



# The RESEARCHER

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## Welcome to the October 2016 issue of *The Researcher*.

In this issue Caoimhín O'Madagáin of UNHCR Ireland writes on the issue of access to the Labour Market for Asylum Seekers with a particular focus on the Irish position.

Noeleen Healy of the Law Centre (Smithfield) discusses The Right to be Heard and the impact of the International Protection Act 2015 on oral hearings.

An article by Luke Hamilton of the Irish Refugee Council, focuses on the very important area of protection of vulnerable asylum seekers in Ireland and the effects of the International Protection Act 2015 on vulnerable asylum seekers.

David Goggins of the Refugee Documentation Centre reports on the situation facing the largest ethnic group in Ethiopia the Oromo in light of the current unrest.

Elisabeth Ahmed of the Refugee Documentation Centre comments on training in the module Researching Country of Origin Information and the RDC involvement in national and international training.

Many thanks to all our contributors, if you are interested in contributing to future issues please contact us at the email address below.

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### Disclaimer

**Articles and summaries contained in *The Researcher* do not necessarily reflect the views of the RDC or of the Irish Legal Aid Board. Some articles contain information relating to the human rights situation and the political, social, cultural and economic background of countries of origin. These are provided for information purposes only and do not purport to be RDC COI query responses.**

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## Should Asylum Seekers have Labour Market Access?



Caoimhín O'Madagáin<sup>1</sup>

This article examines the question of whether asylum seekers should be granted labour market access in Ireland to ease their integration into society<sup>2</sup>. The Recast Reception Conditions Directive (RCD)<sup>3</sup> sets out general reception standards for asylum seekers in the EU, as well as provisions relating to labour market access. As Ireland has not opted into the RCD, or its 2003 predecessor<sup>4</sup>, the Irish legal position regarding labour market access, outlined below, is set by the Refugee Act 1996. The Irish position will be compared to positions adopted by other EU states analysed below. This analysis suggests that the RCD does not necessarily ensure labour market access; it is merely a minimum standard implemented to varying degrees across EU Member States (MS), despite strong policy reasons in favour of allowing liberal access. Arguably, the fundamental individual rights of asylum seekers are being outweighed by what states see as a right to control immigration and

labour market access. This article considers some of the policy reasons for denying or restricting asylum seekers labour market access and offers counter arguments against these policies, advocating for liberal access for asylum seekers.

### The Importance of Integration and Labour Market Access

The current refugee crisis represents the largest movement of people in Europe since World War II. Millions of people have been forced to flee persecution or serious harm in their country of origin in recent years<sup>5</sup>. For such individuals, asylum is a fundamental right, and granting it to those in need is an international obligation<sup>6</sup> outlined in the 1951 UN Refugee Convention. EU MS aspiring to common fundamental values, including in the area of asylum, have attempted to draw up minimum common standards of protection for asylum seekers. As a result, EU MS have committed to establishing a Common European Asylum System (CEAS)<sup>7</sup>.

A core pillar of the CEAS is the provision of dignified standards of living<sup>8</sup> for asylum seekers in EU MS. The RCD establishes minimum common standards for asylum applicants across the EU in the hope of providing asylum seekers with a dignified life<sup>9</sup> during the asylum process. These standards, particularly labour market access and vocational training, are a means of integrating asylum seekers<sup>10</sup>, who may later obtain refugee status, in to the host society. Many refugees see labour market access as “the most relevant durable solution”<sup>11</sup>, and Professor Alice Edwards has stated that the right to work “is fundamental to individual self-esteem and dignity”<sup>12</sup>. It stands to reason that the earlier the integration process

<sup>5</sup> According to the UNHCR Report, Global Trends: Forced Displacement in 2015, 65.3 million people have been forcibly displaced worldwide. This is an increase of 5.8 million on the number of displaced people in 2014.

<sup>6</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm).

<sup>7</sup> Ibid.

<sup>8</sup> EMN “The Organisation of Reception Facilities for Asylum Seekers in different Member States”, 2014, p. 6.

<sup>9</sup> Directive 2013/33/EU, Rec. 11.

<sup>10</sup> “Labour Market Integration of Refugees: Strategies and good practices”, European Parliament Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy, p. 32.

<sup>11</sup> Ibid, p. 11.

<sup>12</sup> “Refugees and the Right to Work” (Provisional Version) Council of Europe, Parliamentary Assembly, 25<sup>th</sup> June 2012, p. 11.

<sup>1</sup> Protection Intern, UNHCR Ireland. Any views expressed are the author’s own.

<sup>2</sup> The Irish context is different than the majority of EU states as asylum seekers, according to a Jesuit Refugee Service article, “No End In Sight”, spend an average of 4 years waiting for a protection decision in Ireland.

<sup>3</sup> 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.

<sup>4</sup> Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States.

begins the more the refugee will benefit<sup>13</sup>. As such, while not every asylum seeker will ultimately be granted status or permission to remain, in the context of the Irish asylum system where a final decision on status can often take years<sup>14</sup>, the current prohibition effectively denies the realisation of this right throughout the determination process. It therefore makes sense to allow asylum seekers access the labour market and, bearing in mind the declaratory nature of refugee status declarations, particularly when delays are experienced in the determination of their application.

Among the common standards in the RCD is access to the labour market. The right to work, and the antecedent access to the labour market, is a fundamental right, “well established in international law<sup>15</sup>, without which other rights are meaningless”<sup>16</sup>. The ability to work and provide for one’s family is also essential to preserving human dignity according to some of the asylum seekers who were consulted<sup>17</sup> by the Working Group that produced the McMahon Report<sup>18</sup>. One asylum seeker stated that “work offers dignity and the best means of integration and reduces the cost of the state”<sup>19</sup>, while another said “these wasted years doing nothing – after leaving the system you are faced with a dilemma of where to start

<sup>13</sup> For this reason, the European Commission, on p.10 of its “Action Plan on the integration of third country nationals” 07/06/2016, states that it will “Develop an online repository of promising practices on integration into the labour market for refugees and, where there are good prospects of granting them protection, asylum seekers, as a source for policy makers in Member States”.

<sup>14</sup> In 2015 the median processing time for an application for refugee status at 1<sup>st</sup> instance was 29 weeks, on appeal it was 69 weeks. For subsidiary protection the median processing time was 52 weeks at the RAT; a figure for ORAC is unavailable in relation to SP (Source: annual reports of ORAC and the RAT 2015).

<sup>15</sup> The right to work is confirmed by several major international legal instruments, including the 1951 UN Refugee Convention; the International Covenant on Economic, Social and Cultural Rights; the European Social Charter; and the ILO Migration for Employment (Revised)(No. 97) and Migrant Workers (Supplementary Provisions), 1975 (No. 143) Conventions.

<sup>16</sup> *Supra*, n. 12, p. 3.

<sup>17</sup> These consultations comprised of written submissions received from 13 groups of residents, and individually from 58 adults and 31 children. 10 regional consultation sessions were held with 381 participants and visits were made to 15 accommodation centres.

<sup>18</sup> The McMahon Report – “Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers”, Final Report, June 2015.

<sup>19</sup> *Ibid*, p. 210, para. 5.37.

from and where to go from here”<sup>20</sup>. Asylum seekers and Direct Provision (DP)<sup>21</sup> residents also voiced concerns to the Working Group that, following “enforced idleness”<sup>22</sup>, they had lost skills and been unable to act as role models for their children. These comments, coupled with the recognition of the right to work by international law, succinctly illustrate the importance of labour market access. Allowing access benefits the individuals, improving their standard of living, but also reduces state costs in terms of DP and providing social welfare once refugee status has been granted<sup>23</sup>.

### Recast Reception Conditions Directive

The RCD, respecting the Charter of Fundamental Rights of the European Union<sup>24</sup>, established common minimum standards for the reception of asylum seekers in the EU. The RCD ensures that asylum seekers have access to housing, food, employment, if certain conditions are met, and medical care<sup>25</sup>; the norms of a dignified life<sup>26</sup>. Specifically in relation to employment, Recital 23 notes that “to promote self-sufficiency...and limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants’ access to the labour market”<sup>27</sup>.

Art. 15 of the RCD provides that:

“Member states shall ensure that applicants have access to the labour market no later than nine months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant”<sup>28</sup>.

Therefore, access to the labour market under the RCD is not automatic and depends on the time taken by MS to issue a first instance decision on an asylum application. Furthermore, labour

<sup>20</sup> *Ibid*.

<sup>21</sup> Direct Provision is the Irish system which is intended to provide for the welfare of asylum seekers while they await the final decision on their asylum application. Asylum seekers in DP are provided with bed, board, a small weekly stipend, €19.10 per adult and €15.60 per child, as well as other basis services.

<sup>22</sup> *Supra*, n. 18, p. 210, para. 5.38.

<sup>23</sup> *Supra*, n. 12, p. 1.

<sup>24</sup> *Supra*, n. 3, Rec. 35.

<sup>25</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm)

<sup>26</sup> *Supra*, n. 3, Rec. 11.

<sup>27</sup> *Supra*, n. 3, Rec. 23.

<sup>28</sup> *Ibid*, Art. 15.1.

market access can be restricted; EU MS can determine their own conditions for granting access, provided such conditions ensure that asylum seekers have effective access to the labour market<sup>29</sup>. Art. 15 also allows EU MS to prioritize access to “Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals”<sup>30</sup>.

It is important to note that neither Ireland nor the UK have opted in to the RCD<sup>31</sup>, as such the requirement to guarantee asylum seekers labour market access does not apply to these states. Unlike the majority of EU MS, Ireland is not bound by European legal instruments in the area of asylum that it has not specifically “opted in to”<sup>32</sup>. Ireland did not opt in to the original Reception Conditions Directive<sup>33</sup> either, although the UK did<sup>34</sup>.

### The Irish Position

The Refugee Act 1996 sets out the procedures governing asylum applications. After a person makes an application for refugee status, the Office of the Refugee Applications Commissioner (ORAC) makes an initial recommendation which, if negative, can be appealed to the Refugee Appeals Tribunal (RAT). Prior to the introduction of the International Protection Act 2015, applications for subsidiary protection continue to be dealt with separately to refugee status applications by ORAC and the RAT after the applicant has been refused refugee status. After each stage, the Minister for Justice and Equality issues a final declaration to the applicant based on the recommendation of ORAC or the RAT. Pending the final protection decision, applicants who wish to may live in DP, they may live independently, or with the assistance of family or friends if they have the means to do so.

Crucial to the current article is the fact that, according to section 9(4)(b) of the 1996 Act:

“an applicant shall not seek or enter employment or carry on any business, trade or profession during the period before the final determination of his or her application”<sup>35</sup>.

Regulation 4(7) of SI 426 of 2013 repeats the restriction in relation to applicants for subsidiary protection.

Therefore, under Irish legislation, asylum seekers do not enjoy a right to work before receiving a final decision on their application for international protection. This position is in marked contrast to that of the RCD, to the policy of the European Commission<sup>36</sup>, and ignores the internationally recognised importance of the right to work and its impact on individual self-esteem and dignity<sup>37</sup>.

The Irish position has been challenged, most recently in the case of *N.H.V. -v- Minister for Justice and Equality & ors.*<sup>38</sup>, in the Court of Appeal. In 2013, the applicant, Mr. V.<sup>39</sup>, was offered a job in St. Patrick’s Accommodation Centre in Monaghan<sup>40</sup> but was twice refused permission to work by the Minister for Justice<sup>41</sup>. The High Court rejected Mr. V’s challenge of these refusals<sup>42</sup>.

Mr. V. appealed this decision to the Court of Appeal on the following grounds. First, section 9 of the 1996 Act allows the Minister a discretion to grant permission to work; second, the Minister has an inherent discretion to grant permission to work; third, if the Minister has no discretion section 9 of the 1996 Act contravenes Art. 15 of the EU Charter of Fundamental rights<sup>43</sup>; and fourth, if section 9 of the 1996 Act does not contravene EU law it is unconstitutional<sup>44</sup>.

Hogan J. dismissed the first three grounds of appeal. In relation to the fourth ground, Hogan J. concluded that, in principle, non-citizens should be permitted to rely on the un-enumerated

<sup>29</sup> Ibid, Art. 15.2.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid Rec. 33.

<sup>32</sup> Protocol No. 21 annexed to the Treaty on the Functioning of the European Union, “on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice”.

<sup>33</sup> Supra, n. 4.

<sup>34</sup> The original Directive contained a similar requirement to grant labour market access to asylum seekers after one year.

<sup>35</sup> Refugee Act 1996, Section 9(4)(b).

<sup>36</sup> Supra, n. 13, p. 9-10.

<sup>37</sup> Supra, n. 12, p. 11.

<sup>38</sup> *N.H.V. -v- Minister for Justice and Equality & ors.* [2016] IECA 86.

<sup>39</sup> Mr. V. had been living in Direct Provision for almost 8 years, receiving €19.10 per week and, under Irish legislation, was denied access to the labour market.

<sup>40</sup> Supra, n. 37, Judgment of Hogan J. para. 8. Mr. V. was resident in this accommodation centre at the time.

<sup>41</sup> Ibid, Judgment of Hogan J. para. 8.

<sup>42</sup> Supra, n. 37, Judgment of Finlay Geoghegan J. para. 5.

<sup>43</sup> Art. 15.1 of the EU Charter of Fundamental Rights provides that “Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation”.

<sup>44</sup> Supra, n. 37, Judgment of Finlay Geoghegan J. para. 5.



constitutional right to earn a livelihood<sup>45</sup>, derived from Art. 40.3.1 of the Constitution. Therefore, Hogan J. found section 9 (4)(b) of the 1996 Act unconstitutional because it fails the *Heaney Proportionality Test*<sup>46</sup>, as it allows for the indefinite denial of access to the labour market<sup>47</sup>.

