right of any person to have his or her affairs handled impartially and within a reasonable period of time.”¹⁵⁵ In addition to being an integral component of upholding the rights of international protection applicants, processing cases in a timely manner is “also in the State’s interests as it contributes to the efficiency of the procedure.”¹⁵⁶

4.3 Obligations under Domestic Law

In addition to Ireland’s international and EU legal obligations, the Irish Constitution protects the fundamental rights of persons. It ensures that all people will be held equal before the law¹⁵⁷ and guarantees to protect the family as “as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.”¹⁵⁸ As demonstrated above, drawing from relevant international and EU law, lengthy and unfair international protection procedures are known to interfere with the enjoyment of fundamental rights.

A number of “unenumerated” personal rights are found to derive from Article 40.3 of the Irish Constitution. Per Keane CJ, non-nationals within the Irish jurisdiction are entitled to rely on these rights.¹⁵⁹ This includes the right to fair procedures, which is inextricably linked to the administration of justice.¹⁶⁰ Per the judgment in *KM and DG v Minister for Justice Equality and Law Reform*:

¹⁵⁴ European Council on Refugees and Exiles, ‘Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)’ (December 2014) 36.

¹⁵⁵ Case 604/12 *H.N v Minister for Justice, Equality and Law Reform, Ireland, Attorney General* [2014] ECLI 302 para 50.

¹⁵⁶ European Council on Refugees and Exiles, ‘Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)’ (December 2014) 36.

¹⁵⁷ *Bunreacht na Héireann* (1945) ‘Constitution of Ireland’ art 40.

¹⁵⁸ *Ibid* art 41.

¹⁵⁹ In the matter of Article 26 of the Irish Constitution and in the matter of ss. 5 and 10 of the Illegal Immigrants (Trafficking) Bill [1999] S.C. 183 360.

¹⁶⁰ Gerard Hogan, Gerry Whyte, David Kenny and Rachael Walsh, Kelly: The Irish Constitution (4th edn, Butterworths 2003) s 7.3.235.

*the entitlement to a prompt decision is an aspect of constitutional justice. Moreover, quite aside from constitutional justice it is clear from the authorities that the idea of substantive fairness includes a duty not to delay in the making of a decision to the prejudice of fundamental rights.*¹⁶¹

Additionally, Edwards J found that in circumstances where there is a gross delay, one can no longer rely on scarce resources as a justified excuse.¹⁶²

In regard to the derived personal rights under Article 40.3, Finlay P held, in the *State (C) v Frawley*, “it is surely beyond argument that they include freedom from torture, and from inhuman or degrading treatment and punishment.”¹⁶³

Derived personal rights under Article 40.3 further include the right to privacy, the right to an effective remedy, and an expansion of the protection of the family, under Article 41, to include the non-marital family.¹⁶⁴ The authors, therefore, urge the Government to heed these unenumerated constitutional rights, all of which further emphasise the need for clearly defined time limits in the status determination procedure.

Further outlining the applicability of these unenumerated rights in the context of international protection applicants in Ireland, the Day Report indicates a number of guiding principles which they deem imperative to “underpin a new system of international protection in Ireland that meets all of Ireland’s EU and international obligations.”¹⁶⁵ One of these principles states that a reformed system should ensure “effective judicial protection and independent accountability structures.”¹⁶⁶ An essential step towards ensuring state accountability is reforming Irish international protection legislation. Including time limits into the International Protection Act 2015, the details of which

¹⁶¹ *KM and DG. v. Minister for Justice, Equality and Law Reform* [2007] IEHC 234 [28] Edwards J.

¹⁶² *Ibid* [34].

¹⁶³ *State (C) v Frawley* [1976] IR365 [374] Finlay P.

¹⁶⁴ Gerard Hogan, Gerry Whyte, David Kenny and Rachael Walsh, *Kelly: The Irish Constitution* (4th edn, Butterworths 2003) s 7.3.

¹⁶⁵ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process’ (September 2020) 23.

