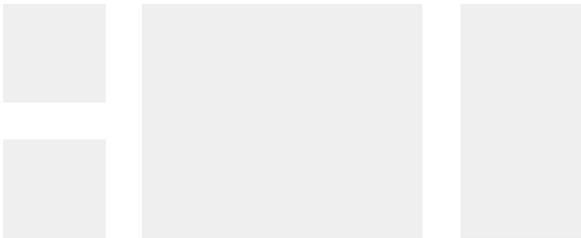




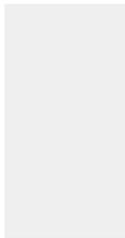
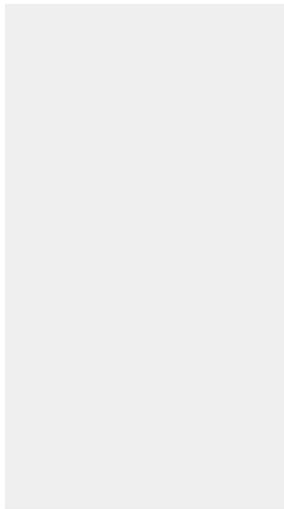
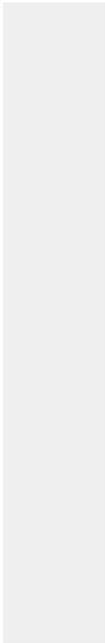
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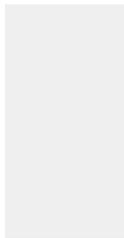
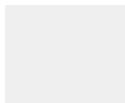
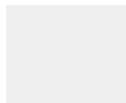
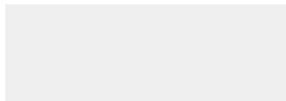
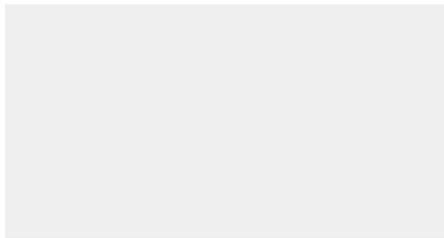
Ireland's Refugee Deterrence Policies



Niamh Collins



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IRELAND'S REFUGEE DETERRENCE POLICIES

*Niamh Collins**

Abstract:

This research explores methods of deterrence, and how they manifest in Ireland. It examines Irish asylum procedures, and draws comparison with policies in other European countries – principally the United Kingdom and Denmark. A particular focus is placed on labour market access, family reunification, reception conditions, and dispersal. Although the terms are often used interchangeably in the literature, for this analysis a distinction is drawn between ‘deterrence’ and ‘containment.’ Containment is concerned with preventing asylum seekers and other migrants from physically reaching a country’s borders. Deterrence, on the other hand, consists of punitive restrictions which only take place once an asylum seeker has reached the state in which they intend to seek protection. The paper also explores Ireland’s place within the European Union. Political trends in Europe have a powerful influence on policy in Ireland, so it is likely that patterns in the rest of the region will influence Irish government policy significantly. The paper argues that deterrence does little to affect actual numbers of refugees seeking protection – the real effect of deterrence is simply to harm integration, and cause ongoing trauma. The scale of the global displacement crisis is beyond the scope of individual nations – particularly if future predictions which include ‘climate refugees’ are accurate. Liberal democracies cannot afford to continue relying on deterrence as an effective measure to reduce asylum-seeking populations. Inward looking models are flawed in the face of such global-scale issues. Within the European Union, this research points to the need for greater solidarity. This solidarity, however, should be based on a shared vision of humanitarian concern and non-discrimination. Regional and broader international cooperation will be required to deal adequately with displacement in a fair and humane way – including the eradication of ineffective national deterrence measures.

Key words: refugee law, deterrence, asylum, international protection, Ireland, Denmark

A. INTRODUCTION

Recent world history has accentuated the problem of displacement. Proxy wars and intense civil conflicts have led to an enormous increase in displaced persons and asylum seekers, in particular, from the Global South. Alongside these changes, globalisation has opened up new migration routes and an increased awareness of faraway places. The ideological vigour which seemed to surround the 1951 Refugee Convention² has slowly eroded as the “refugee crisis” of the last few decades has tested the boundaries of the “welcome” that host countries are willing to extend to refugees. The primary response throughout

* Niamh Collins is a graduate of law, philosophy and the study of religions. The paper is informed by her work with refugee information and advocacy services in Dublin. This research was submitted as an LLM thesis for the UCC School of Law in October 2020, under the supervision of Dr Fiona Donson, and has been lightly edited and updated to reflect recent developments up to January 2021. As such, it does not explore the White Paper on Ending Direct Provision, which was published on 26th February 2021, although the findings in this Working Paper will be of relevance to the debate on the planned replacement accommodation and support system for protection applicants in Ireland.

² UN General Assembly, *Convention Relating to the Status of Refugees* (28th July 1951) United Nations, Treaty Series, vol. 189 [hereinafter: the Refugee Convention].

Europe has been to adopt policies which seek to deter the mass migration of those seeking international protection.³ European solidarity has been severely tested:

On the one hand, there are countries exposed to greater pressure because they are either at the frontline of migration routes into Europe or among migrants' favoured destinations: they all demand a fair sharing of the 'migrant burden' among all EU members. On the other hand, some countries reacted to the crisis by building fences at their borders and/or refusing to share the responsibility and costs for the hosting of immigrants with their overloaded neighbours.⁴

This research explores methods of deterrence, and how they are manifested in the Irish context. It will examine the development of asylum procedures in Ireland, and draw comparison with policies in other European countries – principally the United Kingdom and Denmark. A particular focus is placed on indirect deterrence measures such as restrictions on access to the labour market, limitations on family reunification, and policies around reception conditions and refugee dispersal. The research will also investigate Ireland's place within the European Union in the context of "solidarity" and "burden-sharing".

Although the terms are often used interchangeably in the literature, for this research a distinction will be drawn between "deterrence" and "containment" as there are "important differences between their manifestations and underlying purposes".⁵ Containment is concerned with preventing asylum seekers and other migrants from physically reaching European borders. Policies which effectively "contain" people in particular regions can have the effect of freeing other states from their responsibility of *non-refoulement*.⁶ Systems like this are evidenced, for example, by the controversial *Italy-Libya Treaty of Friendship, Partnership, and Cooperation* under which boats carrying irregular migrants would be intercepted in the Mediterranean and returned to Libya.⁷ This agreement was arrived at despite well-documented instances of human rights abuse carried out by Libyan authorities in detention centres for migrants.⁸ As noted by Gregor Noll:

Australia's policy of zero tolerance towards boat arrivals in its 'Pacific Solution' and the analogous crisis of access to asylum in the European Union are the most visible examples of how liberal democracies have afforded themselves the lethal luxury of a maritime Berlin wall.⁹

³ Thomas Gammeltoft-Hansen & Nikolas F. Tan, "The End of Deterrence Paradigm? Future Directions for Global Refugee Policy" (2017) 5(1) *Journal on Migration and Human Security* 28-56, p.30.

⁴ Linda Basile & Francesco Olmastroni, "Sharing the burden in a free riders' land: The EU migration and asylum policy in the views of public opinion and politicians" (2000) 59(3) *European Journal of Political Research* 669-691, p.669.

⁵ Lisa Hassan, "Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States" (2000) 13(2) *Journal of Refugee Studies* 184-204, p.185.

⁶ *Non-refoulement* is an international law obligation which imposes a duty on states not to return an asylum seeker to a place where there is a risk that they may face persecution, torture, or inhuman and degrading treatment. It has a firm and long-standing basis in customary law and international agreements, and is a cornerstone of international refugee law. See: Goodwin Gill, "The Language of Protection" (1989) 1(1) *International Journal of Refugee Law* 6-18, p.7.

⁷ This particular agreement is now defunct but a number of other bilateral agreements between European Union states and North African states with poor asylum systems have filled the void. See: Gammeltoft-Hansen & Tan, "The End of Deterrence Paradigm?" (n.3) p.36.

⁸ Delphine Nakache & Jessica Losier, "The European Union Immigration Agreement with Libya: Out of Sight, Out of Mind?" (25th July 2017) E-International Relations. Available at: www.e-ir.info/2017/07/25/the-european-union-immigration-agreement-with-libya-out-of-sight-out-of-mind/ (last accessed: 18th March 2021).

⁹ Gregor Noll, "Why Refugees Still Matter: a response to James Hathaway" (2007) 8 *Melbourne Journal of International Law*.