Finlay Geoghegan J. also dismissed the first three grounds of appeal. However, she did not agree that asylum seekers enjoy a constitutional right to earn a livelihood<sup>48</sup>. Finlay Geoghegan J. sided with the High Court judge who concluded:

“in accordance with the judgment of the Supreme Court in *Re. Article 26 and ss. 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999*<sup>49</sup> ... that the fundamental rights or personal rights protected by Article 40.3 to which a non-national may be entitled under the Constitution do not always coincide with the rights protected as regards citizens”<sup>50</sup>.

Therefore, when a person claims an entitlement to a fundamental right under Art. 40.3 it is necessary to determine the status of that person<sup>51</sup> and whether the right is granted to nationals and non-nationals alike.

Finlay Geoghegan J. concluded that, under the 1996 Act, Mr. V is an individual who is only entitled to remain in the State, pending the determination of his application<sup>52</sup>, and as such is not entitled to the right to earn a livelihood. This right, according to the Court, stems from the social contract between the state and citizen, meaning it is not available to non-citizens<sup>53</sup>.

The Court dismissed the case, concluding that asylum seekers do not have a constitutional right to work. Therefore, the Irish legal situation remains one where asylum seekers are denied labour market access<sup>54</sup>; given that the average length of the asylum process is 4 years, this

<sup>45</sup> Supra, n. 37, Judgment of Hogan J. para. 110.

<sup>46</sup> *Heaney v. Ireland* [1994] 3 I.R. 593

<sup>47</sup> Supra, n. 37, Judgment of Hogan J. para. 124.

<sup>48</sup> Supra, n.37, Judgment of Finlay Geoghegan J. para. 29.

<sup>49</sup> *Re. Article 26 and ss. 5 and 10 of the Illegal Immigrants (Trafficking) Bill 1999*<sup>49</sup> [2000] IESC 19, [2000] 2 I.R. 360

<sup>50</sup> Supra, n. 37, Judgment of Finlay Geoghegan J. para. 10.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid, para. 25.

<sup>53</sup> Ibid, para. 28.

<sup>54</sup> The International Protection 2015 Act, which has yet to commence, is set to alter some aspects of Irish asylum law, however, it maintains the current position on labour market access for asylum seekers.

denial of access is more significant in the Irish context than it would be in other EU MS.

### Access to the Labour Market in other EU States

While Ireland and the UK have not opted in to the RCD, all other EU MS (except Denmark<sup>55</sup>) are bound by it and have implemented its standards to varying degrees<sup>56</sup>. The labour market access granted to asylum seekers in several EU states is analysed below as a comparison to the Irish position<sup>57</sup>. In many countries, legal access to the labour market is granted, however, it is questionable whether the access is effective once the MS impose conditions on it. Ireland, Lithuania<sup>58</sup> and Portugal are the only EU MS to completely deny labour market access<sup>59</sup>, but they are arguably not out of line with the majority of EU MS in terms of effective access.

In Germany, asylum seekers have legal access to the labour market; the general time limit being three months after the initial asylum application is made before access is granted<sup>60</sup>. However, asylum seekers are denied access while residing in an initial reception centre<sup>61</sup>. Most asylum seekers in Germany remain in the initial centre for six months but asylum seekers from ‘safe countries of origin’<sup>62</sup> are obligated to stay in the initial centre throughout their asylum application process<sup>63</sup>. These asylum seekers are effectively denied labour market access.

French legislation closely adheres to the RCD standards, allowing access to the labour market

<sup>55</sup> According to Recital 34 of the Recast RCD, Denmark is not taking part in the adoption of the Recast RCD and is not bound by it or subject to its application. More generally, Denmark have standing ‘opt-outs’ from EU policies in relation to security and defence, citizenship, police and justice, and certain areas of home affairs.

<sup>56</sup> “Quality Matrix Report: Reception Conditions”, EASO, October 2016 (forthcoming), p. 82.

<sup>57</sup> The information is sourced from the country reports on the Asylum Information Database - <http://www.asylumineurope.org/reports%20>

<sup>58</sup> While bound by the RCD, Lithuania guarantees a first instance asylum decision within 6 months of applying; as such it was deemed unnecessary to transpose Art. 15 of the RCD into national law.

<sup>59</sup> Supra, n. 55, p. 80.

<sup>60</sup> AIDA Report Germany November 2015, p. 61.

<sup>61</sup> This restriction was provided for in legislation adopted in 2015.

<sup>62</sup> ‘Safe countries of origin’ are countries for which, on the basis of their laws and general political conditions, it can be concluded that neither political persecution nor inhuman or degrading punishment or treatment exists.

<sup>63</sup> Supra, n. 59, p. 61.

only if no first instance decision issues within nine months and the delay is not the applicant's fault<sup>64</sup>. Despite this, prior to entering employment asylum seekers must obtain a temporary work permit requiring proof of an employment offer<sup>65</sup>. This makes access in France quite difficult in practice.

Asylum seekers in the Netherlands can access the labour market 6 months after applying for asylum, however, they are restricted to working a maximum of 24 weeks in each 12 month period<sup>66</sup>. The employer must also request a work permit<sup>67</sup>. The administrative conditions<sup>68</sup> associated with the work permit can be burdensome and limit effective access.

Asylum seekers in Italy have a right to work within 60 days of submitting their asylum application. However, language barriers, the remoteness of accommodation centres and the lack of specific support for asylum seekers cause great practical difficulties in finding employment<sup>69</sup>.

Asylum seekers in Greece may be granted a work permit following a labour market test<sup>70</sup>. The test involves determining that no interest in the job has been shown by a Greek national, an EU citizen, a third-country national of Greek origin, or a recognized refugee<sup>71</sup>. In practice, this prioritization makes securing employment difficult for asylum seekers<sup>72</sup>.

Asylum seekers in the UK<sup>73</sup> can access the labour market, although in practice cannot generally engage in paid employment. Asylum seekers whose applications have been outstanding for a year can seek permission to work from the Home Office. If granted permission, asylum seekers may only apply for vacancies in listed occupations<sup>74</sup> with a shortage of suitable candidates, for example as a consultant in neuro-physiology or an electricity substation electrical engineer<sup>75</sup>. As a result, labour market access is extremely narrowly defined.

<sup>64</sup> AIDA Report France December 2015, p. 83.

<sup>65</sup> Ibid, p. 84.

<sup>66</sup> AIDA Report Netherlands November 2015, p. 60.

<sup>67</sup> Supra, n. 55, p. 81.

<sup>68</sup> Supra, n. 65, p. 60-61.

<sup>69</sup> AIDA Report Italy December 2015, p. 82.

<sup>70</sup> AIDA Report Greece November 2015, p. 85.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> The UK, like Ireland, has not opted into Directive 2013/33/EU and is not bound by the standards it set down.

<sup>74</sup> AIDA Report United Kingdom November 2015, p. 73.

<sup>75</sup> Ibid.

In Sweden, asylum seekers can access the labour market within one month<sup>76</sup>, usually the 'unskilled' sector, provided they verify their identity<sup>77</sup>. In practice, gaining employment is difficult due to language requirements and high levels of youth unemployment. However, if an asylum seeker secures employment and works for six months before their asylum application is rejected they can switch from being an asylum seeker to a 'labour market migrant'<sup>78</sup> which can lead to a permanent residency permit. This scheme was introduced by the Swedish government to acknowledge that many asylum seekers have valuable skills and could benefit the Swedish market<sup>79</sup>.

Many EU MS do grant asylum seekers legal access to the labour market and some MS have even been commended by the European Commission for allowing access prior to the nine months stipulated in the RCD<sup>80</sup>. However, when the conditions and restrictions, permitted under the RCD, are accounted for, it seems that this right exists more in name than in practice. These conditions and restrictions not only make it burdensome for the asylum seeker but in some cases place responsibilities on the employers which could make them less interested in hiring asylum seekers. While Ireland, Lithuania and Portugal stand out by denying labour market access, in practice the majority of asylum seekers are unlikely to secure employment in many EU MS<sup>81</sup>.

### Policy Reasons for Denying Labour Market Access

The Irish Government has identified allowing labour market access as a primary reason why the State cannot opt in to the RCD; the main concern being that granting asylum seekers labour market access would negatively impact the number of asylum applications made in Ireland<sup>82</sup>. In other words, allowing labour market access would make Ireland a more attractive place for asylum seekers. This would mean an increase in the number of asylum applications being made

<sup>76</sup> Supra, n. 55, p.81.

<sup>77</sup> AIDA Report Sweden December 2015, p. 43.

<sup>78</sup> Ibid, p. 44.

<sup>79</sup> Ibid. This may seem contradictory, given that Sweden has limited asylum seekers to the unskilled sector, however, this is a restriction they are entitled to impose under the Recast RCD.

<sup>80</sup> Supra, n. 13, p. 9.

<sup>81</sup> Ibid.

<sup>82</sup> Supra, n. 18, pg. 209, para. 5.36.

which would add to the current backlogs in the Irish asylum system.

Concerns relating to an increase in asylum applications, primarily unfounded applications<sup>83</sup>, were cited by Lithuanian authorities when asked what obstacles might hamper allowing asylum seekers labour market access<sup>84</sup>. Many other EU MS also cite concerns relating to increasing numbers of unfounded asylum claims to justify not granting immediate labour market access<sup>85</sup>. It is commonly believed by EU MS that the sooner asylum seekers access the labour market the stronger the “pull-factor” will be for asylum seekers to travel to the state in question<sup>86</sup>. The “pull-factor” and the expected increase in asylum applications could increase asylum processing times and state costs. The alternative is to make states unattractive to asylum seekers which EU MS believe will lead to a decrease in the number of applications.

A second reason asylum seekers are denied access to the labour market is that, as Ireland and most other EU MS are still recovering from the recent financial crisis, levels of national unemployment are still relatively high<sup>87</sup> and an influx of job-seekers would simply increase unemployment. This is a concern for the Irish Government, and would have to be considered if the policy on asylum seekers accessing the labour market was to change<sup>88</sup>.

A possible further policy reason against allowing asylum seekers access the labour market is concerns over creating instability in the market. Asylum seekers, by definition, do not have permanent permission to reside in the state. If their asylum application is rejected it is possible they will be deported. With this in mind, allowing asylum seekers access the labour market risks creating instability. As deportation could happen relatively quickly, there would be considerable uncertainty regarding whether or for how long the individual would be able to fill a position of employment.

Another factor, of particular salience in Ireland, is the current housing crisis. If allowing labour

market access increased the number of asylum seekers arriving in Ireland, this could worsen the housing crisis, already impacting many Irish individuals and families, as it could add to the number of people in employment or obtaining residency permits, thereby increasing demand for housing.

Fear of creating a “pull factor”, not wanting to make a state overly attractive to asylum seekers, high national unemployment, avoiding market instability, and the housing crisis, all help explain why Ireland denies labour market access and possibly why other EU MS impose considerable restrictions on the access they have granted.

### Counter Arguments

The first reason considered for states denying access to the labour market for asylum seekers was the potential “pull-factor” which MS fear could cause a sharp increase in the number of asylum applications and simultaneously increase state costs. While there is no strong evidence to support this concern<sup>89</sup>, it is possible that granting access to the labour market could cause an increase in asylum applications, as claimed by the Irish Government in 1999 when a group of asylum applicants were granted access<sup>90</sup>. However, early integration into the labour market is crucial in terms of “reducing the net fiscal cost associated with the current inflow of asylum seekers”<sup>91</sup>. The sooner asylum seekers gain employment the sooner they can contribute to public finances by paying income tax. Simultaneously, demands on state resources by asylum seekers would be reduced. Therefore, even if allowing access causes an increase in asylum applications, state

<sup>89</sup> Supra, n. 12, p. 11. A separate article, “Is access to work really a pull factor for asylum seekers?”, highlighted that 30 studies attempting to determine the pull factors determining asylum destination countries undertaken since 1997 have found no correlation between labour market access and asylum seeker choice of destination (source: <http://theconversation.com/is-access-to-work-really-a-pull-factor-for-asylum-seekers-57757>). A working paper published by the University of Sheffield in March 2016 states that “The most up to date research concludes that access to work has little, if any, effect on variations in asylum applications” (source: <https://asylumwelfarework.files.wordpress.com/2015/03/asylum-seeker-pull-factors-working-paper.pdf>).

<sup>90</sup> Supra, n. 18, p. 209. It is important to note that there is not objective evidence to prove that the asylum application numbers increased because labour market access was granted; asylum application numbers fluctuate naturally and may be attributable for myriad reasons.

<sup>91</sup> “The Refugee Surge in Europe: Economic Challenges”, IMF Staff Discussion Note, January 2016, p. 5.

<sup>83</sup> EMN “Ad-hoc query on asylum seekers’ access to the labour market”, 3<sup>rd</sup> July 2014, p. 6.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid, p. 4.

<sup>87</sup> <http://www.tradingeconomics.com/ireland/unemployment-rate>.

<sup>88</sup> Supra, n. 18, pg. 209, para. 5.36.

costs could decrease, or be met, as asylum seekers would be paying income tax and be less dependent on state support. Given the current refugee crisis, it is possible that the number of asylum applications will increase regardless of whether Ireland allows labour market access. At least if asylum seekers can work, state costs may decrease even if the asylum numbers increase.

In light of the recent financial crisis, and facing a refugee crisis which could see asylum applications increase, concerns that an influx of asylum seekers will decrease wages and increase unemployment are understandable. However, IMF research concerning “economic and humanitarian immigration indicates that adverse effects [of an influx of job-seekers into the labour market] on wages or employment are limited and temporary”<sup>92</sup>. It is likely that this is due to “low substitutability between immigrants and native workers, and because investment usually increases in response to a larger workforce”<sup>93</sup>. Thus, while concerns regarding unemployment are understandable, allowing asylum seekers to access the market will have limited and temporary negative effects, and can actually be beneficial for the native workers and asylum seekers as investment in the economy will increase.