¹⁶⁶ *Ibid*.

discussed in Section 3 of this Submission, would not only provide transparency and reduce uncertainty as previously outlined, but this would also fill the gap in accountability present in the procedure; ensuring that, under the principle of good faith, the state would meet these provisions. Additionally, this would provide international protection applicants with recourse to enforceable statutory provisions through litigation if the time limits were not met, as including these time limits into national legislation enforces legal obligations upon the state.

5. Transparency

5.1 The Importance of Transparency in the Status Determination Process

The White Paper acknowledges the current need for accessible information for international protection applicants, stating “At every stage of the International Protection process, applicants will have a right to information describing the services and supports they can receive.”¹⁶⁷ This section expands on this and highlights the importance of transparency throughout the status determination process.

As discussed in Section 2, it is not only the length of the wait times within the international protection procedure that is harmful to the wellbeing of international protection applicants but also the fact that they are kept in the dark as to how long they will have to wait. While implementing a statutory time limit of 6 months for the first instance decision is a welcome reform, it will lack full potential without the time limit being actively communicated to the international protection applicant, along with any potential delays. Keeping international protection applicants notified along each phase of the status determination process is a clear way to fulfil the promised values of “respect, dignity and fairness”, which are portrayed to be at the heart of the Irish international protection procedure.¹⁶⁸

In pursuit of transparency, this Submission proposes the establishment of an online portal to which the applicant and relevant IPO or IPAT officer can securely log and track where the applicant is in the status determination process, in accordance with relevant GDPR requirements. This would allow the applicant to view details of the stages they have completed, provide clarity as to what the next phases entail, and supply applicants with access to relevant information about each stage of the procedure.

¹⁶⁷Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 53, s 4.1.3.

¹⁶⁸INIS & International Protection Office, ‘Information Booklet for Applicants of International Protection’ (IPO1) (January 2017) s 3.1
<<http://www.ipo.gov.ie/en/IPO/IPO%20English%20Information%20Booklet%20Final%20.pdf/Files/IPO%20English%20Information%20Booklet%20Final%20.pdf>> accessed 20 April 2021.

This IT system will be mutually beneficial and will ensure a more efficient international protection system for both the applicant and the Department of Justice. Having clear access to information, in the relevant languages, will lead to less instances of appeals, shortening the decision-making process and freeing up resources.

5.2 ICT system in International Protection Process

5.2.1 Previous Proposals/Recommendations Concerning ICT Systems

In 2019, the Joint Committee on Justice and Equality recommended “an online portal be developed by the IPO for the application process to allow applicants access to current information on the status of their case.”¹⁶⁹ The Committee highlighted the need for greater transparency and “access to timeframes and information regarding their application at all stages of the process.”¹⁷⁰ As a part of the Day Report, the Information and Technology Sub-Group was created to “look at potential IT improvements to the international protection process which would help realise efficiencies and improve the applicant experience.”¹⁷¹ It advocates for the creation of an online tracking system that applicants, legal representatives, and guardians can securely access, taking into account relevant confidentiality and GDPR requirements.¹⁷² The White Paper acknowledges the investment and expansion of ICT by the Department of Justice.¹⁷³ The 2021 Justice Plan highlights a transition into a “fair immigration system for a digital age” and asserts their objective to create a “fully digital, customer-centric immigration service.”¹⁷⁴

5.2.2 Online Portal

Building upon the above recommendations, this section seeks to outline specific elements that we believe should be included in the proposed online tracking system for the status

¹⁶⁹ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process (32/JAE/47 December 2019) Recommendation 41, 53.

¹⁷⁰ Ibid.

¹⁷¹ Government of Ireland, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (September 2020) 138.

¹⁷² Ibid, 139.

¹⁷³ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 50 & 51.

¹⁷⁴ Department of Justice, ‘Justice Plan 2021’ (February 2021).

determination process. Ideally, the portal would include a diagram, such as the one included in the Day Report¹⁷⁵ and the White Paper,¹⁷⁶ clearly showing each step of the Irish international protection procedure and the different routes that international protection applicants may be required to take through the system. There should also be a referral to the International Protection Act 2015, to allow international protection applicants to have direct access to the Irish legislation which governs the procedure to which they are subject.