Containment measures like this are well-established now, and are embedded in immigration systems around the world. Other examples of containment efforts include applying strict visa requirements, imposing carrier sanctions and creating “safe country of origin” legislation.¹⁰ Ireland has implemented many of these containment measures through the Immigration Act 2003.¹¹ Measures like these “are particularly aimed at those individuals who might attempt to abuse the asylum system in order to gain legal entrance into an otherwise impermeable country, but they are applied indiscriminately”.¹²

Deterrence, on the other hand, consists of restrictions and “punitive measures”¹³ which only take place once an asylum seeker has reached the state in which they intend to seek protection. Policies of deterrence are not a new phenomenon. In 1980, for instance, Thailand began introducing policies of “humane deterrence”¹⁴ in an attempt to deter Kampuchean refugees from choosing Thailand as a place of refuge. This action was in response to a humanitarian crisis in which an estimated 5.7 million displaced persons were predicted to flee across the border with Cambodia and seek refuge in Thailand.¹⁵ An aggressive regime of border closures and very harsh living conditions¹⁶ for what Thai officials referred to as “illegal immigrants”¹⁷ was undertaken. The living conditions of these Thai “refugee” camps are described as bleak and akin to “chickens in a cage”.¹⁸ In contemporary Europe, on the other hand, the optics of repression and squalor, such as that apparent in Thailand, are anathema within liberal democracies. European governments have been described as having a “schizophrenic attitude”¹⁹ towards refugee law – simultaneously shirking their share of the responsibility while wanting to *appear* committed.

In recent years, the conditions to which asylum seekers in Ireland have been subjected has been the focus of much criticism and increasing public awareness.²⁰ Nevertheless, An Taoiseach as he then was, Leo Varadkar, felt able to remark that they could be much worse: “the sad reality is that the alternative to direct provision is what happens in France and Germany and Greece and Italy, which is camps and containers. And I hope we never get to that point here in Ireland.”²¹

While it is clear that any country’s politicians want to be perceived by potential voters as doing a better job than elsewhere, they are walking a fine line between liberal ideology and “brass tacks” conservative

¹⁰ Hassan, “Deterrence Measures” (n.5) p.185.

¹¹ The Immigration Act 2003 introduced carrier sanctions and safe country of origin clauses.

¹² Hassan, “Deterrence Measures” (n.5) p.185.

¹³ *ibid*, p 185.

¹⁴ Supang Chantavanich & Paul Rabe, “Thailand and the Indochinese Refugees: Fifteen Years of Compromise and Uncertainty” (1990) 18(1) *Southeast Asian Journal of Social Science* 66-80, p.70.

¹⁵ CIA National Foreign Assessment Centre, “Kampuchea: Famine, Fighting, and Refugees – An Intelligence Assessment” (1979) p.6. Available at: www.cia.gov/readingroom/document/cia-rdp81b00401r001400080006-6 (last accessed: 18th March 2021).

¹⁶ Hassan, “Deterrence Measures” (n.5) p.186.

¹⁷ Note: Thailand is not a signatory to the 1951 Refugee Convention, the term “refugee” would not have been used by Thai officials. See: Chantavanich & Rabe, “Thailand and the Indochinese Refugees” (n.14) p.68.

¹⁸ Lawrence Lam, “Reviewed Work: Political Pawns: Refugees on the Thai-Kamouchean Border by Josephine Reyell” (1990) 18(1) *Southeast Asian Journal of Social Science* 213-214, p.213.

¹⁹ Thomas Gammeltoft & James C. Hathaway, “Non-Refoulement in a World of Cooperative Deterrence” (2015) 53(2) *Columbia Journal of Transnational Law* 235-284, p.235.

²⁰ See: Jürgen Gerhards & Clara Dilger, “European Citizens’ Attitudes on the Return of Refugees to Their Home Country: Results from a Survey in 13 EU Member States” (2020) 61 *Politische Vierteljahresschrift – German Political Science Quarterly* 503-524. Available at: <https://link.springer.com/article/10.1007/s11615-020-00234-6> (last accessed: 18th March 2021).

²¹ Maire O’Halloran, “Alternative to direct provision is ‘camps, containers’ Varadkar warns” (1st October 2019) *The Irish Times*. Available at: www.irishtimes.com/news/politics/oireachtas/alternative-to-direct-provision-is-camps-containers-varadkar-warns-1.4036698 (last accessed: 18th March 2021).

economics. Many constituents will perceive asylum seekers as a burden on the public purse, but few would wish to abandon individuals fleeing persecution or war. As Dempster and Hargrave note, while the distinctions are sometimes unclear, opinion poll data suggests that “people tend to be more favourably disposed towards those recognised as refugees than they are towards asylum-seekers.”²² It is this apparent contradiction that leads to a kind of compromise and lack of consistency in refugee policies. The purpose of deterrence in modern Europe is to discourage *dishonest* claimants – people who would abuse the asylum system. Hassan argues, however, that “what governments are loath to admit is that these policies deter not only abusive claimants, but *all* claimants.”²³ Deterrence tends to be a blunt instrument, not particularly well-suited to distinguishing between those who fit neatly into the category of refugee as defined by the Refugee Convention, and those who do not.

The analysis presented here will investigate deterrence methods in Ireland with a comparative look at the UK and Denmark. The UK is an obvious point of comparison with Ireland due to its proximity, similarity of legal system, and the longstanding overlap of administrative traditions.²⁴

Ireland and Denmark share some common traits. They have similar population sizes and they each joined the EU at the same time. They are unique in the context of the European Union in that they are not parties to the Area of Freedom, Security and Justice and are therefore not bound by Directives in this area, although Ireland maintains an “opt-in” position.²⁵ Further, they are both now near a non-EU state and policy decisions need to take account of this proximity.

Considering population size, both Ireland and Denmark have enormous diplomatic clout. Membership of the EU, of course, amplifies the position of these countries on the world stage. Cultural diplomacy and soft power have also been wielded strategically by both countries.²⁶ Ireland was recently described as “on a per-head basis ... the world’s most diplomatically powerful country.”²⁷ Denmark similarly “punches above its weight” in terms of participation in the range of global organisations of which it is an active member.²⁸ Thus, these relatively small countries are in a (perhaps disproportionately) powerful position to influence global politics, including refugee and migration policies.

Denmark is known for taking a hard-line on refugee immigration and integration in the last 20 years.²⁹ Danish policies went so far as to introduce the internationally controversial “jewellery tax” which sought to strip

²² Helen Dempster & Karen Hargrave, “Understanding public attitudes towards refugees and migrants” (2017) *Overseas Development Institute – Working Paper 512*, p.10.

²³ Hassan, “Deterrence Measures” (n.5) p.187 [italics in original].

²⁴ Gabriel J. Felbermayr & Farid Toubal, “Cultural proximity and trade” (2010) 54(2) *European Economic Review* 279-293, p.282.

²⁵ *Protocol (No.21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice* (Official Journal of the European Union C 202/295).

²⁶ John Caelum Davies, “Where Is Best? A critical deconstruction of nation brand rankings, and the creation of a less theoretically flawed index of European country brand strength” (2020) Unpublished master’s thesis, University of Helsinki (Finland). Available at: <https://helda.helsinki.fi/handle/10138/317494> (last accessed: 18th March 2021).

²⁷ Ben Jennings, “How Ireland gets its way” (18th July 2020) *The Economist* (Europe section).

²⁸ Henrik Larsen, “Theorising post-Cold War Danish foreign policy: The expansion from one dominant to seven distinct approaches”, in Kristian Fischer & Hans Mouritzen (eds.), *Danish Foreign Policy Review*, (Danish Institute for International Studies: Copenhagen, 2018) 77-114.

²⁹ Sören Billing, “Denmark sticks to hardline refugee stance” (16th September 2015) *The Local*. Available at: www.thelocal.dk/20150916/denmark-sticks-to-hardline-refugee-stance-amid-crisis (last accessed: 18th March 2021); “Danish Social Democrats expected to maintain tough migration policy” (4th June 2019) *Euractiv*. Available at: www.euractiv.com/section/elections/news/danish-social-democrats-expected-to-maintain-tough-migration-policy/ (last accessed: 18th March 2021).

incoming asylum seekers of jewellery, any luxury goods and as well as cash.³⁰ Denmark also undertook an anti-refugee advertising campaign in Lebanon.³¹ The campaign sought to discourage the onward migration of Syrian asylum seekers by warning of strict changes in Danish welfare and asylum policy³² in local newspapers.³³ Denmark has certainly made a considerable effort to create an unwelcoming atmosphere around immigration.