Concerns over creating instability in the labour market, due to the risk of employed asylum seekers being deported, is a further possible policy against allowing labour market access. However, the alternative, denying access until refugee status is granted, will cost the state more in the long run. As previously mentioned, asylum seekers who spend a period of time unable to work face greater difficulty securing employment than if they had been granted immediate labour market access, making them more reliant on social welfare after obtaining refugee or subsidiary protection status. The state must decide whether avoiding limited labour market instability is worth the cost of keeping asylum seekers and refugees reliant on the state for all of their material needs.

Clearly labour market access is beneficial for individual asylum seekers. It allows asylum seekers lead a dignified life by preventing social exclusion and promoting integration into the host society. Furthermore, labour market access also benefits the state. Allowing access reduces state costs during and after the asylum process as the

demand for financial and material support from the State is less and asylum seekers will be paying income tax. The increase in the workforce will have a positive impact overall, leading to increased economic investment.

From a purely economic viewpoint, the current refugee crisis is expected to have a positive impact on EU countries<sup>94</sup>, with bigger impacts expected in countries receiving the most refugees. Countries receiving smaller numbers, such as Ireland and the UK, are expected to benefit less<sup>95</sup>. However, if countries refuse to allow asylum seekers labour market access, not only are the above benefits unobtainable, it is possible that states will suffer. Asylum seekers will likely remain dependent on the state for longer once granted refugee status due to difficulty securing employment, particularly in the Irish context when asylum seekers spend 4 years on average awaiting a final decision on their asylum application. This could have financial implications for the state, particularly if the current refugee crisis continues. As a result, it would be prudent for states to ease legal restrictions on asylum seekers accessing the labour market<sup>96</sup>.

It is important to note that the above benefits, for both the asylum seeker and the state, depend on the speedy integration of asylum seekers into the labour market<sup>97</sup>. The sooner access is granted the sooner the benefits can be realised<sup>98</sup>. Furthermore, labour market access would not guarantee a job for every asylum seeker. However, it would provide them the opportunity to lead a dignified life, while reducing state costs simultaneously.

## Conclusion

The right to work, and the accompanying labour market access, is an internationally recognised fundamental individual right, crucial to a person’s self-esteem and dignity, as well as their integration<sup>99</sup> into society. This is no different for asylum seekers.

<sup>94</sup> “The Refugee Crisis is actually having ‘sizeable’ economic benefits in European Countries, EU says”, article in The Independent, 5<sup>th</sup> November 2015, <http://www.independent.co.uk/news/world/europe/the-refugee-crisis-will-actually-have-a-sizable-positive-economic-impact-on-european-countries-eu-a6722396.html>.

<sup>95</sup> Ibid.

<sup>96</sup> Supra, n. 90, p. 33.

<sup>97</sup> Ibid, p. 14.

<sup>98</sup> Ibid, p. 33.

<sup>99</sup> Supra, n. 13, p. 8.

<sup>92</sup> Ibid, p. 33.

<sup>93</sup> Ibid.



Ireland, in denying labour market access to asylum seekers, is legally out of step with the majority of EU MS. The policy reasons for denying access seem to point towards a state exercising its right to control immigration and labour market access. However, these policies ultimately have economic roots. While wanting to cut state spending, particularly given high levels of national unemployment and a housing crisis, is understandable, it seems that granting asylum seekers labour market access would benefit the state by reducing reliance on social welfare and increasing economic investment.

While this might appear callous given the humanitarian suffering causing and caused by the refugee crisis, the economic factors may ultimately persuade states to provide effective labour market access, allowing asylum seekers the opportunity to lead dignified lives by realising their fundamental right to work. However, this can only happen if asylum seekers are quickly integrated into the labour market<sup>100</sup>.

Therefore, from an economic standpoint, it makes sense to grant asylum seekers labour market access. Unfortunately, based on the analysis of labour market access in EU MS, the RCD does not appear to be the answer to the problem of labour market access. The conditions and restrictions allowed under the RCD render labour market access ineffective in practice in many MS. It is interesting to note that a recent proposal for a new directive further amending the RCD suggests allowing labour market access within 6 months of making the initial asylum application, and within 3 months if the application is likely to be well founded<sup>101</sup>. However, this new directive, if ratified, may be as powerless as the current RCD if it permits the same restrictions currently in place in many MS.



<sup>100</sup> "An Economic Take on the Refugee Crisis", European Commission, 07/06/2016, p. 25.

<sup>101</sup> Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), 2016/0222 (COD), Brussels, 13.7.2016, p.4.

## The Right To Be Heard



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### 1. Natural and Constitutional Justice

The maxim of *audi alteram partem* is an element of natural and constitutional justice in administrative law. In its broadest terms, it means there is a requirement to hear the other side; its aim being that there is procedural fairness in the decision-making process. As Walsh J. enunciated in *McDonald v. Bord na gCon*<sup>102</sup>: "In the context of the Constitution natural justice might be more appropriately termed constitutional justice and must be understood to import more than the two well established principles that no man shall be judge in his own cause and *audi alteram partem*"<sup>103</sup>. The requirements of *audi alteram partem* are protected by both the common law and the Constitution.<sup>104</sup>

Under the Refugee Act 1996 (as amended), where a first instance decision-maker applies a s.13(6) finding, the applicant is not granted an oral hearing at appeal. These findings effectively created a legislative bar to an oral hearing at appeal stage to the Refugee Appeals Tribunal (RAT). Even if the tribunal member were of the view that an oral hearing might be necessary to consider the case, she is powerless to so order. Upon judicial review of an appeal decision, the

<sup>102</sup> [1965] 1 I.R. 217 (S.C.)

<sup>103</sup> [1965] 1 I.R. 217 (S.C.) at 242

<sup>104</sup> See generally, David Kenny, 'Fair procedures in Irish administrative law: toward a constitutional duty to act fairly in *Dellway investments v. NAMA*' (2011) 34 D.U.L.J. 47; Joan Donnelly, 'The concept of natural and constitutional justice: *McDonagh v Governor of Cloverhill prison*' (2009) 27(11) I.L.T. 146

High Court has no jurisdiction to order an oral hearing where *certiorari* is issued and a *de novo* appeal granted. Section 42 of the International Protection Act 2015 is likely to change matters; however, this is yet to be commenced. In that context, the following will consider the need to hold an oral hearing in the interests of justice.

## 2. A Right to an Oral Hearing?

An oral hearing may be necessary to ensure that fair procedures are followed. The elements of that requirement vary depending on the nature of the case and the individual circumstances. Hogan and Morgan explain: “[I]t may be misleading to speak of a ‘right’ since in such an amorphous area, entitlement to the advantage sought will depend on all the circumstances of the case.”<sup>105</sup>

The other, and often interconnected, aspect of *audi alteram partem*: leave to summon and cross-examine witnesses, is also dependent on the facts of the case at hand. Furthermore, a distinction previously existed between the judicial or quasi-judicial bodies and administrative decision-making bodies in regard to the scope of fair procedures. The distinction is no longer of great importance to the superior courts, particularly in light of the decision in *Dellaway v. National Assets Management Agency*<sup>106</sup> where the evaluation of fair procedures undertaken in judicial review was expanded by the Supreme Court, and now the courts will look at the result the decision will have upon the applicant.

## 3. Procedural Guarantees

A significant requirement of natural and constitutional justice is that a person be heard in her own defence. Does that necessarily require an oral hearing? In *State (Gleeson) v. Minister for Defence*<sup>107</sup>, Henchy J. found because the army (Gleeson’s employers) had not given Gleeson an opportunity to present his case to his employers before the decision to discharge him was taken, the decision could not stand. The Supreme Court did not order that the applicant respond to the charges levelled against him in a particular manner and so had Gleeson been given an opportunity to respond to the allegations made against him by way of papers-only, the respondent would likely have satisfied the

requirements of *audi alteram partem* without necessarily conducting an oral hearing. Henchy J. concluded:

This judgment is a ruling only on the submissions made as to what happened in the prosecutor’s case. Other cases will depend on their own circumstances, including whether the person discharged has, by delay, acquiescence or other conduct, lost his right to relief.<sup>108</sup>

Clearly, each case will be judged upon its own facts and in this area it can be difficult to seek to rely on a previous case as evidencing the existence of a right.

## 4. Nature of Decision

As with many aspects of public law, and highlighted above by Henchy J., the facts of the case as well as the individual circumstances will be looked at by the courts in deciding if, in the interests of natural and constitutional justice, an oral hearing should be afforded by the decision-maker.<sup>109</sup> In the case *V.Z. v. Minister for Justice, Equality and Law Reform*<sup>110</sup>, McGuinness J. stated as follows:

I would accept the submission on behalf of the respondents that there is no authority to establish that an oral hearing on appeal is necessary in all cases. The applicant is not in the position of an accused person facing prosecution. There are no witnesses against him. He is not in a position to cross-examine the assessors of his claim and it is difficult to see how in these circumstances a right to cross-examine is relevant. He may certainly wish to expand on either his own evidence or independent evidence concerning the conditions prevailing in his country of origin but it is open to him to provide this information in writing.<sup>111</sup>

When McGuinness J. evaluated the nature of the decision involved in the *V.Z.* case, she held that there would be no unfairness in conducting the matter on the papers and since the applicant had been given the opportunity to be heard through their notice of appeal, this was sufficient to satisfy

<sup>105</sup> Hogan and Morgan, *Administrative law in Ireland* (4<sup>th</sup> ed., Round Hall, Sweet and Maxwell, 2010) at p.556

<sup>106</sup> [2011] 4 I.R. 1 (S.C.)

<sup>107</sup> [1976] 1 I.R. 280 (S.C.)

<sup>108</sup> [1976] 1 I.R. 280 (S.C.) at 297

<sup>109</sup> See: *In re. Haughey* [1971] 1 I.R. 217 (S.C.)

<sup>110</sup> [2002] 2 I.R. 135 (S.C.)

<sup>111</sup> [2002] 2 I.R. 135 (S.C.) at 161

the requirements of *audi alteram partem*. Conversely, where decisions are based upon personal demeanour or credibility of an applicant, then fairness should dictate that an applicant be present. Further, where the decision is based upon a person's action and responses when being questioned orally, then without such an oral hearing at appeal stage the requirements of natural and constitutional justice would not so be satisfied.

There is a clear line of authority, beginning with *Doupe v. Limerick County Council*<sup>112</sup>, that for a decision-maker to adhere to natural and constitutional justice, an oral hearing is not necessary. To try to set out circumstances where an oral hearing might be required would be challenging. However, Delany<sup>113</sup> does attempt to shed some light on the matter.

It has been acknowledged that in some circumstances refusal to permit an oral hearing will result in failure to comply with the rules of natural justice, but its absence need not be inconsistent with fundamental justice in every case; the ultimate concern is that an adequate opportunity has been given to an individual to state his case and know the arguments he has to meet. Consideration has been given in a number of jurisdictions to the type of proceedings in which an oral hearing must be held to satisfy the requirement of the duty to be fair. It has been suggested that where there is a threat to life or liberty, where an individual's reputation or livelihood is at issue, or where a decision may lead to the loss of some existing right or privilege, such a hearing is necessary.<sup>114</sup>

In *Sheriff v. Corrigan*<sup>115</sup> Denham J. analysed the process that had been used to initiate disciplinary action against the applicant, a prison officer. Of particular importance here is the judge's scrutiny regarding the applicant's complaint that he was not afforded an oral hearing.

I am satisfied that the requirements of natural justice were met in that the applicant was given due notice, he was informed of the relevant charge, he was informed of the reasons, he was informed

of the essential facts and he was given a reasonable opportunity of presenting his response.<sup>116</sup>

The applicant was given opportunity to respond to the charges against him, albeit not at an oral hearing. The employer had adhered to the requirements of constitutional and natural justice. The difference here is that there is a charge against the applicant, to which he could reply on the papers. However, as Charleton J. pointed out in *M.A.R.A. v. Minister for Justice and Equality*<sup>117</sup>, the refugee applicant's appeal to the tribunal is *de novo*. The applicant's response to a particular aspect would usually need to be teased out and not merely asserted on the papers. As the ECJ has held that an asylum applicant does not have a right make comments on a draft decision,<sup>118</sup> this teasing out process could only be achieved by way of oral hearing unless there were to be some form of back and forth on the papers.

## 5. Dispute as to Facts

Where there is a substantial conflict between the parties as to fact, then, in the interest of attaining the correct facts, fair procedures would require that both parties are afforded the opportunity to present their evidence orally. Cross-examination by opposing sides would likely also be necessary in such cases. In *Castleisland Cattle Breeding Society Ltd. v. Minister for Social and Family Affairs*<sup>119</sup>, O'Donovan J. noted that because this case involved a considerable conflict between the parties, an oral hearing was imperative:

The grounds of appeal advanced by the appellant call for further inquiry by the Chief Appeals Officer, the holding of an oral hearing to receive submissions with regard to those grounds is obligatory. Indeed, one wonders why the Chief Appeals Officer did not even explain why he did not think that an oral hearing, at which, at least, submissions with regard to the appellant's grounds of appeal could have been made to him was not necessary.<sup>120</sup>

<sup>116</sup> 1 I.L.R.M. 67 (S.C.) at 79

<sup>117</sup> [2014] IESC 71

<sup>118</sup> *M.M. v Minister for Justice and Law Reform* (22 November 2012) ECJ Case C-2 77/2012

<sup>119</sup> [2003] IEHC 133

<sup>120</sup> [2003] IEHC 133 at para. 5

<sup>112</sup> [1981] I.L.R.M. 456 (H.C.)