As the central component of this Submission is the provision of time limits for each phase of the status determination process, an important feature of the portal will be an interactive timeline (see Diagram 1). This timeline will allow applicants to clearly see the steps they have completed and those they have left to complete. Additionally, the timeline would clearly show the date which the applicant officially entered the procedure, and therefore highlight the date when the first instance decision is planned to be made. The interactive aspect would enable applicants to click on each step of the timeline and access further information relative to that phase. This information could be divided into subsections, for example, “where and when,” “what to expect,” “what to bring,” and “provisions available”- with clear and straightforward information under each, explaining the substance of each phase in detail (see Diagram 2). This would provide greater transparency for the applicant concerning what is required of them, such as specific deadlines they must meet, and documents they must provide, from the date that they enter the international protection procedure until a final decision is made on their application. It will also provide information on different provisions to which the applicant is entitled and give a brief overview of what the applicant should expect, which would allow them to better prepare.

¹⁷⁵ Government of Ireland, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (September 2020) 41.

¹⁷⁶ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 73.

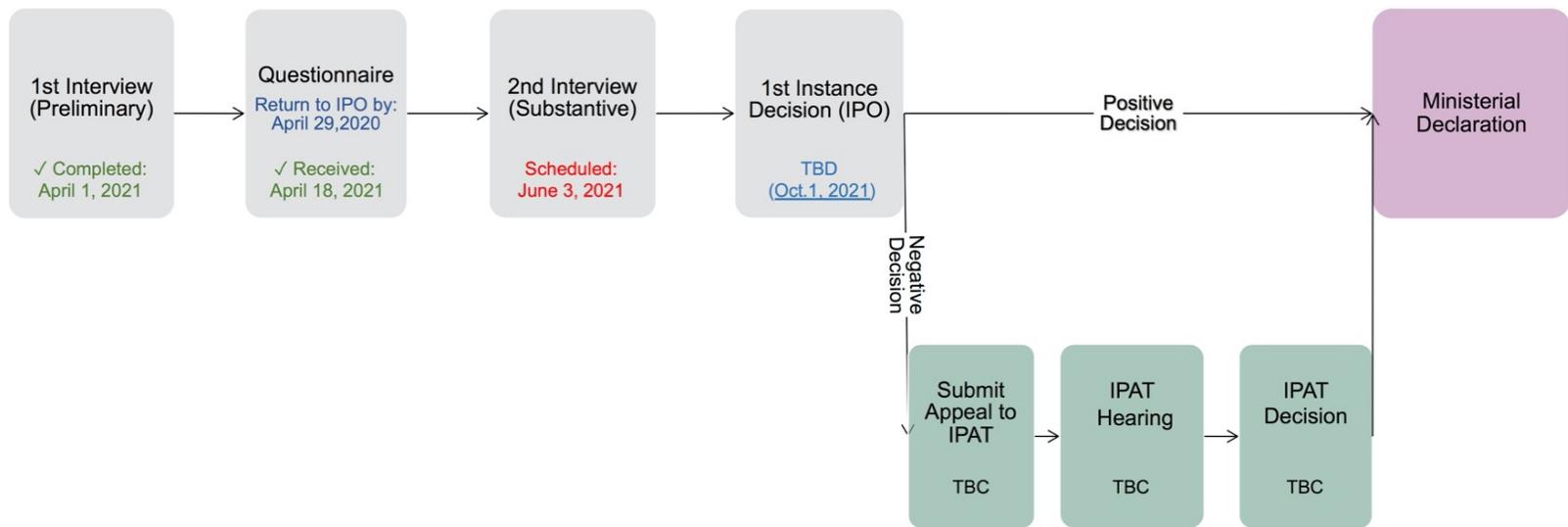


Diagram 1. Example of Online Tracker Timeline

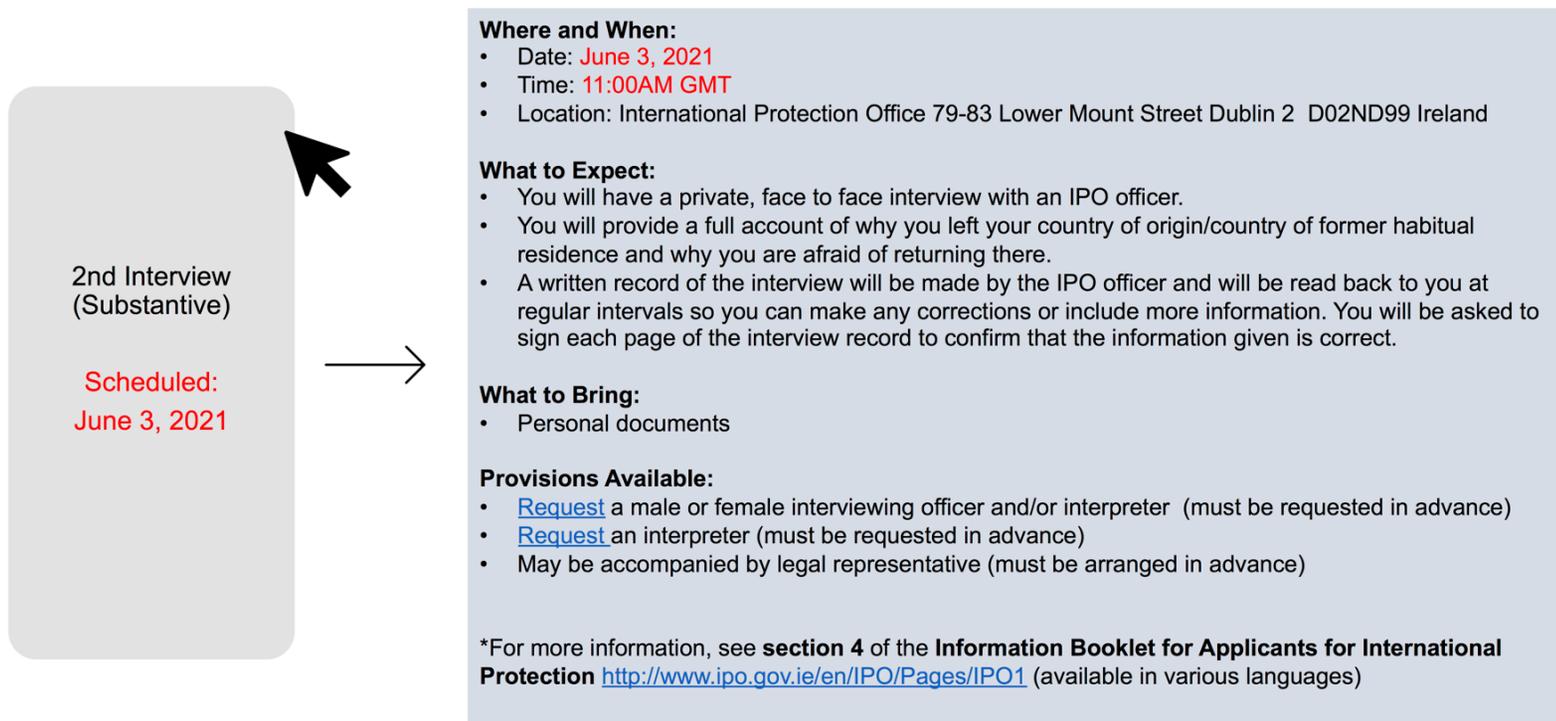


Diagram 2. Example of Information Window When a Step is Selected

6. Safeguarding the Efficiency and Quality of International Protection Procedures

It is our understanding that any amendment in the international protection procedure will need to address the process as a whole in order to be effective. Therefore, as previously mentioned, our recommendations regarding the inclusion of time limits in the legislation should be implemented in tandem with supplementary measures that will ensure the quality of international protection decisions and safeguard the rights of international protection applicants. Although we have underlined the importance of swift and foreseeable decision-making processes, we implore the Department to take all measures to ensure that quicker processes do not result in unfair outcomes. Although it is outside of the scope of this Submission to provide an exhaustive list of necessary reforms, the following section underlines some of the safeguards that would improve the transparency and accountability of the international protection system in Ireland.