Denmark has an electorally prominent right-wing and routinely relies on broad-based coalition governments.³⁴ Unlike Denmark, and many other European neighbours, Ireland has yet to elect an openly right-wing or staunchly nationalist government. In Ireland, the political dynamics in the party spectrum are more contained. The major parties compete for the centre-ground, and while Fianna Fáil and Fine Gael alternated in power for most of the State's history,³⁵ the far-right has been relatively weak.³⁶ The narrative on immigration has remained more open even when the actual policies implemented have become more restrictive. There is a dichotomy between rhetoric and reality. The Irish see themselves as having a historical propensity for emigration and politicians routinely defend the status of undocumented compatriots in America, but this does not seem to inform the domestic debate around undocumented migrants in Ireland, or asylum policies.³⁷

This paper will first, briefly, outline the historical development of asylum procedures in Ireland – outlining significant issues such as delays in the application process, which have been a feature since the 1990s. It will then discuss how these inefficiencies have not been adequately addressed by legislative developments.

In order to explore whether Ireland, in fact, employs measures of deterrence, the following section will discuss the context in which policies of deterrence arise. It will outline, in a general sense, why countries resort to deterrence measures – and why they do not simply refuse to participate in international agreements around refugees. The discussion will then outline, in more detail, measures of deterrence which can be

³⁰ Nicole Stokes-Dupass, "Mass Migration, Tightening Borders, and Emerging Forms of Statelessness in Denmark, Norway, and Sweden" (2017) 12(1) *Journal of Applied Security Research*; Michael Barrett, "Three years after Denmark's infamous 'jewellery law' hit world headlines, not a single piece has been confiscated" (24th January 2019) *The Local*. Available at: www.thelocal.dk/20190124/three-years-after-denmarks-infamous-jewellery-law-hit-world-headlines-not-a-single-piece-has-been-confiscated (last accessed: 18th March 2021). This news article demonstrates the view that this "jewellery tax" may have been more a symbolic gesture and a way to "brand" Denmark as unfriendly to refugees, rather than a truly effective way of collecting revenue from asylum seekers.

³¹ BBC News, "Denmark places anti-immigration adverts in Lebanon newspapers" (7th September 2015). Available at: www.bbc.com/news/world-europe-34173542 (last accessed: 1st March 2021).

³² Translated into Arabic, the campaign outlined that social benefits for refugees were being cut by 50%, that rejected asylum seekers would be deported expediently, and that "foreign nationals granted temporary protection in Denmark will not have the right to bring family ... during the first year". The campaign also informed potential migrants that permanent residence permits would only be granted to those with the ability to communicate through Danish. For English translation of the advertisement see: The Local, "Denmark publishes anti-refugee ad campaign" (7th September 2015). Available at: www.thelocal.dk/20150907/denmarks-anti-refugee-ads-published-in-foreign-papers (last accessed: 18th March 2021).

³³ *ibid.*

³⁴ Christoffer Florczak & Robert Klemmensen, "Denmark: The politics of compromise and minority government governance", in Matt Evans (ed.), *Coalition Government as a Reflection of a Nation's Politics and Society: A Comparative Study of Parliamentary Parties and Cabinets in 12 Countries* (Routledge: New York, 2020) 147-163.

³⁵ Anthony White, "Ireland's Election 2020: The Shape of Things to Come?" (2020) 109(435) *Studies: An Irish Quarterly Review* 267-275.

³⁶ Cas Mudde, *The Far Right Today* (Polity Press: Medford, MA, 2019) p.82.

³⁷ For discussion, see: Ronit Lentin, "Illegal in Ireland, Irish Illegals: Diaspora Nation as Racial State" (2007) 22(4) *Irish Political Studies*, 433-453.

observed in Ireland: restricted access to the labour market; dispersal and direct provision; and, limitations on family reunification.

Having established identifiable methods of deterrence as seen in Ireland, the third section will explore the effectiveness of deterrence. Is deterrence actually an efficient way of reducing the number of people seeking protection in a particular country or region? Or, does it simply have the effect of making life difficult for those already in the jurisdiction? The paper will look at the European socio-political context, and where Ireland “fits” in Europe. Does Ireland’s relationship with Europe influence its choices vis-à-vis deterrence? The concept of European solidarity and areas of proposed reform will also be explored. The final sections will discuss Irish attitudes to “outsiders” since Independence and more recently, before a concluding summary.

1. History and Development of Asylum Procedures in Ireland

Irish asylum policy has long been a “largely reactive process”³⁸ and lags behind other European states in terms of legislation surrounding refugees and the asylum process: “the Irish regime for determining asylum claims has been constructed in a series of ad hoc responses to the changing dynamics of migration in the country, as well as broader trends within Europe.”³⁹

There appears to have been an attitude in Ireland of the early 1990s that this island would remain unaffected by mass migration.⁴⁰ Perhaps this is due to the country’s geographic distance from the continent, or because of the island’s history of emigration rather than immigration. Nevertheless, the complacency is somewhat surprising given that, at this time, there was increasing concern in the rest of Europe, and the development of “policies and practices aimed at restricting entry”⁴¹ taking place around the European Union. Ireland’s under-preparedness is evidenced by a lack of border controls and absence of robust immigration processes. In fact, Ireland appeared to have its “head in the sand” even after it should have been clear that inward migration was no longer a developing concern but rather a real-time issue that needed clear policies and processes.⁴²

Legislators raced to fill the gaps. The introduction of the Refugee Act 1996 was the first time Ireland had “purpose-built” legislation⁴³ to deal with the asylum process⁴⁴ and it was, in fact, quite a liberal document when compared with other practices around Europe. Nevertheless, the development of the legislation was

³⁸ Rosemary Byrne, “Expediency in Refugee Determination Procedures” (2000) 35 *Irish Jurist* 149-163, p.149.

³⁹ *ibid.*

⁴⁰ See: Irial Glynn, “International Trends and National Difference in Asylum Policymaking. Australia, Italy and Ireland compared, 1989-2008” (2009) PhD thesis submitted to Department of History and Civilization, European University Institute, 162-163. Available at: https://cadmus.eui.eu/bitstream/handle/1814/13276/Glynn_2009.pdf?sequence=1&isAllowed=y (last accessed: 18th March 2021).

⁴¹ Peter O’Mahony, “Supporting Asylum Seekers” in Ursula Fraser & Colin Harvey (eds), *Sanctuary in Ireland: Perspectives on Asylum Law and Policy* (Institute of Public Administration: Dublin, 2003) 130-131.

⁴² *ibid.*

⁴³ Up until the implementation of the Refugee Act (1996) in 2000, Ireland’s asylum process had been informed by the Aliens Act (1935), the ‘Von Arnim’ letter, the ‘Hope Hanlan’ letter, and administrative practices that had no underlying legislative framework. See: Ursula Fraser, “The Asylum Procedure” in Ursula Fraser & Colin Harvey (eds), *Sanctuary in Ireland: Perspectives on Asylum Law and Policy* (Institute of Public Administration: Dublin, 2003) pp.81-114.

⁴⁴ The Refugee Act 1996 only dealt with Refugee Status - Subsidiary protection was regulated separately. For a detailed overview see: Brian Barrington, *The Single Protection Procedure: A Chance for Change*, a report compiled for The Irish Refugee Council (2009). Available at: www.irishrefugeecouncil.ie/Handlers/Download.ashx?IDMF=703408dd-304b-4cbf-9a4d-1c6336e41dba (last accessed: 18th March 2021).

rushed⁴⁵ and was essentially unworkable until the year 2000. The Act was outdated before it was even implemented. It still reflected a time of low-immigration and was not durable enough to address the *actual* number of applicants seeking asylum in Ireland.⁴⁶ This resulted in extremely lengthy delays in the determination of first instance-decisions and the appeals process. Applicants were often subjected to years of waiting and, as will be discussed later, this time would be spent in the newly emergent system of Direct Provision. Direct Provision has been staunchly criticised since its inception for falling below acceptable standards of reception conditions,⁴⁷ and for arbitrarily limiting the rights of asylum seekers.⁴⁸ While the emergence of the Refugee Act may have been an improvement on the previous patchwork system, it never comprehensively served its purpose of creating an efficient working system.

The issue of delay in the system was recognised and the International Protection Act 2015 was an attempt to amend this. The 2015 Act introduced reforms such as “the single procedure”. Previously, international protection applicants would have to enter a lengthy and multi-layered system in which applications for refugee status and subsidiary protection were determined separately, but not simultaneously. Now, a single application is processed which considers the category of protection, if any, that applies to the applicant. This means that refugee status, subsidiary protection and humanitarian leave to remain applications are assessed concurrently.⁴⁹

The introduction of the single procedure was expected to reduce the significant back-logs, but the system is still plagued with delays. The department responsible for processing asylum applications, the International Protection Office (IPO), seems to be under-resourced and unable, still, to cope with the caseload and reduce waiting times.⁵⁰ Beyond the IPO, reports indicate that there have also been delays of up to a year “in approving the recommendation ... that a person is a refugee”⁵¹ by the Ministerial Decisions Unit. This, in turn, leads to delays in the processing of Irish Residence Permits and leaves the affected person in a legal black hole in which they cannot apply for supports as an asylum seeker, nor as a recognised refugee.⁵² Cynically, one might wonder whether or not these delays in themselves represent a deterrence tactic. Gammeltoft-Hansen identifies protracted administrative procedures, such as asylum procedures and family reunification applications, as an indirect refugee deterrence tactic.⁵³ One can only speculate, however, whether these particular inefficiencies are the result of deterrence, or just disfunction. Ireland’s official deterrence policies, such as dispersal, direct provision and restricted access to the labour market, will be discussed below in more detail following a brief discussion contextualising deterrence policies in a broader sense.