<sup>113</sup> Delany, *Judicial review of administrative action, a comparative analysis* (2<sup>nd</sup> ed., Round Hall, 2009)

<sup>114</sup> *Ibid* at 278-279

<sup>115</sup> 1 I.L.R.M. 67 (S.C.)

This was also highlighted by the Supreme Court in *Kiely v. Minister for Social Welfare*,<sup>121</sup> and relied upon in the *Castleisland* judgment, that where a conflict as to evidence exists, this should be resolved at oral hearing.<sup>122</sup>

If the case can be disposed of by way of papers-only, then there would be no benefit in conducting an oral hearing. Administrative decision-makers deal with a huge workload, often making numerous decisions on a daily basis. If they were required to hold an oral hearing every time that they received an application for a driving licence, for example, the volumes of work would be completely unmanageable, making the entire public service overly-bureaucratic. In *Mooney v. An Post*,<sup>123</sup> for example, the Supreme Court concluded that the plaintiff had failed to show any justification for his claim that an oral hearing was required.

## 6. Credibility and Demeanor

The oral hearing, in international protection assessments, often serves as an opportunity for an applicant to address any inconsistencies that may have appeared in their written submission or application, and for the decision-maker to question the applicant with regard to any perceived inconsistencies or ambiguities.

In *S.U.N. (South Africa) v. Refugee Applications Commissioner*<sup>124</sup> the commissioner had recommended that the applicant not be declared a refugee because of a lack of credibility in the applicant's account, and further made a finding pursuant to s.13(6) of the Refugee Act<sup>125</sup> in the applicant's case, a s.13(6)(e) finding, that he is from a designated safe country of origin. The s.13(6) finding had the result that any appeal to the Refugee Appeals Tribunal would be without an oral hearing, a so-called papers-only appeal. Cooke J. held that because the applicant's case would stand or fall on personal truthfulness, and the commissioner's impression that the applicant had been dishonest, any appeal in the applicant's case would require an oral hearing to refute those findings.

Under the present regime, namely the Refugee Act 1996, a lack of oral hearing, as a result of a

<sup>121</sup> [1977] I.R. 267 (S.C.)

<sup>122</sup> See also: *Davey v. Financial Services Ombudsman* [2010] 3 I.R. 324 (S.C.)

<sup>123</sup> [1998] 4 I.R. 288 (S.C.)

<sup>124</sup> [2013] IEHC 338

<sup>125</sup> 1996 (as amended)

first instance decision, cannot be complained of when an applicant is seeking to judicially review an appeal stage decision, as the s.13(6) finding would have been applied at the first instance decision stage. In *N.E. v. Refugee Appeals Tribunal*<sup>126</sup> Noonan J. states: "it seems to me to be beyond argument that this issue cannot be raised in these proceedings."<sup>127</sup> There are instances where this may lead to unfairness, as an applicant is encouraged, because of the discretionary nature of judicial review, to exhaust other remedies and available appeals before applying to the High Court. This trend may now be changing as result of *S.U.N.*<sup>128</sup> and the decision of MacEochaidh J., in *P.D. v. Refugee Applications Commissioner*<sup>129</sup>, although the latter involved a challenge to other findings made by the commissioner and did not concern an oral hearing, the applicant succeeded in being granted leave to challenge a first instance decision where other remedies had not yet been exhausted.

As has already been stated, being heard does not necessarily require an oral hearing. Issues of concern can be put to an applicant in other manners, such as through legal representatives and by way of correspondence. Fairness of process requires, primarily, that the applicant be given the opportunity to respond to issues before the decision is made. This is interconnected with the requirement that an applicant be given prior notice of findings, or potential findings, to be made. An applicant usually has an opportunity to address issues in their application form or a notice of appeal, depending upon the nature of the decision. Nonetheless, if a decision-maker is to proceed to make additional findings against an applicant, natural and constitutional justice would require that they be on notice of those investigations and given an opportunity to respond, particularly if those issues are based upon the applicant not being believed in an aspect of their original application.<sup>130</sup>

Stewart J. exemplifies the points in *B.Y. (Nigeria) v. Refugee Appeals Tribunal*:<sup>131</sup>

<sup>126</sup> [2015] IEHC 8

<sup>127</sup> [2015] IEHC 8 at para. 14

<sup>128</sup> [1998] 4 I.R. 288 (S.C.)

<sup>129</sup> [2015] IEHC 111

<sup>130</sup> Notably, according to the ECJ, an applicant has the right to make comments on a draft decision before it is finalised: (Case C-2 77/2012 *MM v Minister for Justice and Law Reform* (22 November 2012)

<sup>131</sup> [2015] IEHC 60



It is accepted that the applicant being heard does not necessarily entail her being present at the appeal hearing. However, if the tribunal member is to effectively ignore and/ or abandon the findings made by the Commissioner and upon which the s.13(6)(b) decision was arrived at and then proceed to make further adverse credibility findings in respect of the applicant, it seems to me that natural and constitutional justice, fair procedure and *audi alteram partem* require that the applicant should be afforded the right to be heard and/or have an input into the process prior to the matter being determined.<sup>132</sup>

The judgment continues:

Clearly the applicant remains bound by the s.13(6)(b) finding and is confined to a paper-only appeal. It is not for this Court to direct the RAT as to how it should deal with the practicalities of the rehearing. It is a matter for the RAT to devise a mechanism to facilitate the applicant in having her views heard on the issues of concern to the tribunal member.<sup>133</sup>

If an appeal is to be conducted on a papers-only basis, then the superior courts have held that extreme care needs to be taken by the decision-maker in these cases. In *V.M. [Kenya] v. Refugee Appeals Tribunal*<sup>134</sup> Clark J. stated:

It is by now very well established that when considering a documents-only appeal, the standard required is of necessity one of extreme care as the Tribunal Member has no opportunity to form a personal impression of the applicant as at an oral hearing.<sup>135</sup>

The courts have not interfered with a finding that an applicant should not be afforded an oral hearing in such cases, particularly because of the legislative footing of the s.13(6) findings.<sup>136</sup> Clark J. stated in *V.M. [Kenya]*:

<sup>132</sup> [2015] IEHC 60 at para.32

<sup>133</sup> [2015] IEHC 60 at para.34

<sup>134</sup> [2013] IEHC 24

<sup>135</sup> [2013] IEHC 24 at para. 22

<sup>136</sup> See *M.O.O.S. v. Refugee Applications Commissioner & anor.* [2008] IEHC 399 where Birmingham endorsed McGuinness J.'s finding in *V.Z.* and further stated in the penultimate paragraph that "it is a matter for the Oireachtas to determine the scope and form of an appeal".

The Court is powerless at this remove to review or amend the Commissioner's finding that s. 13(6) of the Refugee Act 1996 applied on the facts relied on in the applicant's claim. The Court therefore looks with heightened vigilance at the process of the documentary appeal in circumstances where an appellant has no opportunity to appear and explain or expand on any perceived inconsistencies or deficits in his / her claim.<sup>137</sup>

Conversely, in *R. (Hammond) v. Secretary of State for the Home Department*<sup>138</sup> where English legislation provided that a matter should be dealt with without an oral hearing, the House of Lords concluded that they did have discretion to order such a hearing if it was necessary; although, this was held to be necessary to comply with the requirements of article 6 of the European Convention on Human Rights, and not solely *audi alteram partem*.

The Supreme Court of Canada in *Singh v. Canada*<sup>139</sup> stated that fundamental justice requires, in instances where credibility is at issue, an oral hearing be held but the absence of such an oral hearing would not automatically impugn the decision. Similarly, the Austrian Supreme Administrative Court has maintained that a lack of an oral hearing in asylum status determination constitutes a substantial denial of consideration of the evidence, if questioning the credibility either of evidence or of an applicant.<sup>140</sup>

The Supreme Court of the United States has been a champion of the oral hearing. In *Goldberg v. Kelly*<sup>141</sup>, Brennan J stated as follows:

[W]ritten submissions do not afford the flexibility of oral presentations, they do not permit the recipient to mould his argument to the issues the decision-maker appears to regard as important. Particularly where credibility and veracity are at issue, as they may be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision.<sup>142</sup>

<sup>137</sup> [2015] IEHC 60 at para.21

<sup>138</sup> [2006] 1 A.C. 603

<sup>139</sup> (1985) 17 D.L.R. (4<sup>th</sup>) 422

<sup>140</sup> Austria – Supreme Administrative Court, 21 April, 2015, Ra 2014/ 01/ 0154

<sup>141</sup> 397 US 254 (1970)

<sup>142</sup> 397 US 254 (1970) at 268-269

Although this approach is laudable, practical considerations for decision-making public bodies must be balanced. The US Supreme Court recognised this in *Goss v. Lopez*<sup>143</sup> where a student sought an oral hearing in regard to their suspension from high school and the court stated that “to impose in each case even truncated trial type procedures might well overwhelm administrative facilities”. However, day-to-day administrative matters cannot be equated with the decisions assigned to the jurisdiction of the Refugee Appeals Tribunal.

## 9. International Protection Act

Under the provisions of the Refugee Act 1996, the tribunal member is powerless to order a hearing where a s.13(6) finding had been applied by the commissioner. Even where a tribunal member might be of the view that the interest of natural and constitutional justice required an oral hearing, she has no jurisdiction to so order, nor the High Court on judicial review, for that matter.

The International Protection Act 2015 alters the regime as far as the tribunal’s ability to direct an oral hearing. Under s.42 of the 2015 act, and under the heading ‘oral hearing’, it provides as follows:

1. The Tribunal shall hold an oral hearing for the purpose of an appeal under section 41 where
  - a. subject to subsection (2), the applicant has requested this in the notice under section 41(2), or
  - b. it is of the opinion that it is in the interests of justice to do so.
2. a. An applicant may withdraw a request referred to in subsection (1)(a) by giving notice, which shall set out the reasons for the withdrawal, to the Tribunal not later than 3 working days before the hearing date.
  - b. The Tribunal, on receipt of a notice under paragraph (a), shall consider, having regard to the interests of justice, whether to hold an oral hearing.
3. Except where otherwise provided, an appeal may be determined without an oral hearing.

This is an expansion of the powers of the tribunal

<sup>143</sup> 419 US 565 (1975)

and the contentious issue of the s.13(6) findings may, perhaps, be resolved.<sup>144</sup> This section of the 2015 Act is yet to be commenced and its practical application and the tribunal’s use and interpretation of the power are a matter of the future. On its face, it appears that the tribunal would have the power to order an oral hearing even where an applicant has specifically opted for a papers-only appeal. It would seem unreasonable, in such those circumstances, to see how the interests of justice could be served by compelling an applicant to attend at an oral hearing. If an applicant does not wish to address issues at hearing then compulsion of an applicant in those circumstances would appear irrational.

It is not certain if the new statutory power might be invoked to compel an oral hearing. What is clear is that the power will exist, upon commencement, to order an oral hearing, in the interests of justice, where the right to be heard is a constitute element of natural and constitutional justice. Further, the s.13(6) findings, and the impositions of papers-only appeals at first instance, should be a thing of the past, thereby avoiding unfair appeal decisions and lengthy delays in an applicant receiving a fair opportunity to be heard in their international protection status decision.



<sup>144</sup> See, *inter alia*, *S.A. (Pakistan) v. Refugee Appeals Tribunal* [2016] IEHC 15; *B (Nigeria) v. Refugee Appeals Tribunal* [2015] IEHC 19; *S.K. v. Refugee Appeals Tribunal* [2015] IEHC 176

## The Protection of Vulnerable Asylum Seekers in Ireland



Luke Hamilton, Irish Refugee Council

### The Protection of Vulnerable Asylum Seekers in Ireland

#### 1. Introduction

*“Ireland has [...] a responsibility to protect vulnerable groups abroad and a responsibility to be a leader and build alliances to enhance the international response to such vulnerability.*

*... suffice to say that the current mass migration of peoples across the globe presents a profound challenge to the State. It also poses a challenge to the concept of vulnerability and our ability to respond as a global community.”<sup>145</sup>*

- Tanaiste & Minister for Justice - Francis Fitzgerald, 9<sup>th</sup> September 2016

Across all disciplines, the concept of vulnerability is garnering significant attention in international discourse and a substantial body of debate is emerging that seeks to ascertain the value of the notion.<sup>146</sup> Most recently, discussion of vulnerability

<sup>145</sup>Tanaiste & Minister for Justice - Francis Fitzgerald, Opening Address at the DCU Socio-Legal Research Centre 2<sup>nd</sup> Bicentennial Conference: State Accountability for Vulnerability, 9<sup>th</sup> September 2016, <http://www.justice.ie/en/JELR/Pages/State-Accountability-for-Vulnerability>

<sup>146</sup> For a (somewhat outdated) snapshot of literature of vulnerability in the context of policy, medical research, law, healthcare and bioethics, see Mary C Ruof, ‘Vulnerability, Vulnerable Populations, and Policy’ (2004) 14 Kennedy Institute of Ethics Journal 411. See also the work of Martha

has begun to take hold in international human rights law and practice. This is particularly salient as international attention has become fixated on this year’s unprecedented scale of global human displacement stemming from egregious human rights abuse. The word vulnerable has become intrinsically linked to refugees in media and commentary on the global refugee situation to such an extent that the two terms could almost be considered synonymous.

