

The System of Direct Provision & Ireland's Obligations under the UN International Covenant on Civil & Political Rights (ICCPR)

Liam Thornton

[Dr Liam Thornton](#) is a lecturer in law in [UCD Sutherland School of Law](#) and a member of [UCD Human Rights Network](#). Liam researches and publishes on international, European and Irish human rights law, with a particular focus on immigration and asylum law. Liam's monograph, *The Socio-Economic Rights of Asylum Seekers in International and European Law*, will be published in 2015. Liam's full biography and publications can be accessed [here](#).

A. Introduction

The system of direct provision for asylum seekers will be 14 years in operation on 10 April 2014. I contend that the system of direct provision violates a number of rights specifically protected under the International Covenant on Civil and Political Rights (ICCPR):¹ in particular, the prohibition of inhuman and degrading treatment, protection of the right to private and family life, and the right to equal treatment under law.² A number of other UN human rights treaty bodies have raised concerns regarding the direct provision system (and the asylum system)³ in Ireland, as they impact on the rights of children,⁴ women⁵ and on efforts to eliminate racial discrimination.⁶ Some similar concerns have been raised under the Universal Periodic Review process.⁷ Once an individual is subject to the jurisdiction of a state, ICCPR rights will then apply.⁸ The UN Human Rights Committee, responsible for considering whether Ireland is complying with its obligations under the ICCPR, has highlighted the following issues as matters for concern in November 2013:⁹

Table 1: Matters of Concern for UN Human Rights Committee

- ❖ Delays with the Immigration, Residence and Protection Bill.
- ❖ Processing times for asylum claims.
- ❖ Independent complaints and monitoring mechanisms for direct provision.
- ❖ Victims of trafficking subject to the direct provision system.¹⁰

B. The System of Direct Provision in Ireland¹¹

Direct provision is the system utilised in Ireland to provide meals and accommodation to those claiming refugee status, subsidiary protection or leave to remain in Ireland.¹² Asylum seekers are only entitled to direct provision allowance, which has been €19.10 per adult per week and €9.60 per child per week, since 2000. Asylum seekers are legislatively prohibited from working on pain of criminal conviction, and possible imprisonment.¹³ While there is no compulsion on asylum seekers to remain in direct provision accommodation, if they do leave, then direct

provision allowance payments are withdrawn. Asylum seekers are entitled to a medical card and children of asylum seekers and asylum seeking children, are entitled to education up to Leaving Certificate level. This system is currently subject to challenge before the Irish High Court.¹⁴ I have argued that the system of direct provision is legally suspect, on the basis that the system undermines the Oireachtas withdrawal of all forms of social security and social welfare benefits from asylum seekers in 2009.¹⁵

C. Analysing State Obligations under the ICCPR: The Direct Provision System

1. Inhuman & Degrading Treatment & Right to Family Life

All human rights are interdependent and indivisible in nature. A violation of economic, social or cultural rights can lead to violations of civil and political rights.¹⁶ For almost 14 years, Irish human rights organisations¹⁷ have continuously highlighted the significant legal and social problems with the system of direct provision.¹⁸ In 2011, the Special Rapporteur for Children, Dr Geoffrey Shannon called for a full review of the direct provision system, to determine whether it is fit for purpose.¹⁹ Dr Shannon also called for an independent complaints mechanism, operated by either Health Information and Quality Authority (HIQA) or the Ombudsman for Children.²⁰ The former Ombudsman, Emily O'Reilly²¹ and former Supreme Court judge, Catherine McGuinness²² have also raised serious concerns with the system of direct provision. Dr Carol Coulter, as part of the Child Care Law Reporting Project, has highlighted concerns expressed by judges and legal representatives, on the suitability of direct provision for long term care of children.²³ Dr Coulter noted in her Interim Report, that it was not "unreasonable to speculate" that the experiences that led people to claim asylum, along with the significant time spent in direct provision accommodation, has led to individuals (all female single parents) having to be admitted to psychiatric hospitals.²⁴ Despite these concerns, and the concerns raised in Seanad Éireann, the Department of Justice and Equality remain steadfast in support of direct provision.²⁵

Asylum seekers in Ireland live in a system of near cashlessness for years on end. Generally, asylum seekers are unable to cook their own food, or decide what children should have for breakfast, lunch or dinner. Children must share rooms with adults. The House Rules²⁶ provide accommodation centre managers with significant levels of control asylum seekers. The level of social control that asylum seekers are subjected to goes beyond any other type of institution whose purpose is supposedly social care. The numbers in direct provision and the length of time people remain in direct provision continues to be a matter of concern.²⁷

Table 2: Direct Provision Statistics

- Over 86% of asylum seekers have been in direct provision for 12 months or longer, 15.4% of all individuals in direct provision have been there for over 7 years; while 43.1% of individuals in direct provision have been in direct provision accommodation centres for over 5 years.