⁴⁵ Martin Ruhs, “Ireland: From Rapid Immigration to Recession” (2009) *Migration Information Source*, p.1. Available at: www.bollettinoadapt.it/old/files/document/2588MPI_IMMIGRAZIONE.pdf (last accessed: 18th March 2021).

⁴⁶ O’Mahony, “Supporting Asylum Seekers” (n.41) p.131.

⁴⁷ Nasc, *Submission to the Joint Oireachtas Committee on Justice and Equality on Direct Provision and the International Protection Applications Process* (June 2019) p.7. Available at: <https://nascireland.org/sites/default/files/Submission%20on%20direct%20provision%20and%20the%20international%20protection%20process.pdf> (last accessed: 18th March 2021).

⁴⁸ The Irish Council for Civil Liberties has criticised Direct Provision and its curtailment of rights – calling it “arbitrary detention”. See: Irish Council for Civil Liberties, *Submission to Committee on Justice and Equality Consultation on Direct Provision* (May 2019). Available at: www.iccl.ie/wp-content/uploads/2019/06/190531-ICCL-ORourke-Submission-On-Direct-Provision-System.pdf (last accessed: 18th March 2021).

⁴⁹ Nasc, *Introduction to Immigration, Protection and Naturalisation: A guide for service providers* (2019) p.5. Available at: <https://nascireland.org/sites/default/files/Guide%20service%20providers%202019.pdf> (last accessed: 18th March 2021).

⁵⁰ Nasc, *Submission to the Joint Oireachtas Committee* (n.47).

⁵¹ Hennigan, *Reception Conditions Directive* (n.51), p.9.

⁵² *ibid.*

⁵³ Thomas Gammeltoft-Hansen, “Refugee policy as ‘negative nation branding’: the case of Denmark and the Nordics” (2017) *Danish Foreign Policy Yearbook*, p.107.

B. DETERRENCE POLICIES IN IRELAND

1. Deterrence Policies in Context

This section will explore the context in which methods of deterrence arise – seeking to understand *why* countries employ deterrence tactics. If a state does not wish to accommodate asylum seekers, why not simply stop complying with international legal norms?

... international law is inseparable from politics and thus from power. For powerful governments, international law puts an instrument in their toolkit as they seek to influence what happens in the world, and for the less powerful it is a tool that they might also seek to take up when they can but may equally be a means of control whose influence they seek to escape.⁵⁴

It would be reassuring from a human rights perspective if all states adhered to the highest standards, but they do not. It is also impractical to rely entirely on international legal adjudication as this may be ignored or countered with claims of compromised sovereignty.⁵⁵ From this “human rights realism” perspective, countries want to appear to be complying with international law,⁵⁶ but they only comply out of self-interest. The result is that more powerful states where public opinion is ambivalent towards asylum seekers do less than others. Thus, for example, in Australia where “public opinion towards asylum seekers has often been unwelcoming at best and hostile at worst”,⁵⁷ public policies are restrictive.

As FitzGerald suggests, in his account of ‘How Rich Democracies Repel Asylum Seekers’: “Without enforcement mechanisms, states act as they wish and only comply with treaties when it is in their interests.”⁵⁸ As it stands, the rich, developed world is not doing its fair share. The majority of the world’s refugees end up in poor neighbouring countries. As a UNHCR report showed of the top 10 refugee hosting countries, nine are low- or middle-income.⁵⁹ There is an awareness that, if the Refugee Convention were to be renegotiated today, these poorer countries would, presumably, demand that their burden be eased with financial support, or for resettlement programmes to increase drastically. And so, it is in the interests of European countries, like Ireland, to retain the status quo and *symbolically* participate in refugee relief efforts – all the while, hoping that systems to deter or contain asylum seekers in other parts of the world are successful in relieving us of our share of responsibility.

... it is difficult to imagine any of the world’s top refugee hosting countries agreeing to a new legal instrument that does not address this gross disparity in terms of global burden-sharing.⁶⁰

⁵⁴ Ian Hurd, “Good Medicine For Bad Politics? New Realism In The International Rule Of Law” (2018) *New Approaches to International Rule of Law Assistance*, Proceedings of the ASIL Annual Meeting, p.257.

⁵⁵ Natalie R. Davidson, “Human Rights Realism” (4th May 2020) *Vanderbilt Journal of Transnational Law* (forthcoming). Available at: <https://ssrn.com/abstract=3592356> (last accessed: 18th March 2021).

⁵⁶ *ibid.*

⁵⁷ Nick Haslam & Elise Holland, “Attitudes Towards Asylum Seekers: The Australian Experience”, in Diane Bretherton & Nikola Balvin, (eds), *Peace Psychology in Australia* (Cham, CH: Springer, 2012) 107-120, p.107.

⁵⁸ David Scott FitzGerald, *Refuge beyond Reach: How Rich Democracies Repel Asylum Seekers* (Oxford: OUP, 2019) p.50.

⁵⁹ UNHCR, *Global Trends: Forced Displacement in 2018*. Available at: www.unhcr.org/5d08d7ee7.pdf (last accessed: 18th March 2021).

⁶⁰ Gammeltoft-Hansen & Tan, “The End of Deterrence Paradigm?” (n.3) p.32.

Hathaway points out that a major failing of the 1951 Refugee Convention is the absence of an operational mechanism which ensures that “protection burdens and responsibilities are fairly shared among States.”⁶¹ Although speaking in terms of global cooperation, rather than at a regional European level, Hathaway recognises that a state-by-state approach is not sufficient.

Since 1999, the EU has been engaged in a process to create a Common European Asylum System (CEAS), improve the legislative framework within the EU, and harmonize the asylum legislation of the member states. This process is based on the fundamental principle of solidarity among member states, including the sharing of responsibility.⁶²

Nevertheless, the EU still struggles in fully implementing “burden sharing” through its Common European Asylum System.⁶³ For instance, the Dublin III Regulations require, generally, that a person must register their asylum application in the first EU member state to which they gain entry.⁶⁴ The purpose of this measure was to prevent so-called “asylum shopping”. This has, however, naturally led to frontier states bearing an unequal share of the responsibility. In order to compensate for the Dublin Regulations’ “first country of entry” requirement more cooperation is needed amongst the Member States. Nevertheless, Europe continues to be divided on this issue and many states still seek to shirk responsibility. Instead of committing to resettlement schemes and making access for refugees easier, many European states continue to rely on the “effectiveness” of containment measures and, in some cases, flatly refuse to participate in burden sharing.⁶⁵ Seeking to address some of these issues, the European Commission recently introduced a “New Pact on Migration and Asylum”, which will be discussed in more detail later.

Beyond this, the final “safeguard” for EU states that do not wish to accommodate asylum seekers seems to be deterrence methods and the “beggar thy neighbour”⁶⁶ effect. In the case of Ireland:

Politicians hoped that having an unattractive asylum regime in the form of direct provision, would put off those seeking international protection from choosing Ireland as a destination ... evidenced by then Minister of Justice John O’Donohue’s [sic] point that ‘If my scheme is more attractive than the British scheme, it must stand to any kind of logical reasoning that I would have a disproportionate number [of asylum seekers] coming here from Britain’.⁶⁷

⁶¹ James Hathaway, “The Global Cop-Out on Refugees” (2018) 30(4) *International Journal of Refugee Law* 591-604, p.591.

⁶² Östen Wahlbeck, “To Share or Not to Share Responsibility? Finnish Refugee Policy and the Hesitant Support for the Common European Asylum System” (2018) 17(3) *Journal of Immigrant & Refugee Studies* 299-316, p.304.

⁶³ David Kaufmann, “Debating responsibility-sharing: An analysis of the European Parliament’s debates on the Common European Asylum System” (2020) *European Policy Analysis*, forthcoming published online on 15th July 2020. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1002/epa2.1087> (last accessed: 18th March 2021)

⁶⁴ Article 13(1) of Regulation 604/2013 (Dublin III Regulations)

⁶⁵ “According to a report of the European Commission, as of 2017, Hungary, Poland and Austria did not relocate a single migrant, ‘in breach of their legal obligations’, while the ‘Czech Republic ha[d] not pledged since May 2016 and ha[d] not relocated anyone since August 2016, having relocated less than 1% of its allocation” See: Basile & Olmastroni, “Sharing the burden” (n.4) p.670.