6.1. Training of Determining Authorities

In order to ensure quality and fair decisions, it is of utmost importance that all determining authorities receive adequate training and monitoring. Article 4 of the Recast Asylum Procedures Directive lays out the responsibility of Member States to provide authorities with “appropriate means, including sufficient competent personnel, to carry out its tasks.”¹⁷⁷ The Regulation (EU) No 439/2010 establishing a European Asylum Support Office asserts that “all national administrations, courts, tribunals and national services” available to international protection applicants should undergo thorough training on matters such as international human rights law, obtaining and using country of origin information, interview techniques, and correct communication with persons who suffer trauma.¹⁷⁸ We acknowledge that Ireland has not opted into key instruments that regulate the training of determining authorities. Before further commenting on any adverse effects that the lack of training may have on the quality of decisions, we would like to underline

¹⁷⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 art 4.

¹⁷⁸ The full list can be found in art 6(4) (a-f) of the Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

the importance of opting into these documents and eradicate the discrepancy that may arise between the Irish practice and the EU standards.

As outlined in the UNHCR handbook on “Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice,” “the recruitment and retention of highly qualified and skilled interviewers and decision-makers is essential for an effective procedure and sustainable first instance decisions.” To achieve this, the UNHCR is of the view that interviewers should receive training on “[i]ssues of confidentiality, impartiality, and objectivity” and “[c]reating conditions conducive to communication and appropriate conduct.”¹⁷⁹ However, based on the experiences of international protection applicants, one of the prevailing issues in the Irish international protection procedure is the culture of disbelief. The prejudice against international protection applicants that is present in the Irish procedure is not compatible with the standards set out by the Recast Asylum Procedures Directive, as further detailed by the UNHCR, and does not suggest effective training was provided. In their submission to the Government, Anti Deportation Ireland (ADI) states that:

*based on the personal experiences of some of [ADI] members, is that a culture of disbelief exists and guides the operation of the asylum-determination processes; and that the resignation of James Nicholson in 2007 from the Refugee Appeals Tribunal correctly pointed to negative biases within the system, biases that have never been addressed.*¹⁸⁰

The culture of disbelief is further mentioned on McMahan Group Report as an issue that needs to be addressed¹⁸¹ and impedes trust between international protection applicants and determining authorities.¹⁸² The bias that decision makers have against international

¹⁷⁹ UNHCR, ‘Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice- Detailed Research on Key Asylum Procedures Directive Provisions’ (March 2010) 104 <<https://www.unhcr.org/4c7b71039.pdf>> accessed 15 April 2021.

¹⁸⁰ Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process- Volume 2: Submissions Received (32/JAE/47 December 2019) 9.

¹⁸¹ Government of Ireland, ‘Working Group to Report to Government 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) 292.

¹⁸² Government of Ireland, ‘Working Group to Report to Government 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) 330.

protection applicants, therefore, prevents fair decisions, as well as hindering the processes by making applicants feel less secure and less likely to be able to disclose information. This is further illustrated on a decision by the Refugee Appeals Tribunal in 2014, stating that well founded and well documented claims could be “nevertheless refused on credibility grounds.”¹⁸³

Another crucial aspect of delivering efficient and quality international protection decisions, as well as detecting structural issues in international protection procedures, is continuous and objective auditing. In order for the correct implementation of the Recast Asylum Procedures Directive, “the UNHCR recommends that Member States which do not have asylum decision quality evaluation or monitoring systems should consider developing these.”¹⁸⁴ In line with this recommendation, we would like to, regrettably, point to the “European Migration Network Ad-Hoc Query on Quality Management best practices within the field of asylum decision-making in the first instance” which indicates that Ireland was amongst the countries who did not have an auditing system. In line with these findings, we assert that in order for any time limit in the Irish international protection system to be put on a statutory footing while upholding the human rights of protection applicants, it is of utmost importance that adequate training and monitoring mechanisms are adopted.