- **38.2%** (1,666) of all those in direct provision centers are **children**.
- There are **more people in direct provision than** people detained in **prisons** in Ireland.
- As of 05 March 2014, there were **947 cases before the High Court** on asylum and related issues. It is not known how many of these people are in the direct provision system.

Recommendation 1: The system of direct provision is not fit for purpose. Asylum seekers, during the determination of any refugee and subsidiary protection claim, must enjoy all the rights protected under the ICCPR. The system of direct provision is inhuman and degrading. Direct provision violates the right to private and family life. Any system that replaces direct provision must ensure that the human rights of those seeking asylum are respected, protected and vindicated.

2. *Expulsion from Direct Provision*

In circumstances of extreme seriousness, an asylum seeker may be expelled from the direct provision system entirely.²⁸ Prior to 2008, statistics were not maintained in relation to numbers expelled from direct provision accommodation.²⁹ Information on numbers of asylum seekers expelled post August 2011 is not readily available.

Year	Numbers Expelled from DP
2008-2009	22
2009-2010	18
2010- Up to August 2011	12

In *A.N. v Minister for Justice, Equality and Law Reform*,³⁰ A.N. was an Afghan asylum seeker who was expelled from a direct provision accommodation centre due to his behaviour.³¹ Counsel for A.N. argued that he suffered from mental illness and sought an order mandamus requiring the Minister for Justice, Equality and Law Reform to provide “basic subsistence provision” to the applicant as he was living on the streets without access to shelter or money and was legislatively prohibited from working.³² Counsel argued that failure by the state to provide a minimum standard of shelter and food constituted a breach of the constitutional right to bodily integrity³³ and Article 3 (inhuman and degrading treatment) and/or Article 8 (right to private and family life) ECHR.³⁴ The applicant was also prepared to argue that the manner in which direct provision was withdrawn were a breach of fair procedures.³⁵ However, before the case could go to trial, the Minister agreed to re-admit Mr. A.N. into the direct provision system.³⁶

Recommendation 2: The Reception and Integration Agency (RIA) needs to maintain and make public any and all statistics on expulsion from direct provision. Given the length of time individuals may have to reside in direct provision, conflicts will occur. Regardless of reasons for expulsion, Ireland continues to have international obligations to prevent the destitution of asylum seekers.

3. *Direct Provision and Complaints*

Part 4 of the House Rules and Procedures for asylum seekers in direct provision, outlines the complaint procedures in place, in relation to the standards of the accommodation centre and behaviour of residents.³⁷ In response to calls for an independent complaints process,³⁸ the Minister for Justice and Equality, Alan Shatter T.D. stated:

“many complaints about accommodation around the country are inspired by the desire of residents to be accommodated elsewhere.”³⁹

Only due to sustained media coverage,⁴⁰ have inspection reports for direct provision accommodation centres been released for all to access.⁴¹

Recommendation 3: A transparent complaints mechanism, independent of the Reception and Integration Agency, needs to be established.

D. Ensuring ICCPR Compliance

1. Ireland is fully aware of the significant negative impact that direct provision is having on a large number of families and individuals.
2. The direct provision complaints system lacks any independent oversight. This must be remedied as a matter of urgency.
3. The operation of the direct provision system is bordering on inhuman and degrading treatment, given the length of time individuals and families will have to remain in the system. Given the level of social control, poverty and enforced idleness imposed on asylum seekers for several years, the State is also violating rights to private and family life and rights to be treated equally before the law.

¹ [International Covenant on Civil and Political Rights](#) 1966, (ICCPR) 999 *United Nations Treaty Series* 171

² For more detail, see, Thornton, L. “[Law, Dignity and Socio-Economic Rights: The Case of Asylum Seekers in Europe](#)”, Working Paper No. 6, *Fostering Human Rights Among European Policies (FRAME)*, January 2014.

³ Concluding Observations, Committee Against Torture, Ireland, [UN Doc. CAT/C/IRL/CO/1](#) (17 June 2011), in particular paras 10, 17, and 30.