⁶⁶ Human Rights Watch, “European Union: Refugee Response Falls Short” (27th January 2016). Available at: www.hrw.org/news/2016/01/27/european-union-refugee-response-falls-short (last accessed: 18th March 2021)

⁶⁷ Aideen Elliott, “Ireland’s evolving migration policies: building alliances and a liberal European identity through EU migration policy crisis” (2019) 34 *Irish Political Studies* 551-574, p.555.

Clearly, there was a belief that would-be asylum seekers have the capacity to compare potential destinations and their choices are informed by such information. This model influenced policy in a number of countries.⁶⁸ Despite this widely held belief, a report for the Australian Parliament examined:

... the extent to which asylum seekers are able to exercise choice when it comes to their destination country ... This research reveals a number of common themes, chief among them being that asylum seekers generally have limited options available to them, and choices are made within a very narrow field of possibilities.⁶⁹

Nevertheless, in pursuit of deterrence, Ireland has turned to measures such as:

- (a) restrictive labour market access;
- (b) dispersal and Direct Provision; and
- (c) limitations on family reunification.

Each will be discussed in more detail in the following sections.

a. Access to the Labour Market

The Irish government has been reluctant over the years to allow asylum seekers to work. This is despite calls for reform in this area, such as those included in the McMahon Report.⁷⁰ The McMahon Report identified access to the labour market as one of the main areas of concern for asylum seekers in Ireland.⁷¹ Restricting access to the labour market has been a clear deterrence tactic. Limiting this right has also meant that asylum seekers were not afforded the opportunity to improve their standard of living, or extend their networks into the wider community. In essence, this prohibition prevented asylum seekers from setting down roots. The government has openly expressed fears that allowing asylum seekers to work would disproportionately increase the number of applicants seeking protection in Ireland.⁷² As observed by Kinlen: “The refusal of the Irish Government to allow asylum seekers to work was ... based primarily on deterrence and ensuring that the asylum system does not create any further ‘pull factors’.”⁷³ It was not until a ruling of the Supreme Court that the prohibition on the right to work was ended.⁷⁴ In practice, however, the right is still limited.

As confirmed in *NVH v Minister for Justice and Equality* [2017],⁷⁵ the rights of citizens and non-citizens can be different, but respect must be shown for the fundamental human rights of all people. In the particular case of *NVH*, the absolute restriction on the right to work of asylum seekers was deemed to be unconstitutional.⁷⁶

⁶⁸ Gammeltoft-Hansen & Tan, “The End of Deterrence Paradigm?” (n.3).

⁶⁹ Harriet Spinks, “Destination anywhere? Factors affecting asylum seekers’ choice of destination country” (2013) Research Paper No.1, 2012-13, Parliament of Australia Social Policy Section. Available at: www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1213/13rp01 (last accessed: 18th March 2021).

⁷⁰ *Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*, Final Report (June 2019) Department of Justice & Equality, p.211.

⁷¹ *ibid*, p.101 (at 3.180).

⁷² Reply to Parliamentary Question 15729/13 (27th March 2013). Available at: www.oireachtas.ie/en/debates/question/2013-03-27/236/ (last accessed: 18th March 2021).

⁷³ Louise Kinlen, “Welcome to Ireland: Seeking Protection as an Asylum Seeker or through Resettlement – Different Avenues, Different Reception” (2013) 28(2) *Refuge: Canada’s Journal on Refugees* 31-48, p.35.

⁷⁴ *NVH v Minister for Justice and Equality* [2017] IESC 35.

⁷⁵ [hereinafter *NVH*].

⁷⁶ The judgment drew on the idea of unenumerated rights as protected by Article 40.3 of *Bunreacht na hÉireann* 1937.

Following the *NVH* case, Ireland signed up to the Reception Conditions Directive.⁷⁷ This instrument aims to standardised reception conditions throughout the EU, including outlining the criteria for access to the labour market. It was transposed into national law by the *European Communities (Reception Conditions) Regulations 2018*.⁷⁸ Nevertheless, even under the terms of the Directive, Ireland still chose the most restrictive conditions allowable regarding access to the labour market – requiring an applicant to have been in the international protection process for at least nine months before they can legally begin working.⁷⁹ These provisions represent the most prolonged delays permitted under the Recast Reception Conditions Directive.⁸⁰ Further, if an applicant has already received a “first-instance” decision, access to the labour market is prohibited. This means that long-term asylum seekers may be deprived of the right to work, while relatively new-comers are given a chance to secure employment. A recent government advisory report known as the “Day Report”⁸¹ has recommended that the right to work should be “extended to anyone in the international protection process who has not yet received a final decision on their application, within three months of lodging an application for protection.”⁸² It is too early yet to know whether or not this recommendation will be implemented, although the rhetoric from government around the issue has already given the impression of a tempering of expectations. For instance, a government press release mentions a six month waiting period being introduced as opposed to three, as recommended.⁸³ A White Paper outlining the government’s plan in relation to this, and other issues, was expected in December 2020 but is still anticipated at time of writing.⁸⁴

While many people are successfully applying for permission to access the labour market, the Irish Refugee Council's report of July 2019, *The Reception Conditions Directive: One Year On*, highlights additional hurdles faced by asylum seekers in *actually* gaining employment. These include “the inability [of asylum seekers] to access bank accounts and driving licences; remote locations of [Direct Provision] centres ... and a lack of awareness on the part of employers regarding the right to work for people seeking asylum.”⁸⁵ Banking rules related to identification and proof of residence mean that asylum seekers are frequently prevented from opening accounts.⁸⁶ Furthermore, the “access to the labour market” documents are often not recognised by employers.⁸⁷ Many employers are also reluctant to invest resources in asylum seekers – hiring a person with

⁷⁷ Ireland was not previously bound by this Directive because Ireland is not a party to the Area of Security, Freedom and Justice of the EU. Ireland maintains an “opt-in” position to any directives arising in this area. See: *Protocol (No 21)* (n.25).

⁷⁸ European Communities (Reception Conditions) Regulations 2018, S.I. No 230 of 2018.

⁷⁹ *ibid*, s. 11(4)(a).

⁸⁰ Article 15 (1) Directive 2013/33/EU of the European Parliament and of the Council of 26th June 2013 laying down standards for the reception of applicants for international protection (recast).

⁸¹ *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (September 2020) Government of Ireland.

⁸² *ibid* p 77.

⁸³ Department of Children, Equality, Disability, Integration and Youth Press release (21st October 2020) . Available at: www.gov.ie/en/press-release/59532-minister-ogorman-and-minister-mcentee-publish-the-report-by-the-advisory-group-on-direct-provision-and-announce-a-reduction-in-the-waiting-period-for-international-protection-applicants-to-access-work/ (last accessed: 18th March 2021).

⁸⁴ Recent media reports suggest that the White Paper will be published in February 2020. See Paul Hosford and Aoife Moore, “Report on ending direct provision due in February” (29th December 2020) *Irish Examiner*. Available at: www.irishexaminer.com/news/arid-40197702.html (last accessed: 18th March 2021).

⁸⁵ Hennigan, *Reception Conditions Directive* (n.51) p.21.

⁸⁶ “The Temporary Residence Certificate provided to people seeking asylum is the only official document given to people before they receive their status and this is specifically stated as not constituting an identity document and, therefore, cannot be relied upon.” See: “Access to the Labour Market: Republic of Ireland”, Irish Refugee Council Report for AIDA Asylum Information Database. Available at: www.asylumineurope.org/reports/country/republic-ireland/reception-conditions/employment-education/access-labour-market. (last accessed: 18th March 2021).

⁸⁷ *ibid*.

this “access to the labour market” permission imposes additional legal and administrative obligations on employers which do not apply to other workers.⁸⁸

The lack of political will for actually improving conditions for asylum seekers has been made clear by the uphill battle in gaining access to the labour market. The State has continued implementing deterrence wherever possible.⁸⁹ The State’s “hand” was ultimately pushed by the courts – despite the fact that the government had commissioned its own report (McMahon) which had already recommended this change. It remains to be seen whether or not the recommendations of the Day Report will be adopted in a similarly piecemeal fashion. As it stands, accessing the labour market still remains difficult for asylum seekers in practice, and yet the government can be said to have complied with minimum legal requirements.

b. Dispersal and Direct Provision

Policies for the dispersal of asylum seekers and refugees have been common in a number of European countries over the last 20 years, often focused on allaying fears of concentrations of asylum seekers in specific urban centres.⁹⁰

Dispersal is the process of assigning accommodation to asylum seekers across a wider area of the country. It manifests slightly differently from country to country in the range of accompanying integration supports⁹¹ and the level of local consultation but, generally, it purports to prevent the emergence of “ethnic enclaves” and “clustering” of refugees in large cities. It does not usually consider the individual preference of the protection applicant.⁹² Whether or not Ireland operates a policy of dispersal is not, in fact, a matter for debate.⁹³ Warranting further discussion, however, is to assess *why* it operates this system.

