

## **Nasc Submission on Direct Provision and Ireland's Protection System**

Nasc welcomes the commitment made by the Taoiseach and the Tánaiste in the Statement of **Government Priorities 2014 – 2016**, to address the Irish Protection System and Direct Provision. We warmly welcome the commitments of both Ministers Fitzgerald and Minister Ó Ríordáin to begin to make real their promises of reforming the system by convening both a roundtable and establishing a working group to examine Ireland's Protection and Reception system in its entirety.

### **About Nasc.**

Nasc is an NGO based in Cork working to respond to the direct needs of all migrants, including refugees, asylum seekers and their families. There are currently five direct provision centres in Cork City and County placing Cork as one of the counties with the highest asylum seeking population in the country. Nasc's contribution to this process is directly informed by our work with asylum seekers and the issues that present in our legal clinics.

From Nasc's perspective the current asylum, protection and reception system is a dysfunctional system which fails to respect the fundamental human rights and human dignity of this vulnerable population. We accept that reforming this system is a complex task and one to which there are no easy or quick fixes.

To ensure comprehensive reform of the system we submit that a number of short, medium and long term measures need to be put in place and a clear roadmap for reform must be developed. We also believe that it is essential that the asylum seekers and refugees are consulted as part of this process and that they are directly represented in the working group. Nasc suggestions for reform are outlined below:

## A) Immediate

**In advance of the establishment and publication of the findings of the Working Group we would recommend the following reforms that can be implemented immediately:**

1. The immediate introduction of legislation to facilitate a unified or single procedure for the processing of future protection applications.
2. Ensure asylum seeker representation on the Working Group. No one is better able to speak to how the system impacts lives than the people who have lived there, sometimes for several years.
3. The introduction of an independent complaints mechanism that is in line with fair procedures and the principles of natural justice. This mechanism must be independent from the Reception and Integration Agency to ensure complaints are objectively heard.
4. Placing the weekly allowance for asylum seekers on a statutory footing and increasing the payments in line with the stated objective of the Supplementary Welfare Allowance Scheme “[t]o provide a standard minimum income, in an immediate and flexible manner, to those whose means are insufficient to meet their basic needs. It is important to note that there is no clear legal basis for the payments of €19.10 per week or €9.60 per week. This is because *Section 15 of the Social Welfare and Pensions (No. 2) Act 2009*, states categorically that asylum seekers cannot be habitually resident, therefore they have no entitlement whatsoever to supplementary welfare allowance or any social welfare payment. Depending on any more substantive reforms to direct provision, the direct provision allowance needs a legal basis AND in setting the rate of payment, which need not be equivalent to that of the basic Job Seekers payment, or any other SW payment, there needs to be an immediate review to make the payment reflective of the costs than arise for individuals and families on a day to day basis. This needs to be done immediately to lessen the inhuman and degrading nature of direct provision as it currently stands.

5. Expanding the remit of the Ombudsman for Children to receive, investigate and respond to individual complaints made by children living in Direct Provision, or any future reception system. This will ensure that the rights of asylum seeking children are upheld, and that the state adheres to and gives effect to the principle of the Best Interests of The Child.
6. Phase out the old system by beginning the closure of centres that do not provide self catering facilities. Cap or limit the time applicants can spend in a reception centre and begin providing step down processes and alternative accommodation for residents who have been in direct provision for an excessive amount of time.
7. Special accommodation units or alternative accommodation for particularly vulnerable families/individuals needs to be provided for as a matter of urgency.

## **B) Medium Term/Long Term Reforms**

**End the current Direct Provision System and replace it with a system that protects the rights and dignity of all protection applicants and their families.**

1. There is currently no legislative basis for Direct Provision. We need to implement a reception system that has undergone Parliamentary scrutiny, and ensures compliance with our international obligations under the ECHR Act 2003 and also EU law. Regarding EU law, while we are not bound by the Reception Conditions Directive, or its Recast (2013), we are still under a general obligation to ensure that EU protection law guarantees an effective right to claim asylum and ensures the best interests of the child. The Receptions Directive provides a good framework here.
2. A pragmatic approach must be taken to resolving what can be termed "legacy issues", that is people for whom a new single or unified procedure will not apply and those who have spent a considerable number of years

awaiting the outcome of an application for protection, subsidiary protection or temporary permission to remain. A good framework or model for consideration here is the Irish Born Child Scheme 2005 (IBC 05). This scheme was rolled out in Ireland to deal with the legacy issues post the Citizenship Referendum in 2004. As was the case with the IBC 05 scheme, any grants of temporary residency should be made without prejudice to any pending application for a higher form of residency or protection.

3. Introduction of a right to work. This right can be a limited right, in line with the provisions of the Receptions Directive which grants a wide a margin of appreciation to member states when considering access to the labour market. It provides that the right to work can be granted after 9 months if no first instance decision has issued on the asylum application.
4. A pragmatic approach must be taken to dealing with applicants who have deportation orders issued against them for long periods of time and for applicants who have deportation orders that cannot be effected for a variety of reasons. We would submit, that for applicants living under a deportation order for protracted periods, sometimes years on end, the State could be in breach of the its obligations under both Article 8 (Family and Private Life) and Article 3 (Inhuman and Degrading Treatment) of the European Convention on Human Rights which is transposed into our domestic legal system through the European Convention of Human Rights Act 2003.
5. A review of outstanding deportation orders issued for applicants from countries where there is a current conflict or upheaval and unrest must be undertaken. This review must ensure that the Irish state is fully compliant to the principle of *non-refoulement*. Article 33 of the 1951 Convention on the status of Refugee provides "*No Contracting State shall expel or return (—refouler||) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*". This principle is reaffirmed by Article 3 of the 1984

Convention against Torture, Other Cruel, Inhuman and Degrading Treatment or Punishment, and has been codified into Irish law by Section 5 (1) of the Refugee Act 1996.

6. Victims of trafficking should be accommodated outside of the direct provision system. Direct provision accommodation is not suitable for victims of trafficking and does not meet our international obligations in relation to the provision of safe and secure accommodation. In addition, a victim of trafficking should not be barred from pursuing an asylum application in circumstances where they have been granted a recovery and reflection period or temporary immigration permission under the current 'Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking'. Victims of human trafficking pursuing an asylum application should be allowed to avail of immigration and protection arrangements afforded to victims of trafficking outside of asylum process on an equal basis. International human rights instruments require states to provide protection to victims of trafficking without prejudice to an application for asylum.

We look forward to the opportunity to work with Ministers Fitzgerald and Ó Riordáin to progress these issues and improve Ireland's protection system and the reception of asylum seekers.