However, painting all refugees with the brush of vulnerability has been criticised as imposing an “institutional dependency” on the refugee or asylum seeker, labelling them as a group incapable of self-sufficiency.<sup>147</sup> Labelling has the potential to perpetuate stereotypes and strips people of their agency, individuality and capacity for self-development, which in turn can exacerbate existing vulnerability.<sup>148</sup> Furthermore, such a generalisation systematically ignores the basic fact that refugees, as a group in need of protection, are made up of individuals who each bear the burden of their respective traumas and may be in need of further, more specialised, assistance better suited to their particular needs. Lack of attention to these details can have a significant impact on the capacity of a person to engage with the asylum process, and a disregard for particular vulnerabilities can severely dampen the ability of those granted refugee status to effectively integrate into their host society and pursue a ‘normal’ life. It is clear, least of all from the ubiquitous references to vulnerability in media, policy and various legislative instruments, that an understanding of vulnerability is crucial for all stakeholders involved in procedural and substantive aspects of refugee status determination.

The Irish government has repeatedly affirmed its commitment to ensuring the protection of vulnerable persons within its international obligations, particularly in the context of the

Fineman, Anna Gear, Brian Turner to name some pioneering contemporary scholars on the subject of vulnerability.

<sup>147</sup> R. Black, “Livelihoods under Stress: A Case Study of Refugee Vulnerability in Greece” *Journal of Refugee Studies* Vol. 7, No. 4 [1994] p. 360

<sup>148</sup> Fineman, M., ““Elderly” as Vulnerable: Rethinking the Nature of Individual and Societal Responsibility” *The Elder Law Journal*, Vol. 20, p.85; D. Marion & P. Donald, *Health Policy, Vulnerability, and Vulnerable Populations*, *Ethical Dimensions of Health Policy*, ed. D. Marion et al, New York: Oxford University Press [2002] p. 320.

ongoing refugee crisis.<sup>149</sup> This essay will provide a cursory examination of the extent to which this commitment is reflected domestically in law and practice. By first sketching out a broad picture international legal framework for the protection of vulnerable asylum seekers, the following paragraphs will assess whether or not vulnerability has a role in Irish refugee protection decision making and highlight gaps or areas of concern with regards to vulnerable persons, keeping in mind the imminent commencement of Ireland's International Protection Act, signed into law at the end of 2015.<sup>150</sup>

## 2. The International Legal Framework for Protection of Vulnerable Asylum Seekers

### 2.1 International Refugee Protection and Vulnerability

The United Nations High Commissioner for Refugees (UNHCR), the agency tasked with governing states' implementation of the Refugee Convention, has the mandate to provide guidance on the interrelationship between international human rights standards and refugee protection. This is clearly demonstrated in their body of international protection guidelines and other soft law documents, where there are frequent references to the particular vulnerability of certain categories of asylum seekers and refugees.

The vulnerability of children (especially unaccompanied or separated children) is highlighted in the context of trafficking, forced military service and in guidelines specifically dealing with asylum claims of children.<sup>151</sup> The vulnerability of other groups is raised in relation to particular circumstances, such as the vulnerability

<sup>149</sup> The Irish Times, Giant postcard urges Government to honour refugee promise, September 14<sup>th</sup> 2016, <http://www.irishtimes.com/news/ireland/irish-news/giant-postcard-urges-government-to-honour-refugee-promise-1.2790611>; Herald, State took in only 311 refugees despite vow to welcome 4,000 (September 8<sup>th</sup> 2016) <http://www.herald.ie/news/state-took-in-only-311-refugees-despite-vow-to-welcome-4000-35031362.html>; Breaking News, Tánaiste agrees to accept more refugees into Ireland (July 6<sup>th</sup> 2016) <http://www.breakingnews.ie/ireland/tanaiste-agrees-to-accept-more-refugees-into-ireland-743525.html>

<sup>150</sup> Department of Justice and Equality, The International Protection Act 2015, <http://justice.ie/en/JELR/Pages/The%20International%20Protection%20Act%202015>

<sup>151</sup> UNHCR Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 22<sup>nd</sup> September 2009, paras 4, 7, 15, 18, 59.

of women, girls, religious groups, and ethnic and racial minority refugees to human trafficking.<sup>152</sup> Similarly, states are encouraged to take account of vulnerability in their assessment of an internal flight alternative<sup>153</sup> or potential exclusion from refugee status.<sup>154</sup> In its guidelines on alternatives to detention, UNHCR calls on states to pay particular attention to the "specific situation of particular vulnerable groups such as children, pregnant women, the elderly, or persons with disabilities or experiencing trauma."<sup>155</sup> These guidelines are reaffirmed in the UNHCR's refugee status determination (RSD) procedural standards document, which sets among its core standards that "Procedures should be in place to identify and assist vulnerable asylum seekers", and that "All aspects of the RSD procedures must be consistent with established UNHCR policies relating to confidentiality, standards of treatment of vulnerable asylum seekers and gender and age sensitivity."<sup>156</sup> UNHCR maintains that vulnerable applicants may require special assistance at any or all stages of RSD and designates that such groups might encompass: persons manifestly in need of international protection; victims of torture/trauma; women with special needs; certain child applicants (particularly unaccompanied/separated children); elderly or disabled asylum seekers and asylum seekers with medical requirements.<sup>157</sup>

### 2.2 Vulnerability in European and European Union Asylum Law

Despite a marked increase in the use of vulnerability language in EU and European legislation and jurisprudence, such practice does not appear to be guided by a common framework

<sup>152</sup> UNHCR Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, 7<sup>th</sup> April 2006, paras. 4, 20, 31, 32, 36, 38, 40.

<sup>153</sup> UNHCR, Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/03/04, 23<sup>rd</sup> July 2003, paras. 25

<sup>154</sup> UNHCR Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/05, 4<sup>th</sup> September 2003, para. 28.

<sup>155</sup> UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012) para 39, p. 23.

<sup>156</sup> UNHCR, Refugee Status Determination under UNHCR's Mandate, p. 2 <http://www.unhcr.org/4317223c9.pdf>

<sup>157</sup> *ibid.* p. 22



of understanding of the concept. The European Court of Human Rights seems to have embraced the concept of “vulnerable groups” in order to compensate for human rights exclusions faced by so-called “out-groups.”<sup>158</sup> These groups have included ethnic minorities, such as Roma,<sup>159</sup> people living with HIV,<sup>160</sup> people with mental disabilities<sup>161</sup> and asylum seekers.<sup>162</sup> In many of these cases, the Court refers to standards established in international human rights mechanisms, as well as UNHCR guidelines (in the case of asylum seekers), to support their judgements.<sup>163</sup> The widely-debated *M.S.S v. Belgium and Greece* case broadened the scope of the ECtHR’s application of vulnerability to encompass vulnerability “inherent in his [the applicant’s] situation as an asylum seeker,” which it described as a “particularly underprivileged and vulnerable population group in need of special protection.”<sup>164</sup> The vulnerability determination in this case, was a significant contributing factor to a finding of violations of Article 3 and Article 13 of the European Convention on Human Rights. In his partially dissenting opinion, Judge Sajó criticised the vulnerability reasoning used in this case as it strayed from the court’s traditional application of vulnerability to groups “historically subject to prejudice with lasting consequences, resulting in their social exclusion.”<sup>165</sup> His concern is well-founded, as asylum seekers cannot be considered a socially homogenous group (with regards to a history of discrimination, unlike Roma or people living with HIV who have a well-documented history of stigma due to a shared characteristic) but his interjection highlights the court’s struggle with the development of consistent approach to vulnerability, despite the clear protective force behind the concept. This tension raises some questions. Should the court adhere to a single approach to vulnerability, like that linking vulnerability specifically to groups with a history of prejudice? Would such an approach

not exclude non-homogenous groups who might be in need of special protection? What about individual members of a social group who might have vulnerabilities particular to their circumstances and not aligned with the status of the group as a whole? Post-*M.S.S* cases demonstrate the court’s difficulty distinguishing between group and individual vulnerability and whether or not these are two mutually exclusive concepts. If the court recognises that vulnerability is inherent in the asylum seeker’s status, then it holds that vulnerability would play some sort of role in subsequent cases involving this group. However, practice has been inconsistent, with some cases involving asylum seekers relying heavily on vulnerability as set out in *M.S.S*<sup>166</sup> and others not mentioning vulnerability at all.<sup>167</sup> There is clearly value in an approach to vulnerability that goes beyond rigid group categorisations but such value can only be relied upon when the court’s practice is informed by a consistent framework of understanding, which at the moment seems to be absent.

The EU’s international protection framework, the Common European Asylum System (CEAS), seems to identify within the asylum seeker group those applicants who are individually vulnerable on account of requiring special assistance to facilitate their full engagement with the asylum process. The recast Reception Conditions Directive (RCD), for example, has a section wholly dedicated to outlining provisions for vulnerable asylum seekers and gives arguably the most comprehensive consideration to vulnerability of all instruments of the EU asylum acquis. Of particular note, Article 21 provides a list of “vulnerable persons” to whom Member States should pay particular heed to in their implementation of the directive.<sup>168</sup> For the purposes of determining whether or not an asylum seeker is granted access to the content of international protection, the recast Qualifications Directive (QD) encourages the state to take into account the “specific situation of vulnerable persons” and provides that extra guarantees “shall apply only to persons found to have special needs after an individual evaluation of their

<sup>158</sup> Lourdes Peroni and Alexandra Timmer, ‘Vulnerable Groups: The promise of an emerging concept in European Human Rights Convention Law’ (2013) 11(4) IJCL, p. 1062

<sup>159</sup> ECtHR [GC], no. 27238/85, 18 January 2001 (Chapman v. the United Kingdom)

<sup>160</sup> ECtHR, no. 2700/10, 2011 (Kiyutin v. Russia)

<sup>161</sup> ECtHR, no. 38832/06, 20 May 2010, (Alajos Kiss v. Hungary)

<sup>162</sup> ECtHR no. 30696/09, 2011, (M.S.S. Belgium and Greece)

<sup>163</sup> e.g. ECtHR [GC], no. 57325/00, 2007 (D.H. and others v. the Czech Republic), para. 182; ECtHR, no. 38832/06, 20 May 2010, (Alajos Kiss v. Hungary) para. 44; ECtHR no. 30696/09, 2011, (M.S.S. Belgium and Greece) para. 251

<sup>164</sup> *M.S.S v. Belgium and Greece*, paras. 233 and 251, respectively.

<sup>165</sup> *M.S.S v. Belgium and Greece*, Partly Concurring and Partly Dissenting Opinion of Judge Sajó

<sup>166</sup> e.g. ECtHR, no. 60125/11, 7<sup>th</sup> July 2015 (V.M v Belgium); ECtHR, no. 29217/12 4<sup>th</sup> November 2015 (Tarakhel v. Switzerland)

<sup>167</sup> e.g. ECtHR, no. 41872/10, 23 July 2013 (M.A. v. Cyprus)

<sup>168</sup> Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, Art. 21.

situation.”<sup>169</sup> Similarly, the recast Asylum Procedures Directive (APD) sets out that some applicants might have difficulty engaging with the asylum process due to their “individual circumstances” and as such confers an obligation on Member States to provide special procedural guarantees.<sup>170</sup> Again, this directive lists certain applicants who might require special procedural guarantees, which should be taken as an illustrative list of potentially vulnerable persons, rather than an exhaustive definition.<sup>171</sup>

As positive as it is that the various directives of the CEAS call for states to address the “special needs” of “vulnerable persons”, such provision is significantly weakened by the absence of either a requirement on states to identify vulnerability at the earliest possible stage in the process, or any guidance as to what a potential identification mechanism might look like. Additionally, while the inclusion of illustrative lists of those who might be considered vulnerable (and the expansion of these lists with the subsequent recast directives to account for “new” vulnerabilities), without any framework or criteria provided to explain how such lists were compiled, or why new groups were added in subsequent iterations of the instruments, such lists ultimately seem arbitrary. As such, without a conceptual framework or mechanism for identification of vulnerability, it may be difficult for States to recognise the vulnerability of those not explicitly laid down in lists but whose needs may nonetheless be as urgent.

### 3. Vulnerability in the Irish International Protection System

Vulnerability clearly carries significant weight in human rights protection, however international bodies and courts are currently struggling to develop a consistent approach to the newly emerging concept. In the context of the conceptual fuzziness surrounding vulnerability,

<sup>169</sup> 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), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, Art. 20.

<sup>170</sup> 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), 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, Art. 2 (d)

<sup>171</sup> *ibid.*, Art. 15 (3)(a)

this section will provide an overview of the extent to which vulnerability plays a part in the Irish asylum system.

Ireland’s first and primary legislative tool dealing with asylum law is the Refugee Act 1996. However, within years of its commencement in 2000, substantial cracks began to emerge in its capacity to facilitate international protection effectively and in line with international standards. The Irish system’s inefficiency is linked particularly to a procedure that is wrought with lengthy delays arising out of an illogical two-pronged protection application process. Ireland’s system is unique in the EU<sup>172</sup> in that it requires applicants to exhaust the refugee application procedure first, before they may apply for subsidiary protection (a status granted to those who do not meet the strict criteria for the refugee definition set out in the refugee convention).<sup>173</sup> In other states, these processes are carried out concurrently. A dual-system effectively doubles the length of time some asylum seekers spend in the system. As a consequence, asylum seekers are required to spend an average of three to four years living in the Direct Provision system, giving rise to a wide number of concerns, which have drawn attention by human rights bodies both domestic<sup>174</sup> and international.<sup>175</sup> Indeed, the Advocate General in his opinion in the *MM* case described the extended length of time spent by the applicant (two years and three months) in the system as “manifestly unreasonable.”<sup>176</sup> The mounting pressure building around the indefensible delays in the Irish system led to the drafting of the International Protection Act 2015, passed on 18<sup>th</sup> December 2015 before being quickly signed into law on 30<sup>th</sup> December 2015.

<sup>172</sup> With the exception of Denmark, however, asylum seekers are at least entitled to work after a period in the Danish system, whereas in Ireland they are not.