The UK Home Office adopted similar dispersal policies from 2000 onwards in the context of its wider commitment to privatising public services and the British pattern of socially distinct neighbourhoods. This latter characteristic, historically mainly linked to social class, has accelerated in recent decades. In a report commissioned by the BBC, Dorling *et al* observed:

⁸⁸ *ibid.*

⁸⁹ Until recently applicants awaiting a decision regarding a Dublin III transfer were excluded from access to the labour market. For discussion see Liam Thornton, “Asylum Seekers subject to ‘Dublin procedures’ have a right to work under EU Law” (14th January 2021). Available at: <https://liamthornton.ie/2021/01/14/asylum-seekers-subject-to-dublin-procedures-have-a-right-to-work-under-eu-law/> (last accessed: 18th March 2021).

⁹⁰ Birgit Glorius, Jeroen Doornik & Jonathan Darling, “Asylum in Austere Times: Instability, Privatization and Experimentation within the UK Asylum Dispersal System” (2016) 29(4) *Journal of Refugee Studies* 483-505, p.483.

⁹¹ Yitchak Haberfeld, *et al*, “Selectivity and Internal Migration: A Study of Refugee’ Dispersal Policy in Sweden” (2019) *Frontiers in Sociology* (online journal). Available at: www.frontiersin.org/articles/10.3389/fsoc.2019.00066/full (last accessed: 18th March 2021).

⁹² Matz Dahlberg & Madhinee Valeyathepillay “On the Anatomy of a Refugee Dispersal Policy: Neighbourhood Integration and Dynamic Sorting” (2019) p.7. Available at: http://conference.iza.org/conference_files/AMM_2019/valeyathepillay_m28133.pdf (last accessed 18th March 2021).

⁹³ “Services for all protection applicants who are in State-provided accommodation or who live in the community are delivered under the Government’s policies of direct provision and dispersal” – Minister David Stanton, Dáil Éireann debate Thursday, 30th March 2017, Vol.945 No.1. Available at: www.oireachtas.ie/ga/debates/debate/dail/2017-03-30/2/ (last accessed: 18th March 2021).

As people have moved about Britain, and as economic, social and political change has moved on, our neighbourhoods have become far more socially distinct in 2008 compared to the more mixed neighbourhoods of around 1968.⁹⁴

UK government statistics published in June 2020 confirm this general pattern and further shows that “people from the White British, White Irish and White Other ethnic groups were the least likely out of all ethnic groups to live in the most income-deprived 10% of neighbourhoods.”⁹⁵

The 2000 policy reflected older practices from the 1970s onward that saw refugees from Uganda, Vietnam and Bosnia similarly dispersed around Britain.⁹⁶ The implementation of these policies was contracted out to private companies in collaboration with local authorities. Local political considerations often meant that asylum seekers were housed in the least affluent and infrastructurally advantaged urban areas. The outcome of the British policies has been the subject of much negative comment in relation to its impact on asylum seekers: “the UK’s asylum system should be fair, efficient and humane. At present it is beset with errors and backlogs.”⁹⁷ Many of the same criticisms are levied at Ireland’s scheme where asylum seekers have found themselves in isolated locations with poor public transport links – despite the majority of resources for asylum seekers being based in Dublin.⁹⁸

Placing refugees in localities with poor labour market conditions can hinder their integration, leading to unemployment and extended dependency on the state. Refugees placed in more rural areas may also face challenges surrounding access to public transport for language classes and employment.⁹⁹

Much of the literature on the UK dispersal system has identified the practice as a “mechanism of exclusion”,¹⁰⁰ and it is difficult to see how the Irish system differs. The policy of direct provision and dispersal was “introduced in Ireland just a few weeks after a similar system was established in the UK”¹⁰¹ and shares many of the same hallmarks – such as operational privatisation.

An argument in favour of the practice of dispersal, however, may be that it relieves crucial housing stock in capital cities and spreads the financial and logistical burden of housing asylum seekers across a wider area.

⁹⁴ Danny Dorling, Dan Vickers, Bethan Thomas, John Pritchard, & Dimitris Ballas, *Changing UK: The way we live now* (University of Sheffield: Social and Spatial Inequalities (SASI) group, Department of Geography, 2008) p.2.

⁹⁵ Office for National Statistics, *People living in deprived neighbourhoods* (London: Gov.UK, 2020). Available at: www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/people-living-in-deprived-neighbourhoods/latest (last accessed: 18th March 2021).

⁹⁶ Emma Stewart, “UK Dispersal Policy and Onward Migration: Mapping the Current State of Knowledge” (2012) 25(1) *Journal of Refugee Studies* 25-49.

⁹⁷ Jill Rutter & Rosie Carter, “National Conversation on Immigration: Final report” (2018) p.9. Available at: www.britishfuture.org/wp-content/uploads/2018/09/Final-report.National-Conversation.17.9.18.pdf (last accessed: 18th March 2021).

⁹⁸ Bairbre Ní Chiosáin, “Ireland and its vulnerable “others”: the reception of asylum seekers in Ireland” (2016) 41(2) *Étude Irlandaises* 53-72.

⁹⁹ Joseph Coley, *et al*, “What works? What can work? What does not work? A summary of the evidence” (June 2019) UK Home Office Report, p.11.

¹⁰⁰ Emma Stewart, “The integration and onward migration of refugees in Scotland: a review of the evidence” (2009) *New Issues in Refugee Research*, (UNHCR) Research Paper No.174, p.2.

¹⁰¹ Kinlen, “Welcome to Ireland” (n.73) p.36.

Nevertheless, the evidence does not seem to support the conclusion that dispersal is actually cost effective.¹⁰²

... dispersal is actually more expensive and less efficient than other means of reception and settlement. In particular, dispersal is more costly than clustering because important economies of scale are lost in relation to the duplication of costs (administrative systems, staff and travel), which are spread across smaller numbers of asylum seekers dispersed to a larger number of regions.¹⁰³

Dispersal methods in the UK and Ireland have had the unfortunate side-effect of raising tensions and simply relocating “social anxieties to areas with little previous history of minority settlement.”¹⁰⁴ We see this played out in arson attacks at proposed Direct Provision centres,¹⁰⁵ and protests by local communities who do not wish to accommodate asylum seekers in their area.¹⁰⁶ Achill Island, Co. Mayo, for instance, saw a six week long protest involving an around the clock rotation system of 150 residents. This outcry was in reaction to the Reception and Integration Agency’s¹⁰⁷ decision to accommodate 38 international protection applicants in the area.¹⁰⁸ There have been many similar demonstrations across rural Ireland.¹⁰⁹

In tandem with dispersal is the notorious system of Direct Provision. Direct Provision is the reception arrangement in Ireland which provides for “the material needs of people seeking protection in the State.”¹¹⁰ The system has been decried as not fit for purpose for many years. Although an even further degradation in reception conditions has been emerging in recent times with Direct Provision suffering from major capacity issues and relying on grossly ill-equipped hotels and B&Bs to stem the crisis.¹¹¹ It is beyond the scope of this research to discuss fully the effects of these “emergency accommodation” measures, although asylum seekers in these hotels and B&Bs face additional challenges.

Despite being introduced as an interim measure, where an asylum seeker would be accommodated for no more than 6 months,¹¹² the average length of stay in Direct Provision is 24 months – with some people having spent up to 12 years in the system.¹¹³ Prolonged stays in Direct Provision, an institutional setting,¹¹⁴ often

¹⁰² David Griffiths, Nando Sigona & Roger Zetter, *Refugee community organisations and dispersal: Networks, resources and social capital* (Bristol: Bristol University Press: 2005) 47-48.

¹⁰³ *ibid.*

¹⁰⁴ *ibid* p.47.

¹⁰⁵ Merville, Co. Donegal (November 2018); and Rooskey, Co. Roscommon (January and February 2019). See: Hari Gupta, Oireachtas Library & Research Service (2020) *Spotlight: Direct Provision*. Available at: https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2020/2020-03-30_spotlight-direct-provision_en.pdf (last accessed: 18th March 2021).