6.2. Available Accredited Interpretation Services

Having established the importance of maintaining a certain level of quality in the decision-making processes, it must be noted that determining authorities are not the only actors who influence the process. Due to the very nature of the international protection system, international protection applicants come from many backgrounds and vary in their level of English. Therefore, interpreters step in as the much-needed link between international protection applicants and determining authorities. Addressing this need, the Recast Asylum Procedures Directive stipulates that Member States shall guarantee the services

¹⁸³ *A.A.M.O (Sudan) v Refugee Appeals Tribunal & Anor* [2014] IEHCR 49 at [2].

¹⁸⁴ UNHCR, ‘Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice- Detailed Research on Key Asylum Procedures Directive Provisions’ (March 2010) 40 <<https://www.unhcr.org/4c7b71039.pdf>> accessed 15 April 2021.

of an interpreter to international protection applicants whenever necessary,¹⁸⁵ including but not limited to the duration of a personal interview. The UNHCR Handbook on Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice underlines the state responsibility to have access to competent interpreters for main languages and take into account the applicants' entitlement to have a preference on receiving an interpreter of the same sex.¹⁸⁶ UNHCR further underlines the issues faced in various Member States, such as "double interpretation via English,"¹⁸⁷ which could jeopardise the quality and integrity of the decision making processes.

We welcome the provisions in the White Paper for both an accreditation test which ensures "[c]ompetency standards in both English and the language of interpretation," and training for interpreters specific to the international protection context.¹⁸⁸ We would like to emphasise the importance that these provisions of accreditation and context specific training are implemented, to ensure the quality of the procedure as a whole.

The importance of accredited translators is highlighted by the Irish Translators and Interpreters Association: "members tend to focus on inconsistencies in asylum seekers' account of why they have fled their home country. In this situation, it is essential that, where all applicants are not proficient in English, the interpreter is competent."¹⁸⁹ Given the current situation, the Irish Refugee Council has had to step in to provide optional training to aid in providing international protection applicants with adequately trained interpreters in the international protection context.¹⁹⁰

¹⁸⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 art 12.

¹⁸⁶ UNHCR, 'Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice- Detailed Research on Key Asylum Procedures Directive Provisions' (March 2010) 117 <<https://www.unhcr.org/4c7b71039.pdf>> accessed 15 April 2021.

¹⁸⁷ Ibid, 118.

¹⁸⁸ Government of Ireland, 'A White Paper to End Direct Provision and to Establish a New International Protection Support Service' (February 2021) 53.

¹⁸⁹ Irish Translators' and Interpreters' Association, 'Submission to the Working Group to report to Government on improvements to the protection process, including Direct Provision and supports to asylum seekers' (March 2015) 3 & 4 <<http://www.justice.ie/en/JELR/Irish%20Translators%20and%20Interpreters%20Association.pdf/Files/Irish%20Translators%20and%20Interpreters%20Association.pdf>> accessed 15 April 2021.

¹⁹⁰ Irish Refugee Council, 'Interpreter training' <<https://www.irishrefugeecouncil.ie/interpreter-training>> accessed 12 April 2021.

While taking necessary steps to ensure that there is a sufficient number of interpreters who are competent in main languages, it should also be kept in mind that an interpreter working in personal interviews of international protection applicants must possess certain qualities, such as confidentiality, impartiality, accuracy, and integrity.¹⁹¹ While these qualities are important for any field of work, their absence could result in dire consequences for the credibility of the international protection applicant and alter the outcome of their application, ultimately increasing the amount of time they may spend in the international protection procedure. These findings underline the importance of providing international protection context training for interpreters. Therefore, we believe that the work of the Irish Refugee Council provides a blueprint of a training program whereby the interpreters could be accredited.

6.3 Legal Aid

Article 20 of the Recast Asylum Procedures Directive stipulates that Member States provide free legal aid for international protection applicants in appeals procedures.¹⁹² The UNHCR points to the inequality that arises when the applicants do not have access to legal services since the governments are always represented in a legal capacity in Member States.¹⁹³ They therefore underline the crucial role that legal aid plays in determining processes and recommends that Member States do not bar applicants unnecessarily from accessing this provision.