<sup>173</sup> Asylum Information Database, Country Report: Ireland (November 2015) pp. 13-14

<http://www.asylumineurope.org/reports/country/republic-ireland>

<sup>174</sup> Irish Human Rights and Equality Commission, Policy Statement on the System of Direct Provision in Ireland, 10<sup>th</sup> December 2014, available here:

[https://www.ihrec.ie/download/pdf/ihrec\\_policy\\_statement\\_on\\_direct\\_provision\\_10dec14.pdf](https://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf)

<sup>175</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Ireland, UN Doc. A/HRC/19/9 (21 December 2011), para. 102. Available here: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-9\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-9_en.pdf)

<sup>176</sup> *MM v Minister for Justice and Equality Case (C-277/11)*, Opinion of Advocate General Bot delivered on 26<sup>th</sup> April 2012

As of time of writing, the act is not yet in force.<sup>177</sup> However, an overview of the provisions contained therein affirm pre-existing warnings that a single-procedure would not act as a panacea for the problems inherent in the original system. Both the recommendations of a government working group that was convened to guide the development of the new legislation,<sup>178</sup> as well as independent analyses of the bill by civil society organisations,<sup>179</sup> drew attention to areas of concern in the Act. Given the convoluted and somewhat troubled evolution of Irish asylum legislation and intense scrutiny/criticism of the new Act before it has even come into force, it is worth examining how this system treats vulnerable applicants, who will be among the first to suffer should gaps begin to emerge.

### 3.1 Identification of Vulnerable Asylum Seekers

From the point of entry to the State, vulnerability can have a severe impact on an asylum seeker's capacity to engage with the asylum process. As such, identification of a person's particular needs, at the earliest possible stage in the procedure, is a crucial component of a fair and effective asylum system. UNHCR's procedural guidelines state that "reception and registration procedures should include measures to identify asylum seekers who may have special needs as early as possible in the RSD process" and urges decision makers to be conscious that "vulnerability or special needs of asylum seekers... more commonly, do not become known... until a later stage in the RSD process."<sup>180</sup>

In Ireland, the Refugee Act 1996 contains a single provision calling for the identification of vulnerable persons, which focuses specifically on unaccompanied children and doesn't actually use

<sup>177</sup> Section 1 (2) of the International Protection Act provides that "This Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions."

<sup>178</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report (June 2015) Available at: <http://bit.ly/1LSZc6j>

<sup>179</sup> See, for example: Irish Refugee Council Recommendations on the International Protection Bill 2015 (November 2015) Available here:

<http://www.irishrefugeecouncil.ie/wp-content/uploads/2015/11/IRC-Recommendations-on-International-Protection-Bill-2015-Final.pdf>

<sup>180</sup> UNHCR Refugee Status Determination Procedural Guidelines, p. 22

the word "vulnerable."<sup>181</sup> There is no requirement to identify other categories of applicant who might have special needs elsewhere in the text. The International Protection Act 2015 improves on its predecessor, somewhat, in that it includes in Section 58 provision for the "Situations of Vulnerable Persons" and even enumerates a list of potentially vulnerable persons, "such as persons under the age of 18 years (whether or not accompanied), disabled persons, elderly persons, pregnant women, single parents with children under the age of 18 years, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence."<sup>182</sup> However, consideration is only to be given to vulnerable persons "in the application of sections 53 to 57" of the Act, which relates to the *content* of international protection. In other words, regard to vulnerability is only required in the case of those who have been granted refugee or subsidiary protection status. Despite recommendations from national NGOs<sup>183</sup> and the government's working group itself,<sup>184</sup> there is no obligation in the new Act for vulnerability to be taken into account at any stage during refugee status determination procedures, a significant barrier to early identification of special needs.

Such omission is unfortunate and dampens the protective force of Section 58 of the new act. Failure to identify and address the needs of vulnerable persons as early as possible in the RSD process inevitably hinders their capacity to engage fully with the process and may lead to an erroneous denial of protection status. The provisions for protection of vulnerable persons with refugee status contained in Section 58 are rendered obsolete if persons are being denied status due to the fact that such vulnerabilities are not being recognised in the first place. Further, erroneous negative first instance decisions can lead to appeals, an unnecessarily prolonged procedure or potentially *refoulement* – at significant financial cost to the state and unacceptable human cost to the asylum seeker. This is at odds with most other EU Member

<sup>181</sup> Refugee Act 1996, Section 5 (a)

<sup>182</sup> International Protection Act 2015, Section 58 (1)

<sup>183</sup> Irish Refugee Council Recommendations on the International Protection Bill 2015 (November 2015); SPIRASI, Statement on Publication of the International Protection Bill (20 November 2015) Available here: <https://www.scribd.com/document/290526769/Statement-on-Publication-of-the-International-Protection-Bill>

<sup>184</sup> Working Group Report, pp. 126 - 129



States, who are beholden to the identification provisions contained in the CEAS, primarily the recast APD and RCD, which Ireland has opted out of.<sup>185</sup>

### 3.2 Procedural Guarantees for Vulnerable Asylum Seekers

While consideration of vulnerable persons who have been granted protection is a welcome addition to the International Protection Act, its value is diminished by the lack of similar provisions in the context of the actual asylum procedure itself. The EU framework sets out what such procedural safeguards might look like, notwithstanding the fact that Ireland has opted out of the relevant directives. The Qualification Directive states that applications should be reviewed on an individual basis and should take into account, inter alia, “the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm.”<sup>186</sup>

This language is reflected in Section 28 of the International Protection Act 2015.<sup>187</sup> However, the obligation on the international protection officer is not linked directly to identification of vulnerability. Furthermore, in order to address vulnerability in the asylum process, decision makers must be equipped with the requisite skills and sensitivity that would allow them to effectively take account of vulnerability in their determination. The recast APD calls on Member States to “ensure that the personnel of the determining authority ... are properly trained” and that “[p]ersons interviewing applicants ... shall have acquired general knowledge of problems which could adversely affect the applicants’ ability to be interviewed.”<sup>188</sup> To this end, Member States should “ensure that the person who conducts the interview is competent to take account of the ... applicant’s... vulnerability.”<sup>189</sup> By way of guidance for member states, the APD links to the training obligations contained in the EASO Regulation, particularly Article 6 (b), which calls for training on “issues related to the handling of asylum applications

from minors and vulnerable persons with specific needs.”<sup>190</sup>

While these obligations are not transposed into Irish legislation, the Office of the Refugee Applications Commissioner (ORAC) indicated during the protection working group proceedings that it includes as part of its training for interviewers “modules on how to deal with vulnerable and child applicants; particular aspects of the training provided on interview techniques and procedures address how to cater to vulnerable applicants.”<sup>191</sup> Furthermore, ORAC accepts training from UNHCR and NGOs with relevant experience in the needs of vulnerable asylum seekers.<sup>192</sup> However, there is no way to discern the impact of such good practice on the quality of procedures due to its ad hoc nature and without any legislative basis, there is no obligation on the State to continue to provide specially tailored training in the future, or to evaluate the impact of existing training modules.

### 3.3 Reception Conditions for Vulnerable Persons

Those who apply for asylum in Ireland are accommodated under the system of Direct Provision, managed by the Reception and Integration Agency, which is an administrative division of the Department of Justice. Direct Provision has no statutory basis and it was initially conceived as a short-term solution to accommodate asylum seekers and provide them with food, board and basic necessities for no longer than six months.<sup>193</sup> However, due to significant delays in the system, as outlined earlier, most people spend an average of three years in Direct Provision and in some cases more than seven years.<sup>194</sup> Direct Provision has raised major human rights concerns and the toll that it takes on its residents has been well documented by NGOs, legal practitioners, experts and international bodies,<sup>195</sup> so one can assume that

<sup>190</sup> Regulation (EU) No. 439/2010 of the European Parliament and of the Council of May 19<sup>th</sup> 2010 establishing a European Asylum Support Office, Art. 6 (b)

<sup>191</sup> Working Group Report, p.130, para 3.295, 128

<sup>192</sup> *ibid*, p. 128, para. 3.295

<sup>193</sup> Liam Thornton, ‘Social Welfare Law and Asylum Seekers in Ireland: An Anatomy of Exclusion’ [2013] 20 (2) *Journal of Social Security Law* 24, p. 33

<sup>194</sup> Irish Refugee Council, *Direct Provision: Framing an alternative reception system for people seeking international protection* (2013) p. 16. Available here:

[http://www.irishrefugeecouncil.ie/wp-content/uploads/2013/12/DP\\_Report\\_New-Font.pdf](http://www.irishrefugeecouncil.ie/wp-content/uploads/2013/12/DP_Report_New-Font.pdf)

<sup>195</sup> Some recent examples include: Keelin Barry, *What’s Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision* (2014); Samantha Arnold, *State*

<sup>185</sup> European Commission proposal to reform the Common European Asylum System (CEAS), European Migration Network, see footnotes 2 & 4 (April 2016) Available here: [http://emn.ie/index.jsp?p=100&n=105&a=2437#\\_ftnref4](http://emn.ie/index.jsp?p=100&n=105&a=2437#_ftnref4)

<sup>186</sup> Qualifications Directive, Art 4 (3)(c)

<sup>187</sup> International Protection Act 2015, Section 28, Art. 4 (c)

<sup>188</sup> Asylum Procedures Directive, Article 4 (3)

<sup>189</sup> Asylum Procedures Directive, Article 15 (3)(a)



the situation is particularly stark for vulnerable residents with special needs.

As mentioned already, Ireland is not party to the RCD and there is no mention of Direct Provision, nor of reception conditions more generally, either in the Refugee Act 1996 or the new International Protection Act 2015. Furthermore, as we have seen, there is no domestic obligation on the Irish authorities to consider the special needs of vulnerable asylum seekers throughout any of the asylum procedure, let alone in terms of accommodation. As such, there is no legislative framework for identifying and assessing the special reception needs of vulnerable asylum seekers (with the sole exception of unaccompanied minors, who are accommodated in foster care until they turn 18). It is standard practice for all asylum seekers to have access to a general practitioner or psychologist for health screening upon arrival, which may influence the person's subsequent transfer to a Direct Provision centre elsewhere in the country (i.e. to be near appropriate medical facilities) under the dispersal system, whereby asylum seekers are transferred throughout the country after their initial registration. Despite claims from civil society that the practice of dispersal is unfair and doesn't take into account special needs, the Reception and Integration Agency has maintained that "it seeks to respond to the various changes in circumstance or need which arise from the 'life changes' which occur within any individual or family unit."<sup>196</sup> The government working group, in advance of the passing of the International Protection Act 2015, recommended that the initial

health screening be replaced by a more robust process that facilitates a multidisciplinary needs assessment, which has unfortunately not come to pass.<sup>197</sup>

Children are in a particularly precarious position in Direct Provision. The Special Rapporteur on Child Protection has raised numerous concerns in relation to children's experiences in Direct Provision, particularly in relation to the close-quarters sleeping environments with parents (and other residents) and the long-term damage caused to children who have spend several years in the system.<sup>198</sup> The Health Information and Quality Authority, in May 2015, published a report on child protection and welfare services provided to children in Direct Provision, expressing "grave concern" about the fact that 14% of children living in Direct Provision had been referred for child protection concerns (as opposed to 1.6% of the general child population.)<sup>199</sup> Among concerns raised included referrals made on the basis of the parents' physical or mental illness hindering their capacity to care for the child, exposure to domestic violence and abuse and inappropriate contact by adults towards children living in the same centre.<sup>200</sup>

Life in Direct Provision can exacerbate existing vulnerability or give rise to entirely new vulnerabilities, brought on by numerous factors associated with prolonged accommodation in Direct Provision, such as poor integration-supports, lack of access to appropriate facilities or support networks for medical or psychological treatment, inability to work or pursue further education and a lack of consideration given to cultural or religious requirements.<sup>201</sup> Special facilities for traumatised asylum seekers or victims of sexual violence are extremely limited or non-existent. The Rape Crisis Network Ireland, in a 2014 report on sexual violence experienced by asylum seekers and refugees, found that Direct

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Sanctioned Child Poverty and Exclusion: The case of children in State accommodation for asylum seekers (2012); Salome Mbugua, *Am Only Saying It Now: Experiences of Women Seeking Asylum in Ireland* (2010); Emily O'Reilly, 'Dealing with Asylum Seekers: Why Have We Gone Wrong?' 102(406) *Studies Magazine* 1, (2013); Irish Refugee Council, *Direct Provision: Framing an alternative reception system for people seeking international protection* (2013); Liam Thornton, 'Social Welfare Law and Asylum Seekers in Ireland: An Anatomy of Exclusion' [2013] 20 (2) *Journal of Social Security Law* 24; Liam Thornton, 'Direct Provision and the Rights of the Child in Ireland' (2014) 17 (3) *Irish Journal of Family Law* 67-75; FLAC, *Our Voice, Our Rights: a parallel report in response to Ireland's Third Report under the International Covenant on Economic, Social and Cultural Rights* (2014); Sue Conlan, *Counting the Cost: Barriers to employment after direct provision*, (2014); Muireann Ni Raghallaigh, Maeve Foreman, Maggie Feeley, *Transition from Direct Provision to Life in the Community – the experiences of those who have been granted refugee status, subsidiary protection or leave to remain*, (2016)

<sup>196</sup> Corona Joyce and Emma Quinn, *The Economic and Social Research Institute, 'The Organisation of Reception Facilities for Asylum Seekers'* (February 2014) p. 14

<sup>197</sup> Working Group Report, para 46, p. 21

<sup>198</sup> Geoffrey Shannon, 'Fifth Report of the Special Rapporteur on Child Protection a Report Submitted to the Oireachtas, 2011 Report' p. 13. Available here: <http://www.dcy.gov.ie/documents/publications/5RapporteurRepChildProtection.pdf>