⁴ See, Concluding Observations, CRC, Ireland, [UN Doc. CRC/C/73](#) (1998) 14 at para. 96 and Concluding Observations, CRC, Ireland, [UN Doc. CRC/C/IRL/CO/2](#) (September 2006), para. 56.

⁵ Concluding Observations, CEDAW, Ireland, [UN Doc. CEDAW/C/IRL/CO/4-5](#) (3 February 2006) at paras. 28-29.

⁶ See, Concluding Observations, CERD, Ireland, [UN Doc. CERD/C/IRL/CO/2](#) (14 April 2005), para. 13 and Concluding Observations, CERD, Ireland, [UN Doc. CERD/C/IRL/CO/3-4](#) (04 April 2011), para. 20.

⁷ UN Human Rights Council, [Report of the Working Group on the Universal Periodic Review: Ireland](#), UN Doc. A/HRC/19/9 (21 December 2011). For Ireland’s response and update on actions taken, see Ireland, [UPR: National Interim Report](#) (March 2014)

⁸ General Comment No. 15, ICCPR, [The position of aliens under the Covenant](#), UN Doc. HRI/GEN/1/Rev.1 at 18 (11 April 1986), para. 6 and General Comment No. 31, ICCPR, [The Nature of the General Legal Obligation Imposed on State Parties to the Covenant](#), UN Doc. CCPR/C/21/Rev.1/Add. 13 (26 April 2004), para. 10.

⁹ ICCPR: Human Rights Committee, [List of Issues in Relation to the Fourth Periodic Report: Ireland](#), UN Doc. CCPR/C/IRL/Q/4 (22 November 2013). See also, Ireland, [Replies by Ireland to List of Issues](#), UN Doc. CCPR/C/IRL/Q/4/Add.1 (27 February 2014).

¹⁰ I will not consider this in any detail. For a full analysis of human rights concerns relating to Trafficking victims in direct provision, see: Immigrant Council of Ireland, [Asylum Seeking Victims of Human Trafficking in Ireland: Legal & Practical Challenges](#) (ICI, November 2011).

¹¹ For a full examination of the law, policy and legality of the direct provision system in Ireland, see: Thornton, L. [“Upon the limits of rights regimes’ : Reception Conditions of Asylum Seekers in the Republic of Ireland”](#) (2007)

24(2) *Refugee, Canadian Periodical on Refugees*, pp.86-100 and Thornton, L. "Social Welfare Law and Asylum Seekers in Ireland : An Anatomy of Exclusion" (2013) 20(2) *Journal of Social Security Law*, pp.66-88 (a pre peer-reviewed version of the 2013 paper is available [here](#)).

¹² For an explanation of the particular legal meaning of these immigration statuses, see Thornton, L. [Glossary of Terms: Irish Asylum Law](#) (November 2013).

¹³ [Section 9\(4\)\(b\)](#) of the Refugee Act 1996.

¹⁴ I am aware of at least one case before the Irish High Court, which will be heard before Mr. Justice McDermott in April 2014. A previous case, [N.M and others v Minister for Justice and Equality, Minister for Social Protection, Attorney General and Ireland](#) (Record No. 2013 553 JR) was discontinued, however it is my understanding that similar arguments will be pursued.

¹⁵ See above, note 11.

¹⁶ For a discussion and definition of these rights, see Thornton, L. "[What are Economic, Social and Cultural Rights?](#)", Constitutional Convention Briefing Paper, February 2014. The UN Human Rights Committee accepts the interdependent and indivisible nature of all human rights, see generally: Communication No. 1799/2008, [Georgopoulos et al. v Greece](#), ICCPR, UN Doc. CCPR/C/99/1799/2008 (14 September 2010), in particular para. 3 and para 7, and Individual Opinion of Committee member Mr. Fabián Omar Salvioli. See also, Concluding Observations, ICCPR, Switzerland, [UN Doc. CCPR/C/CHE/CO/3](#), para. 19 (3 November 2009) and Concluding Observations, ICCPR, Slovakia, [UN Doc. CCPR/C/SVK/CO/3](#), para. 9 (20 April 2011).

¹⁷ Free Legal Advice Centres (FLAC), [Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland](#) (July 2003) and FLAC, [One Size Doesn't Fit All - A Legal Analysis of Direct Provision, 10 years On](#) (November 2009). Irish Refugee Council (IRC), [State Sanctioned Child Poverty and Exclusion](#) (September 2012); NASC, the Irish Immigrant Support Centre, [Hidden Cork: The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System](#) (2008).