Specific to the Irish context, the Irish Refugee Council's report on the provision of early legal aid highlights its importance in providing an efficient and fair procedure, benefiting all parties involved:

¹⁹¹ UNHCR Austria, 'Handbook for Interpreters in Asylum Procedures' (2017) 72 <https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/09/AUT_Handbook-Asylum-Interpreting_en.pdf> accessed 12 April 2021.

¹⁹² This requirement is subject to derogations in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 art 15(3).

¹⁹³ UNHCR, 'Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice- Detailed Research on Key Asylum Procedures Directive Provisions' (March 2010) 450 <<https://www.unhcr.org/4c7b71039.pdf>> accessed 15 April 2021.

*Experience here in Ireland and in other jurisdictions shows that early legal advice to applicants for protection enables them to understand the ‘asylum’ process and to assemble the necessary information for the first stages of that process. The end result is a reduction in the time spent by individuals awaiting a decision and a consequent reduction of cost to the state.*¹⁹⁴

Recommendation 3.15 of the Day Report recognizes the need for greater resources and staffing for the Legal Aid Board to support applicants as soon as they enter the international protection procedure. They note that this provision “would help to ensure that the principles of fair, fast and consistent decision making are implemented and help the IPO and IPAT to meet the case deadlines recommended in [their] report.”¹⁹⁵ The White Paper responded to this recommendation, stating that this was “under consideration” by the Department of Justice.¹⁹⁶ Due to the critical importance early legal advice has on the outcome of the international protection procedure, we advocate for this recommendation to be immediately put into progress.

6.4 Vulnerability Assessment

Ireland is currently obliged to undertake vulnerability assessments under the Recast Reception Conditions Directive and the European Communities (Reception Conditions) Regulations 2018.¹⁹⁷ Per the Recast Reception Conditions Directive, vulnerable people include;

*minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.*¹⁹⁸

¹⁹⁴ Irish Refugee Council, ‘A Manual on Providing Early Legal Advice to Persons Seeking International Protection’ (2015) 3 <<https://www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=f96d341b-cd9b-4503-8a14-c3ce574209f3>> accessed 20 April 2021.

¹⁹⁵ Government of Ireland, ‘Report of the Advisory Group on the Provision of Support Including Accommodation to Persons in the International Protection Process’ (September 2020) 207.

¹⁹⁶ Government of Ireland, ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’ (February 2021) 141.

¹⁹⁷ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/1 and SI No 230/2018 European Communities (Reception Conditions) Regulations 2018.

¹⁹⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/1, art 21.

We recognise the acknowledgement in the White Paper of the need for vulnerability assessments to be completed to ascertain appropriate accommodation needs. However, in line with Article 31(7)(b) of the Recast Asylum Procedures Directive, this Submission advocates for this assessment to not only inform reception conditions but also special procedural guarantees which may be required, such as the prioritisation of an application.¹⁹⁹

¹⁹⁹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60 art 31(7)(b).

7. Conclusion

7.1 Summary of Findings

The rationale for this Submission is the urgent need for transparency and accountability in the international protection procedure in Ireland. It is both informed by and builds upon the Day Report and the subsequent White Paper produced by the Irish Government. Recognising these efforts to reform the Irish international protection procedure, this Submission seeks to address the gaps in policy and legislation that continue to negatively impact the lives of international protection applicants.