<sup>199</sup> HIQA, 'Findings of HIQA Inspection of the child protection and welfare services provided to children living in direct provision raises serious concerns' (25 May 2015) p. 3. Available here: <https://www.hiqa.ie/press-release/2015-05-25-findings-hiqa-inspection-child-protection-and-welfare-services-provided-chi>

<sup>200</sup> *ibid*

<sup>201</sup> Irish Refugee Council, 'Direct Provision and Dispersal: Is there an alternative?' Report prepared for the NGO Forum on Direct Provision (2011), p. 7 available at: <http://bit.ly/1InP4VP>

Provision not only exacerbated trauma experienced by survivors but also left individuals vulnerable to new incidences of sexual violence and called for immediate provision of psychosocial support for victims and for the establishment of women-only centres.<sup>202</sup> Further, a number of reports revealed that people in Direct Provision sometimes engage in precarious work, or become victim to sexual exploitation as a means of supplementing their meagre income allowance of €19.10 a week.<sup>203</sup>

Despite the fact that Ireland's new protection legislation calls for consideration of vulnerability once a person is granted status, the damage caused during the prolonged asylum procedure is done by the time that occurs. As a consequence, many have difficulty restarting their life in the transition out of Direct Provision. A recent report documenting the experiences of refugees as they attempt this transition demonstrates that many years spent devoid of autonomy has left them "ill prepared mentally, economically or in terms of cultural awareness and vital social links" for navigating life outside of the institutionalised environment of Direct Provision.<sup>204</sup> Indeed, some people remain in Direct Provision for a significant period of time after obtaining their status, due to practical difficulties such as obtaining enough money for a rent deposit. Such difficulties are heightened for persons suffering from trauma and mental health issues "who are more likely to be socially isolated and not linked in with support organisations [and] can remain where they are in DP for long periods, without the necessary knowledge and support to begin to navigate the system."<sup>205</sup> Needless to say, calls for the government to address the deficiencies inherent in Direct Provision are resounding, particularly when considered in tandem with the disadvantage already faced by the most vulnerable people in the asylum process. "Given Irish society's past

practices of institutionalisation and confinement of vulnerable groups," the plight of vulnerable persons in Direct Provision is particularly poignant and confers a particular responsibility on the government to respond.<sup>206</sup>

#### 4. Conclusions

In the context of the current "refugee crisis", Ireland has repeatedly affirmed its commitment to the protection of vulnerable people internationally. The Irish State, despite a 'slow start' is determined to take in 4000 refugees as pledged under the EU resettlement and relocation quotas.<sup>207</sup> If Ireland is to demonstrate sincerity in its commitment to vulnerable people internationally, this should be reflected in our treatment of those people domestically and not just mere linguistic flourish to save face in the spotlight of a humanitarian crisis.

International standards and practice at the European level show that vulnerability is much more than simply a label – it carries real protective weight in human rights protection and refugee status determination. However, in Ireland, some key provisions for the protection of vulnerable asylum seekers are missing. There are no provisions for the early identification of vulnerable asylum seekers (with the exception of unaccompanied children); there is no legislative basis for ensuring procedural safeguards for vulnerable asylum seekers and good practice in this area is on an ad hoc basis, and the reception system for asylum seekers has actually been shown to *exacerbate* vulnerability, when it should be facilitating recovery from trauma and persecution.

The International Protection Act 2015 has been pushed forward as the solution to the myriad issues inherent in the current system. However, a single procedure is not a cure-all for existing problems, particularly for vulnerable asylum seekers who may require procedural and substantive safeguards in order to navigate the complex asylum process, regardless of the length of time spent in that process. A steadfast and

<sup>202</sup> Rape Crisis Network Ireland, Asylum Seekers and Refugees Surviving On Hold – sexual violence disclosed to Rape Crisis Centres (October 2014) p. 23. Available here: <http://www.rcni.ie/wp-content/uploads/RCNI-Asylum-Seekers-and-Refugees-Surviving-on-Hold.pdf>

<sup>203</sup> Asylum Information Database: Ireland Country Report, p. 68

[file:///Users/user/Downloads/aida\\_ie\\_update.iv\\_%20\(1\).pdf](file:///Users/user/Downloads/aida_ie_update.iv_%20(1).pdf)

<sup>204</sup> Muireann Ni Raghallaigh, Maeve Foreman, Maggie Feeley, Transition from Direct Provision to Life in the Community – the experiences of those who have been granted refugee status, subsidiary protection or leave to remain, (2016) p. 29 [http://www.irishrefugeecouncil.ie/wp-content/uploads/2016/07/Transition-from-Direct-Provision-to-life-in-the-community\\_M-NiRaghallaigh\\_M-Foreman-et-al-2016.pdf](http://www.irishrefugeecouncil.ie/wp-content/uploads/2016/07/Transition-from-Direct-Provision-to-life-in-the-community_M-NiRaghallaigh_M-Foreman-et-al-2016.pdf)

<sup>205</sup> *ibid*, p. 43

<sup>206</sup> Comment by Dr Liam Thorton marking the 15 year anniversary of Direct Provision, see: Irish Refugee Council, Human Rights in Ireland marks 15 years of the system of direct provision in Ireland, 10 April 2015, available at: <http://bit.ly/1IPVhW7>;

<sup>207</sup> The Irish Times, Francis Fitzgerald regrets 'slow start' on migrant resettlement, September 20<sup>th</sup> 2016, Available at: <http://www.irishtimes.com/news/politics/frances-fitzgerald-regrets-slow-start-on-migrant-resettlement-1.2797493>

obvious solution would be for Ireland to sign up to the recast CEAS instruments, which would require transposing such safeguards directly into domestic legislation. Unfortunately, with the new act due for commencement in the near future, this doesn't seem like a realistic possibility any time soon. However, there will surely be opportunities for strategic litigation further down the line. Vigilance on the part of legal representatives and those working with vulnerable asylum seekers, combined with targeted research initiatives that explore gaps in the new legislation, can ensure that these issues remain on the agenda and can be effectively addressed when the opportunity arises.

## The Oromo Crisis in Ethiopia: RDC Researcher David Goggins investigates.



David Goggins, Refugee Documentation Centre

### Background

The Federal Democratic Republic of Ethiopia is Africa's oldest independent country. The country was ruled by the Emperor Haile Selassie from 1916 until 1974, when he was overthrown by a Soviet-backed Marxist military junta known as the Derg. The Derg remained in power for the next 17 years, a period known as the Red Terror. During this time an estimated half a million people were thought to have died as a result of the regime's actions. The Derg was finally ousted in 1991 by a coalition of rebel forces dominated by the Tigray People's Liberation Front (TPLF). The TPLF reinvented itself as the Ethiopian People's Revolutionary Democratic Front (EPRDF) and has remained in power for the past 25 years. During this time there have been 5 elections, the most recent of which was in 2015, when the EPRDF and its allies won all 547 seats.<sup>208</sup> There were claims from the opposition that this was not a fair and free election, with Freedom House claiming that:

"Opposition party members were intimidated, detained, beaten and arrested in the run-up to the polls."<sup>209</sup>

Human Rights Watch saw this result as a cause for concern, saying:

<sup>208</sup> The Guardian (22 June 2015) Ethiopia's ruling party wins by landslide in general election

<sup>209</sup> Freedom House (14 July 2016) Freedom in the world 2016 - Ethiopia



“Elections where a ruling party wins 100 percent of the seats in parliament should always ring alarm bells. Results in Ethiopia from the May 24 general election, released yesterday, are no exception. According to Ethiopia’s National Electoral Board, the ruling Ethiopian People’s Revolutionary Democratic Front (EPRDF) coalition won 546 parliamentary seats (with the 547th seat still to be announced). The results shouldn’t be seen as a stamp of approval for Prime Minister Hailemariam Desalegn’s government – rather they are the inevitable outcome of a political system in which opposition parties face extraordinary challenges and nearly all avenues for citizens to engage in political debate are closed.”<sup>210</sup>

### **An Unrepresented People?**

As a result of their success in defeating the Derg regime the Tigray have dominated Ethiopian politics for the past 25 years despite actually being a minority ethnic group. The largest group is the Oromo, who constitute at least 35% of the population, as explained in an Al Jazeera article by Awol K Allo, a Fellow in Human Rights at the London School of Economics and Political Science, who refers to the ethnic composition of Ethiopia as follows:

“According to the 2007 Ethiopian National Census, Oromo constitute 34.49 percent of the population while Tigray, the politically dominant ethnic group, represents 6.07 percent of the total population. The real figure for the Oromo people is much higher. By virtue of being a majority ethnic group, Oromos represent an existential threat to the legitimacy of ethnic Tigrayan rule and therefore have to be policed and controlled to create an appearance of stability and inclusiveness.”<sup>211</sup>

Dr Allo has also published an article in African Arguments in which he states:

“Ethiopia is an assemblage of diverse ethnic and cultural groups. But historically, up to around the 1970s, ‘Greater Ethiopia’ pursued a policy of ethnic homogenisation in which Amhara identity became the identity par excellence, pushing others to the periphery. In particular, the Oromos, the country’s largest ethno-national group, were

not treated as equal partners and did not have influence commensurate with their demographic, geographic, and economic contribution. These asymmetries helped fuel the historic antagonism between the two groups.”<sup>212</sup>

### **Protesting against the Master Plan**

Oromo resentment at what they perceived to be a lack of representation by a non-Oromo government was greatly exacerbated by the introduction of the so-called Addis Ababa Master Plan. In 2012 the government unveiled a project to develop the city of Addis Ababa, which is completely surrounded by the Oromia region. This plan involved seizing land in Oromia and forcibly removing millions of Oromo farmers, which would have benefited Tigrean real-estate developers while reducing the farmers to the status of unskilled workers. Unsurprisingly, the Oromo were bitterly opposed to this plan and protested against it.

Human Rights Watch explained the motivation behind these protests as follows:

“Protesters fear the expansion will further displace Oromo farmers without consultation or adequate compensation. Addis Ababa has already experienced significant growth over the past 10 years, resulting in significant displacement of Oromo farmers from land around the city. On the rare occasions that authorities have provided compensation, the funds are usually inadequate to make up for lost livelihoods and farmers rarely receive alternate land. There is little recourse for the losses in courts or other institutions.”<sup>213</sup>

A Deutsche Welle report on the protests commented on the Oromo viewpoint as follows:

“Most Oromos feel they have been cheated of political and economic representation by a succession of non-Oromo governments. To them, the plan by the government and city administration to expand the area of the capital - which Oromos prefer to call Finfine instead of the Amharic ‘Addis Ababa’ - is yet another example of

<sup>212</sup> African Arguments (27 September 2016) “The blood flowing in Oromia is our blood too”: Why Oromo-Amhara solidarity is the greatest threat to the Ethiopian government

<sup>213</sup> Human Rights Watch (June 2016) “Such a Brutal Crackdown”: Killings and Arrests in Response to Ethiopia’s Oromo Protests

<sup>210</sup> Human Rights Watch (23 June 2015) Dispatches: Alarm Bells for Ethiopia’s 100% Election Victory

<sup>211</sup> Al Jazeera (20 June 2016) The ‘Ethiopia rising’ narrative and the Oromo protests



the high-handedness of the ruling elite which comprises mostly non-Oromos.”<sup>214</sup>

### A Violent Response

The Ethiopian authorities responded aggressively to the Oromo protests, with the police and special military security forces using extreme violence which included beatings and the use of live ammunition, together with the mass arrest of demonstrators even after they had dispersed.

In a report on these arrests Amnesty International states:

“Between 2011 and 2014, at least 5,000 Oromos have been arrested as a result of their actual or suspected peaceful opposition to the government, based on their manifestation of dissenting opinions, exercise of freedom of expression or their imputed political opinion. These included thousands of peaceful protestors and hundreds of political opposition members, but also hundreds of other individuals from all walks of life – students, pharmacists, civil servants, singers, businesspeople and people expressing their Oromo cultural heritage – arrested based on the expression of dissenting opinions or their suspected opposition to the government.”<sup>215</sup>

Human Rights Watch has also condemned the behaviour of the security forces, saying that:

“State security forces in Ethiopia have used excessive and lethal force against largely peaceful protests that have swept through Oromia, the country’s largest region, since November 2015. Over 400 people are estimated to have been killed, thousands injured, tens of thousands arrested, and hundreds, likely more, have been victims of enforced disappearances.”<sup>216</sup>

The persistence of the Oromo finally forced the Ethiopian government to abandon its “master plan” in January 2016, but the brutal repression and the deaths of as many as 400 protestors had radicalised the Oromo, who continued to oppose

<sup>214</sup> Deutsche Welle (11 December 2015) Ethiopia: Outcry As Oromo Protests Turn Violent

<sup>215</sup> Amnesty International (28 October 2014) ‘Because I am Oromo’: Sweeping repression in the Oromia region of Ethiopia

<sup>216</sup> Human Rights Watch (June 2016) “Such a Brutal Crackdown”: Killings and Arrests in Response to Ethiopia’s Oromo Protests

the government on a range of issues. According to Amnesty International these issues include:

“Peaceful protests over job opportunities, forced evictions, the price of fertilizer, students’ rights, the teaching of the Oromo language and the arrest or extra-judicial executions of farmers, students, children and others targeted for expressing dissent, participation in peaceful protests or based on their imputed political opinion.”<sup>217</sup>

### Not only the Oromo

The Oromo are not the only people currently demonstrating against the government. Ethiopia’s second largest ethnic group, the Amhara, have their own grievances and have also begun holding protests. In a report on these protests BBC News states:

“There is no formal connection between the Amhara and Oromia demonstrations but at a recent protest in Gondar, banners could be seen expressing solidarity with people from the Oromia region.”<sup>218</sup>

Juneydi Saaddo, who was formerly Ethiopia’s Minister for Transport & Communication, Minister for Science and Technology and Civil Service Minister, gives an insider’s view of the crisis as follows:

“For those of us who have seen the genesis of the current crisis from the inside, the current turn of events is therefore not surprising. The eruption of mass protests in the two largest regions of Oromia and Amhara was inevitable as these communities have been deliberately and systematically marginalised. The resilience of these protests is also not unexpected, given not just the depth of the people’s grievances but the complete lack of will to reform from the government. The brutal response of the regime is also in keeping with its paranoia about the rise of either the Oromo or Amhara against Tigrayan domination or of the alliance between the two.”<sup>219</sup>

### International Response

<sup>217</sup> Amnesty International (28 October 2014) ‘Because I am Oromo’: Sweeping repression in the Oromia region of Ethiopia

<sup>218</sup> BBC News (22 August 2016) What is behind Ethiopia’s wave of protests?