¹⁸ For a near complete list of reports on direct provision and links to these reports from Irish human rights and community organisations since 2000, see Thornton, L. [Closing Our Eyes: Irish Society and Direct Provision](#), Human Rights in Ireland, 08 October 2013.

¹⁹ Shannon, G. [Fifth Report of the Special Rapporteur for Children](#), (Dublin: 2011), pp. 31-33 and p. 42.

²⁰ Shannon, G. [Fifth Report of the Special Rapporteur for Children](#), (Dublin: 2011), p. 18.

²¹ O'Reilly, E. "[Asylum Seekers in our Republic: Why Have we Gone Wrong?](#)" 102 *Studies*, Summer 2013. See also, Thornton, L. "[The Ombudsman and Direct Provision](#)", *Human Rights in Ireland*, 10 July 2013.

²² McGuinness, C., Foreword, [State Sanctioned Child Poverty and Exclusion](#) (September 2012).

²³ See, Child Care Law Reporting Project (CCLRP), Vol. 1, Case 20, [Emergency care order for children in direct provision centre](#); CCLRP, Vol. 3, Case 4, [Emergency Care Order for 8-year-old born and reared in direct provision centre](#); CCLRP, Vol. 3, Case 17, [Mother in direct provision opposes discharge of Emergency Care Order](#).

²⁴ Coulter, C. [Interim Report: Child Care Law Reporting Project](#) (November 2013), p. 20, p. 24 and p. 27.

²⁵ Seanad Éireann, [Direct Provision System: Motion](#), 23 October 2013.

²⁶ Department of Justice and Equality/Reception and Integration Agency, [Direct Provision Reception and Accommodation Centres: House Rules and Procedures](#) (RIA, 2011).

²⁷ Reception and Integration Agency, [Monthly Statistics: December 2013](#), pp 17-20. For prison statistics, see Irish Penal Reform Trust, [Facts and Figures](#) (February 2014).

²⁸ *Ibid.* p. 32.

²⁹ Letter from Ms L. C. (Department of Social Protection) to L. Thornton (FOI Response), 31 March 2011 on numbers expelled from direct provision accommodation. See also, Baker, N. "[Asylum seekers evicted as last resort](#)", *Irish Examiner*, September 10 2011.

³⁰ *A.N. v Minister for Justice, Equality and Law Reform*, Outline Submission of the case by the applicant is on file with the author, no further written submissions were made to the High Court. (The author expresses his appreciation to Michael Lynn BL for making this submission available to him). See also, Mary Carolan, 'Refugee who sleeps in factory seeks subsistence aid', *Irish Times*, Friday, October 24, 2008.

³¹ *A.N. v Minister for Justice, Equality and Law Reform*, Outline Submission, para. 3.

³² *A.N. v Minister for Justice, Equality and Law Reform*, Outline Submission, paras 2-4.

³³ *A.N. v Minister for Justice, Equality and Law Reform*, Outline Submission, paras 3-6.

³⁴ Counsel for Mr. A.N. relied in particular on the House of Lords judgment in *R (Limbuella) v. Home Secretary of State for the Home Department* [2006] 1 AC 396.

³⁵ *A.N. v Minister for Justice, Equality and Law Reform*, Outline Submission, paras 7-8.

³⁶ Mary Carolan, 'State undertakes to house destitute asylum seeker', *Irish Times*, Saturday, October 25 2008 and Mary Carolan, 'Afghan man wins case on housing provision', *Irish Times*, Friday, October 31 2008.

³⁷ Department of Justice and Equality/Reception and Integration Agency, [Direct Provision Reception and Accommodation Centres: House Rules and Procedures](#) (RIA, 2011), pp. 26-28.

³⁸ FLAC, *One Size Doesn't Fit All* (Dublin: Printwell Cooperative, 2009) at pp 37-42. Office of the Ombudsman, [Developing and Optimising the Role of the Ombudsman](#) (Dublin: Ombudsman, 2011), p. 4.

³⁹ Mr. Alan Shatter T.D., Minister for Justice and Equality, [Written Answers, Dáil Debates, Vol. 732, No. 5](#), (19 May 2011).

⁴⁰ Carl O'Brien, [Bleak Picture of Conditions at Asylum Centres](#), *Irish Times*, 08 October 2013.

⁴¹ To access these reports, see <http://www.ria-inspections.gov.ie/> [last accessed, 20 March 2014].