Drawing from the literature concerning the mental health and wellbeing of persons in international protection procedures in Ireland and elsewhere, our research found that uncertain and prolonged waiting periods can be the most detrimental aspect of the procedure. In light of these findings, this Submission highlights that the commitment to end Direct Provision, as laid down in the White Paper, will not meaningfully reform the international protection procedure. The lack of statutory time limits will result in international protection applicants continuing to live a life in limbo, interfering with the enjoyment of their human rights on a daily basis. Accordingly, this Submission argues that the provision of time limits in the International Protection Act 2015 would be a step towards a more transparent and accountable international protection procedure with a higher commitment to human rights. Drawing from the European standards that guide status determination procedures and reception conditions, this Submission proposes a limit of 6 months for the IPO recommendation, a limit of 6 months for the IPAT recommendation, and a limit of 1 week for the issuance of the Ministerial Declaration. Furthermore, it is the argument of the authors that the 0-4 months period that the international protection applicants are to spend in “Reception and Integration Centres” should also be put on a statutory footing to ensure that international protection applicants do not spend prolonged times in institutionalized living, and “Reception and Integration Centres” remain as temporary living arrangements, as intended.

This Submission highlights Ireland’s existing legal obligations under international, EU, and domestic law in relation to the international protection procedure, demonstrating that the provision of statutory time limits is a necessary component of the state fulfilling these obligations, and providing a further accountability mechanism for international protection applicants to avail of, in the case that their applications are not processed in a timely manner. In order to further combat uncertainty and improve communication between decision making bodies and international protection applications, we propose the creation of an interactive online portal. While the inclusion of statutory time limits is necessary to ensure greater transparency and accountability in the international protection procedure, this Submission recognizes the need for safeguards, such as training of determining authorities, accredited interpreters, legal aid, and vulnerability assessments to ensure the overall quality of the decision-making process.

It is the authors’ aim to ensure the human rights of international protection applicants are upheld to the highest standard and that the welcomed abolishment of Direct Provision does not distract from other reforms that are necessary for their dignified treatment. The Irish Government has perpetually allowed international protection applicants to be left in a state of prolonged uncertainty and limbo. This Submission aims to bring attention to this damaging practice and put an end to it by ensuring accountability and transparency at every stage of the international protection procedure.

7.2 Concluding Recommendations

- 1.** In order to facilitate the implementation of time limits into the legislation and in line with Ireland’s obligations towards the human rights of international protection applicants, we recommend anyone who has been in the system for longer than 2 years (from the date when the time limits are implemented) be granted permission to remain without prejudice to their ongoing protection application. (Section 1.4)
- 2.** We recommend that Ireland opt-in to the Recast Asylum Procedures Directive and ensure its transposition into national legislation in a timely manner. (Section 3.1)
- 3.** We recommend that the time limit of 4 months for Phase One Accommodation, as proposed by the White Paper, be placed on a statutory footing. (Section 3.2.1)

4. We recommend for the International Protection Act 2015 to be amended to include a statutory time limit of 6 months for the first instance decision by the International Protection Office, in line with the Recast Asylum Procedures Directive. (Section 3.2.2)
5. We recommend for the International Protection Act 2015 to be amended to include a statutory time limit of 6 months for the decision by the International Protection Appeals Tribunal, in line with recommendations of the Day Report. (Section 3.2.3)
6. We recommend for the International Protection Act 2015 to be amended to include a statutory time limit for the granting of the Ministerial Declaration, within a reasonable amount of time, not exceeding 1 month after a recommendation has been made by the relevant Tribunal. (Section 3.2.4)
7. We recommend for the International Protection Act 2015 to be amended to include a provision which allows international protection applicants to request an extension of the time limit for the processing of their application, under extenuating circumstances, similar to when the decision maker can make an extension. (Section 3.3)
8. We recommend for an online portal to be created, which includes an interactive timeline, in which an international protection applicant can see where their application is in the status determination procedure and have direct access to relevant information. (Section 5.2.2)
9. We recommend that an auditing mechanism is implemented to ensure the quality of decision making in the status determination process. (Section 6.1)
10. We recommend that all interpreters working in the status determination procedure are accredited and receive training specific to the asylum context. (Section 6.2)
11. We recommend, in line with the Day Report, for further resourcing and staffing of the Legal Aid Board to support international protection applicants from the beginning of the status determination process. (Section 6.3)
12. We recommend for vulnerability assessments to be consistently conducted for all international protection applicants and for them to inform special procedural guarantees which may be required, such as the prioritisation of an application. (Section 6.4)

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