<sup>219</sup> African Arguments (16 September 2016) Behind the Ethiopia protests: A view from inside the government

The protests by the Oromo and other groups have been largely ignored by Western governments and media. This has led to accusations that the West is applying double standards to Ethiopia in comparison with other conflicts, as noted by Awol K Allo who states:

“The silence of the international community in the face of consistent reports raising alarms about systemic and widespread atrocities is deafening. The obsessive focus of the West on the ‘war on terror’ and the tendency to define human rights policy through the lens of the war on terror means that those who abuse their citizens under the guise of the war on terror are impervious to criticism.”<sup>220</sup>

This lack of criticism of human rights abuses by the Ethiopian government has also been noted by Human rights Watch, which states:

“Public criticism by donor governments and allies of Ethiopia’s worsening human rights situation has been minimal. Bilateral and multilateral donors have instead given priority to the government’s record on development and economic progress, perception of relatively low corruption, its hosting of the African Union, its security and counterterrorism partnerships, and its contributions to regional peacekeeping operations.”<sup>221</sup>

## Recent Events

Ethiopia once again experienced an upsurge in violence on 2 October 2016 when a protest following the Irreecha religious festival in Bishoftu was dispersed by the police, resulting in a stampede in which dozens of people died. The exact number of fatalities is disputed, with the Oromo regional government confirming the deaths of 52 protestors while the opposition claims that the true death total was much higher.

Referring to the cause of so many deaths a former Ethiopia correspondent for Inter Press Service and Spanish News Agency (EFE) states:

“When some began to protest, security officers responded by firing tear gas and live ammunition, according to witnesses and videos that later emerged on social media. The crowd was

<sup>220</sup> Al Jazeera (20 June 2016) The ‘Ethiopia rising’ narrative and the Oromo protests

<sup>221</sup> Human Rights Watch (June 2016) “Such a Brutal Crackdown”: Killings and Arrests in Response to Ethiopia’s Oromo Protests

packed between a lake and treacherous terrain, and in the panic that ensued, many died.”<sup>222</sup>

An Al Jazeera report on this incident states:

“The official death toll given by the government is 55, though opposition activists and rights groups say they believe more than 100 people died as they fled security forces, falling into ditches that dotted the area. Ethiopian radio said excavators had to be used to remove some of the bodies.”<sup>223</sup>

Referring to the disparity between the official government casualty figures and the much higher opposition estimates Human Rights Watch says:

“Based on the information from witnesses and hospital staff Human Rights Watch has spoken to, it is clear that the number of dead is much higher than government estimates. But without access to morgues and families who lost loved ones, and with many people unwilling to speak for fear of reprisals, it is impossible to come up with a credible total.”<sup>224</sup>

A lecturer at Arba Minch University offers his opinion of the security forces actions as follows:

“On Sunday, the Oromo people had converted Irreecha into a place to celebrate their identity, but also to show their grievances. The violence there has shaken Ethiopia, as it appears to be the first assault by security forces on a major cultural and religious ritual of the Oromo people as well as among the most brutal crackdowns ever perpetrated specifically against the Oromo identity.”<sup>225</sup>

## State of Emergency

Seeking to explain the current unrest the Ethiopian government has laid the blame on “foreign enemies” in Eritrea, with which Ethiopia fought a bloody border war between 1998 and 2000, and Egypt, with which Ethiopia has a long-standing dispute over rights to water from the Nile. Channel News Asia quotes a government spokesperson as follows:

<sup>222</sup> African Arguments (7 October 2016) Ethiopia: How popular uprising became the only option

<sup>223</sup> Al Jazeera (6 October 2016) Oromo protests: Ethiopia unrest resurges after stampede

<sup>224</sup> Human Rights Watch (8 October 2016) Q&A: Recent Events and Deaths at the Irreecha Festival in Ethiopia

<sup>225</sup> Global Voices (4 October 2016) Ethiopian Authorities Send a Chilling Message to the Oromo People With Deadly Holiday Crackdown

“There are countries which are directly involved in arming, financing and training these elements,’ government spokesman Getachew Reda said, referring to the protesters, although he added that those responsible might not have state approval.”<sup>226</sup>

On 9 October 2016 the Ethiopian authorities declared a state of emergency for the first time in 25 years. This state of emergency is expected to last for six months. In a report on this declaration Al Jazeera states:

“Earlier on Sunday, the state Ethiopian Broadcasting Corporation reported that the state of emergency was effective as of Saturday evening as a means to ‘deal with anti-peace elements that have allied with foreign forces and are jeopardising the peace and security of the country’.”<sup>227</sup>

A Voice of America news report states:

“The government has said the state of emergency may include a curfew in some locations, arrests and search-and-seizures without a court order, restrictions on the right to assembly and a ban on some communications. The six months is the longest that Ethiopia allows for a state of emergency, but it can be renewed.”<sup>228</sup>

## Conclusion

Regarding the situation as it stands in October 2016 journalist Abdi Latif Dahir writes:

“After almost a year of anti-government protests, Ethiopia on Tuesday (Oct. 11) admitted that the death toll from police crackdowns and deadly stampedes could exceed more than 500 people. The admission came a few days after the government declared a country-wide six-month state of emergency, and blamed external forces for trying to break up the nation of over 100 million people.”<sup>229</sup>

Despite government repression and the imposition of a state of emergency many

commentators do not see a restoration of order, but instead believe that opposition to the government is likely to increase.

An Al Jazeera article points out the challenge that the spreading protests represent to the government, saying:

“Ethiopia’s government is facing the biggest challenge of its 25 years in power, with anti-government protests spreading, foreign-owned companies targeted, and a harsh security crackdown that has killed hundreds so far while failing to quell the unrest.”<sup>230</sup>

In a Washington Post article Rashid Abdi, the Horn of Africa project director at the International Crisis Group, is quoted as saying:

“It is clear Ethiopia has a potentially serious and destabilizing unrest on its hands. What started off as isolated and localized protests in the Oromia and Amhara regions has now morphed into a much broader movement covering a large swath of the country.”<sup>231</sup>

In an article from the Economist the author shows equal concern for Ethiopia’s immediate future, saying.

“Still, the future is troubling. Over 500 people have been killed since last November, and tens of thousands have been detained. What began nearly a year ago as an isolated incidence of popular mobilisation among the Oromo people, who make up at least a third of the population and opposed a since-shelved plan to expand Addis Ababa into their farmland, has spread. It is now a nationwide revolt against the authoritarianism of the EPRDF and the perceived favouritism shown to a capital whose breakneck development appears to be leaving the rest of the country behind.”<sup>232</sup>

All documents and reports referred to in this article may be obtained upon request from the Refugee Documentation Centre.



<sup>226</sup> Channel News Asia (11 October 2016) Ethiopia blames foreigners for unrest, UN experts seek probe

<sup>227</sup> Al Jazeera (10 October 2016) Ethiopia declares state of emergency over protests

<sup>228</sup> Voice of America (10 October 2016) Ethiopia Blames Egypt for State of Emergency

<sup>229</sup> Quartz Africa (13 October 2016) Ethiopia has finally admitted to the deaths of more than 500 anti-government protesters

<sup>230</sup> Al Jazeera (10 October 2016) Ethiopia blames ‘foreign enemies’ for stoking unrest

<sup>231</sup> Washington Post (9 August 2016) A year after Obama’s visit, Ethiopia is in turmoil

<sup>232</sup> The Economist (15 October 2016) Ethiopia cracks down on protest

## Training in the module 'Researching Country of Origin Information'



Elisabeth Ahmed<sup>233</sup>

“Training of asylum service personnel remains central to the implementation of the Common European Asylum System (CEAS)”<sup>234</sup>

The development of the European Asylum Curriculum (EAC) has played an important role in enhancing the implementation of the CEAS by providing access for asylum officials across member states, to knowledge and skills through a common training curriculum. Through EAC, now EASO Training Curriculum a complete toolbox for training in all areas of the asylum procedure has been produced and a suggested learning path now referred to as the EASO Learning Path<sup>235</sup> for Case Officers includes Core Modules, Advanced Modules and Optional Modules.

The consideration of Country of Origin Information (COI) is an essential element in assessing claims for international protection and good research skills enable the sourcing of quality COI. As part

<sup>233</sup> Elisabeth Ahmed, RDC with co-trainer Stefan Baumann at the Train the Trainer session of the COI Module in Malta October 2016

<sup>234</sup> Communication from the Commission to the Council and the European Parliament on strengthened practical cooperation - New structures, new approaches : improving the quality of decision making in the common european asylum system {SEC(2006) 189} /\* COM/2006/0067 final \*/

<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52006DC0067>

<sup>235</sup> EASO Learning Path  
<https://www.easo.europa.eu/sites/default/files/public/EASO-Learning-path.pdf>

of the EASO Learning Path<sup>236</sup>, the Advanced Modules offer among others, Country of Origin Information, a module which focuses primarily on the role of COI, research and presentation. This module was included under the initial skills when EAC was developed.

### National Training

The Refugee Documentation Centre has been providing training through the EASO Training Curriculum which is delivered through a blended learning (BL) method of both online learning and face to face training. Since 2010 the module Researching Country of Origin Information has been delivered across asylum agencies in Ireland to case workers, decision makers and legal representatives and has included when spaces were available international participants. The benefit of this training has provided trainees with new research skills and has also ensured that better research questions are submitted to the Refugee Documentation Centre ensuring more accurate research results and better use of research time.

The Researching Country of Origin Information module is divided into five sub-modules, these are The Role of COI; Questions; Sources; Research and finally Presentation. The online learning is carried out over four weeks requiring approximately 3-4 hours of work per week. This allows the trainee flexibility because he/she can decide to do the work in one session or divide the work over the week. This option is perfect for busy asylum officials and the only set time frame is the attendance at the face to face training day which usually takes place in week five.

The face to face training day centres around a case study which reinforces the theory through practical research, however, the coming together of asylum officials also allows for learning through sharing of experiences which adds value to the day.

The module Researching Country of Origin Information is offered annually by the Refugee Documentation Centre usually in Spring. Advertising and invitation to asylum agencies to participate takes place during February. However, interest can be expressed earlier by contacting the RDC directly, as places are limited on courses they are offered on a first come first served basis.

<sup>236</sup> (ibid)



## International Training

The Refugee Documentation Centre has supported EASO over the last number of years in delivering the Train the Trainer session of the COI Module at the European Asylum Support Offices in Malta. The RDC's input in the training involved delivery of the TtT module to a large number of asylum officials from across member states. The new trainers are now trained to deliver the Researching Country of Origin Information module in their countries on a national level. This has a huge impact in terms of the number of asylum officials receiving training as the number of EASO Trainers grows across Europe multiplying the effect.



October 2016 Train the Trainer COI module

Comments from participants at the recent Train the Trainer session held in Malta included Anne from CEDOCA "The train the trainer module on COI I just attended gave me altogether a welcome fresh up on the basic quality criteria, as well as a great opportunity to reflect on more tricky research issues among peers. This opportunity was even greater, since one of the participants was new to COI research, and therefore had a totally fresh insight on it."



October 2016 Train the Trainer COI module

Lorenzo from the Italian Interior Ministry "After four weeks of online training and the good feeling that I was not alone but rather constantly followed

and assisted by two trainers, it was no surprise to me to see in the final face-to-face course in Malta that both trainers actually met my needs. The two-day F2F course was very well structured, and the trainers were in tune with the class. The first day was very good as the material (nine hand-outs) of a practical case (Case of Abed Sayed) kept everyone busy through the day... The second day was filled with good information and practical tips about researching with a view to my field of activity. I wished we had more time to concentrate on a different case on the second day."

The impact of the EASO Training Curriculum will continue to enhance the implementation of the CEAS in the area of common training ensuring that the curriculum is delivering on its goals.

### For training enquiries in Ireland contact:

The Refugee Documentation Centre at:

[eactraining@legalaidboard.ie](mailto:eactraining@legalaidboard.ie)

Telephone 01 4776250



October 2016 Iraq families fleeing Mosul. Debaga camp in Kurdistan braces for influx of internally displaced. Photos for UNHCR by Ivor Prickett.



16 October, 2016. Internally displaced Iraqi women queue up to receive food and water supplies at Debaga camp, near Mosul in northern Iraq.



16 October, 2016. Internally displaced Iraqi women and children walk down a rocky path into Debaga camp, near Mosul in northern Iraq.



16 October, 2016. A young girl is passed over a fence between a family of internally displaced Iraqis at Debaga camp, near Mosul in northern Iraq, as men and women are separated upon arrival for screening.



16 October, 2016. An internally displaced Iraqi mother carries her child up a rocky path in Debaga camp, near Mosul in northern Iraq.



17 October, 2016. UNHCR boss Filippo Grandi (centre), accompanied by the Governor of Erbil, Nawzad Hadi, walks through Debaga camp, near Mosul in northern Iraq.



17 October, 2016. UNHCR boss Filippo Grandi talks to a family of internally displaced Iraqis in a shelter at Debaga camp, near Mosul in northern Iraq.