¹⁰⁶ *ibid.*

¹⁰⁷ Now called the International Protection Accommodation Service (IPAS).

¹⁰⁸ Rosita Boland, “There will always be two groups in Achill now” (7th December 2019) *The Irish Times*. Available at: www.irishtimes.com/news/social-affairs/there-will-always-be-two-groups-in-achill-now-1.4105718 (last accessed: 18th March 2021).

¹⁰⁹ Gupta, *Spotlight: Direct Provision* (n.105).

¹¹⁰ *Working Group to report to Government* (n.70) p.44, para 1.30.

¹¹¹ AIDA Asylum Information Database. Available at: www.asylumineurope.org/reports/country/republic-ireland/reception-conditions/housing/types-accommodation (last accessed: 18th March 2021); Jesuit Refugee Service, “Living with Dignity: Enhancing Reception Conditions and Supports for Protection Applicant in Emergency Accommodation” (June 2019). Available at: https://drive.google.com/file/d/1yXnltusCy4ZBODjMHpFBfPq1Fsc_ZfH/view (last accessed: 18th March 2021).

¹¹² *Working Group to report to Government* (n.70) p.14.

¹¹³ Doras Luimní website. Available at: <https://doras.org/direct-provision/> (last accessed: 18th March 2021).

¹¹⁴ Molly O’Connell, Richard Duffy & Niall Crumlish, “Refugees, the asylum system and mental healthcare in Ireland” (2016) 13(2) *BJPsych International* p.35.

lead to individuals experiencing significant mental health issues and ongoing trauma.¹¹⁵ In many instances it also leads to loss of skills and diminished self-esteem.¹¹⁶ Literature abounds outlining the short and long-term harm of direct provision on individuals' mental health and integration prospects.¹¹⁷

It may be important at this point to note that staying in Direct Provision is not mandatory.¹¹⁸ Although, while not a *legal* requirement, it would be disingenuous to suggest that asylum seekers have the ability to exercise much choice in this matter. In reality, most asylum seekers simply cannot afford to live outside of the Direct Provision system, and even those who can face obstacles such as health care uncertainty¹¹⁹ and financial insecurity. Asylum seekers are not entitled to work on arrival and are also not entitled to access most social welfare payments.¹²⁰ The 'daily expenses allowance' of €38.80 per week for adults and €29.80 for children is only accessible to applicants staying in Direct Provision.¹²¹

Addressing the question of why Ireland operates policies of dispersal and direct provision: "It is clear ... that the decision to introduce [Direct Provision] was based on a policy of deterrence rather than on any attempt to address the needs of asylum seekers as a class or as individuals."¹²² The overall impact of the current regime is that individual asylum seekers find it difficult to integrate into Irish society and establish a pattern of life that is attuned to that of the local community.

This institutional *modus vivendi* increases the social segregation that reinforces the sense of separation between the settled and incoming communities. This issue is addressed by the Day Report's recommendation of ending "the congregated and segregated accommodation of applicants for international protection and providing own-door accommodation sourced through the local authorities within three months of an

¹¹⁵ College of Psychiatrists of Ireland – position paper, "The Mental Health Service Requirements in Ireland for Asylum Seekers, Refugees and Migrants from Conflict Zones" (March 2017). Available at: www.irishpsychiatry.ie/wp-content/uploads/2016/10/Mental-Health-Service-requirements-for-asylum-seekers-refugees-and-immigrants-150517-1.pdf (last accessed: 18th March 2021).

¹¹⁶ *Working Group to report to Government* (n.70) p.210, paras 5.37-5.38.

¹¹⁷ O'Connell, Duffy & Crumlish, "Refugees" (n.114); Doras, "Experiences of Living in Direct Provision: A Case Study of Mount Trenchard Accommodation Centre" (2019). Available at: <http://doras.org/wp-content/uploads/2020/02/Report.-Experiences-of-Living-in-Direct-Provision.-Mount-Trenchard-3.pdf> (last accessed: 18th March 2021); UNHCR, "Towards a New Beginning: Refugee Integration in Ireland" (May 2014). Available at: www.refworld.org/docid/52ca8a6d4.html (last accessed: 18th March 2021).

¹¹⁸ Department of Justice and Equality, *Spending Review 2019: Direct Provision: Overview of current accommodation expenditure* (August 2019) p.14. Available at http://justice.ie/en/JELR/Spending_Review.pdf/Files/Spending_Review.pdf (last accessed: 18th March 2021).

¹¹⁹ For instance, those not screened at the Baleskin Reception Centre face difficulty in accessing medical cards – this is increasingly problematic for those sent straight to emergency accommodation as well as those who do not avail of direct provision for other reasons. See: *The Ombudsman & Direct Provision: Update for 2019*, (April 2020). Available at: www.ombudsman.ie/publications/reports/the-ombudsman-direct-prov-1/Direct-Provision-Report-2019-FINAL.pdf (last accessed: 18th March 2021).

¹²⁰ A recent exception can be seen in the Pandemic Unemployment Payment (PUP). According to Citizens Information, PUP is being made available to international protection applicants meeting certain criteria. See: Citizens Information website. Available at: www.citizensinformation.ie/en/social_welfare/social_welfare_payments/unemployed_people/covid19_pandemic_unemployment_payment.html (last accessed: 18th March 2021). Initially, there was confusion about whether or not asylum seekers could apply for PUP. For discussion, see: Liam Thornton, "Excluding Asylum Seekers from Pandemic Unemployment Payment" (29th May 2020). Available at <https://liamthornton.ie/2020/05/29/excluding-asylum-seekers-from-pandemic-unemployment-payment/> (last accessed: 18th March 2021).

¹²¹ Department of Justice and Equality, *Spending Review 2019* (n.118).

¹²² Caroline O'Connor, "Direct Discrimination: an analysis of the scheme of Direct Provision in Ireland" (2003) *FLAC Report*, p.39. Available at: www.flac.ie/assets/files/pdf/directdiscrimination.pdf?issuusl=ignore (last accessed: 18th March 2021).

application for protection.”¹²³ The report stipulates that the intention behind this recommendation is “to promote integration of those seeking international protection into local communities from the earliest stage in the process.”¹²⁴ Nevertheless, this recommendation has already met resistance. Responding to a draft of the report in September 2020, the *Department of Housing, Planning and Local Government* (DHPLG) criticised the report for not taking account of the ongoing housing crisis. It cited concern for “other vulnerable groups” and stated that the implementation of these recommendations would cause homeless families and individuals to have to compete for accommodation with those in Direct Provision.¹²⁵ Nasc have responded to these concerns by arguing that they are based on a fundamentally flawed understanding of the recommendations – including the fact that all “legacy cases” would need to be addressed before it would be practical to begin implementation. The DHPLG, they argue, is overestimating the number of households within the international protection process, and failing to consider the fact that accommodation for asylum seekers is temporary in nature and “confers no right or access to social housing.”¹²⁶ Others have criticised DHPLG of pitting vulnerable groups against each other – raising unnecessary “us versus them” tensions.¹²⁷ Nevertheless, it remains to be seen where the government will settle on this issue. All stakeholders await the release of the government White Paper.

c. Family Reunification

In Ireland, where previously refugees had the opportunity to reunify (at the discretion of the Minister) with dependents outside their nuclear family unit¹²⁸ – the category of eligible family members was significantly reduced with the introduction of the International Protection Act 2015. The 2015 Act removed this ministerial discretion and eliminated the possibility of reunifying with grandparents, grandchildren, siblings, children who have reached the age of majority, and other possible categories of dependent. Furthermore, the 2015 Act imposed a time limit of 12 months in which a person could apply for family reunification. It is often not possible for someone, in this time, to locate family members from whom they have been separated,¹²⁹ or to acquire sufficient finances and accommodation to support additional family members. This is evidenced, perhaps most starkly, by the number of refugees who struggle to find accommodation and leave the direct provision system once granted status.¹³⁰

In defending the changes in 2017, Minister for Justice & Equality, David Stanton stated that “the reforms introduced in the 2015 Act sought to bring Ireland closer to EU norms as provided for under the EU family

¹²³ *Report of the Advisory Group* (n.81) p.9.

¹²⁴ *Ibid.*

¹²⁵ “Observations on an excerpt from the Draft Report of the Advisory Group on Direct Provision”, Department of Housing Planning and Local Government, 14th September 2020. Available at: www.justice.ie/en/JELR/DHLGH%20Observations%20on%20draft%20Advisory%20Group%20report%2014092020.pdf/Files/DHLGH%20Observations%20on%20draft%20Advisory%20Group%20report%2014092020.pdf (last accessed: 18th March 2021).

¹²⁶ “Nasc statement on housing recommendations in the Day Report”. Available at <https://nascireland.org/news/2020/nasc-statement-housing-recommendations-day-report> (last accessed: 18th March 2021).

¹²⁷ See: “Exploring Day” Webinar Series hosted by UCD Sutherland School of Law and Nasc, the Migrant and Refugee Rights Centre (27th November 2020) “Webinar 2: Implementation of the Day Report: Challenges and Opportunities”. Available at www.facebook.com/135651150972/videos/849310002531568 (last accessed: 18th March 2021).

¹²⁸ Refugee Act 1996 18(4)(a).

¹²⁹ Karen Smith, Muireann Ní Raghallaigh, Derina Johnson & Azad Izzeddin, *Invisible People: The Integration Support Needs of Refugee Families Reunified in Ireland* (Cork: Nasc, 2020) 42-56.

¹³⁰ Due to administrative delays and lack of available social and rental accommodation hundreds of people have been unable to leave direct provision after receiving refugee status. See: Hennigan, *Reception Conditions Directive* (n.51) 9-10; “Observations on an excerpt from the Draft Report” (n.125) p.4.

reunification directive”¹³¹ perhaps seeking to use EU standards as a shield from domestic criticism. This is despite the fact, however, that Ireland is not subject to the Directive, and even if it were there would be nothing to prevent Ireland from “adopting or maintaining more favourable conditions.”¹³² In fact, an obligation to create “more favourable conditions” in relation to refugee family reunification is identified by the Directive:

Special attention should be paid to the situation of refugees on account of the reasons which obligated them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.¹³³

The International Protection (Family Reunification) (Amendment) Bill 2017 sought to rectify the restrictive changes introduced by the 2015 Act. The bill proposed returning to the broader definition of family as seen in the 1996 Act, and doing away with the 12-month time restriction. Despite working its way through all the necessary channels, the bill was held-up by the refusal of the previous government to pass the requisite money messages.¹³⁴ This “money message veto” has been described as “undemocratic and a mis-use of the Constitution.”¹³⁵ Nevertheless, the bill remains lapsed. There appears to be no immediate incentive for the current coalition government to implement more liberal policies in the area of refugee law, particularly in the context of post-Brexit uncertainty – a fact which Minister Stanton also cited in his defence of maintaining the current restrictions.¹³⁶ As ever, the fear of “attracting” asylum seekers from our closest neighbour, and the possibility of threatening the common travel area, remain significant concerns for Irish politicians.

Most EU states have progressively moved towards more restrictive family reunification policies¹³⁷ and some have even pushed the limits of international human rights law.¹³⁸ Nevertheless “both domestic and international law place certain limitations on the design of indirect deterrence with regard to non-discrimination, making it difficult for governments to design policies specifically targeting certain groups or nationalities.”¹³⁹ In the case of Denmark, restrictions on family reunification as a form of deterrence is widely recognised and condemned by human rights groups.¹⁴⁰ Denmark is also not a party to the Family Reunification Directive, and its restrictions “constitute the toughest family-migration rule package in force among Western democracies today.”¹⁴¹ Nevertheless, non-discrimination guarantees, such as those under

¹³¹ Minister David Stanton, Seanad Éireann Debate (19th July 2017) Vol. 253, No.2. Available at: www.oireachtas.ie/ga/debates/debate/seanad/2017-07-19/28/ (last accessed: 18th March 2021).

¹³² Article 3(5) Family Reunification Directive.

¹³³ Preamble (8) of Family Reunification Directive.

¹³⁴ For discussion on the money messages procedure see: David Kenny & Eoin Daly, “Opinion on the Constitutional Limits of the “Money Message” Procedure under Article 17.2 of the Constitution of Ireland”. Available at: <https://colettekelleher.ie/wp-content/uploads/2019/12/Money-Message-David-Kenny-and-Eoin-Daly.pdf> (last accessed: 18th March 2021).

¹³⁵ Social Justice Ireland, “Government’s use of money message veto is undemocratic” (6th September 2019). Available at: www.socialjustice.ie/content/policy-issues/governments-use-money-message-veto-undemocratic (last accessed: 3rd March 2021).

¹³⁶ Stanton, Seanad Éireann Debate (n.131).

¹³⁷ Council of Europe policy paper “Realising the right to family reunification of refugees in Europe” (2017), p.33.

¹³⁸ Council of Europe, “Family Reunification for Refugee and Migrant Children: Standards and promising practices” (2020), 19-27. Available at: <https://biblio.ugent.be/publication/8672180/file/8672181> (last accessed: 18th March 2021).

¹³⁹ Gammeltoft-Hansen, “Refugee policy” (n.53) p.117.

¹⁴⁰ Emily Cochran Bech, Karin Borevi & Per Mouritsen, “A ‘civic turn’ in Scandinavian family migration policies? Comparing Denmark, Norway and Sweden” (2017) 5 *Comparative Migration Studies*.

¹⁴¹ *ibid.*

Article 14 of the European Convention on Human Rights,¹⁴² mean that refugees cannot be subjected to more stringent family reunification policies than others. Denmark does not have “self-standing asylum law”¹⁴³ and so, the laws around family reunification apply equally to refugees, beneficiaries of subsidiary protection, and other types of migrant.

Spousal reunification requires that both spouses be at least 24, despite the legal marriageable age being 18 years old.¹⁴⁴ Denmark’s policies also include financial thresholds, language proficiency, and the ability to show that the sponsor has not relied on social welfare support in the previous three years.¹⁴⁵ Further, the couple must be able to prove a “greater attachment” to Denmark than any other country. Although, this particular rule does not apply to anyone who has been a Danish citizen for more than 28 years¹⁴⁶ – therefore creating an additional barrier for many young people and most migrants.¹⁴⁷ Due to these measures there is great sympathy in the country for “the plight of the young professional who has fallen in love with an American.”¹⁴⁸ Though, perhaps not as much empathy for the migrant who has relied on state support, or failed in some other desirability category.

What the Danish example shows is that: “what was previously a basic human right to family life now had to be earned. And this logic is extending to a growing number of national settings.”¹⁴⁹ As European countries seemingly compete to be the least “desirable”, the minimisation of rights should be a concern. It is especially troubling in the case of Ireland due to our unique flexibility within the European Union regarding the area of Freedom, Security and Justice. Ireland’s closest neighbour is correspondingly unrestricted in introducing certain deterrence measures, at least not by EU legislation. Worryingly, the British prime minister Boris Johnson has even alluded to the withdrawal of the UK from the European Convention on Human Rights.¹⁵⁰ More recently, the UK government has announced plans to “update” its Human Rights Act¹⁵¹ – removing certain protections for asylum seekers from deportation.¹⁵²

What the examples, from Ireland and other European countries, outlined in this section show, is that the rights and entitlements of asylum seekers are in jeopardy. More and more, European countries are implementing measures of deterrence and shifting the focus of refugee law from humanitarian concern to almost seeking to punish those who seek asylum. In this context, the EU Home Affairs Commissioner Ylva Johansson said of new proposals set out by the Commission in late-September 2020: “We will focus very much on returns ... we have a lot of people coming that are not entitled to international protection, and need to be returned.”¹⁵³

¹⁴² “The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” – Article 14 of the European Convention on Human Rights.

¹⁴³ European Commission (website), “Governance of Migrant Integration in Denmark.” Available at: <https://ec.europa.eu/migrant-integration/governance/denmark> (last accessed: 18th March 2021).

¹⁴⁴ Bech, Borevi, & Mouritsen, “A ‘civic turn’ in Scandinavian family migration policies?” (n.140).

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

¹⁴⁹ *ibid.*

¹⁵⁰ Jon Stone, “Boris Johnson refuses to commit to keeping UK in human rights convention” (5th March 2020) *Independent*.

¹⁵¹ United Kingdom: Human Rights Act 1998.

¹⁵² Owen Bowcott, “UK government plans to remove key human rights protections” (13th September 2020) *The Guardian*.

¹⁵³ Naomi O’Leary, “EU to propose quick deportation of failed asylum seekers” (18th September 2020) *The Irish Times*.

The result of countries like Denmark taking a hard-line on refugees seems to have initiated a general “race to the bottom” around Europe. In 2015, the Swedish prime minister Stefan Löfven expressed regret that his government was compelled to restrict asylum policies despite popular support and a general empathy towards the plight of refugees amongst his people.¹⁵⁴ Löfven pointed to a lack of European solidarity in the area of asylum policy that had resulted in an unfair distribution of the “burden” that Sweden could no longer sustain.¹⁵⁵

Politicians and commentators have sometimes argued that if all EU countries had welcomed refugees to the same extent as Sweden (in relative numbers), Europe would not even have had a refugee ‘crisis’ ... When calls for solidarity fall on deaf ears, more societies will start closing their doors.¹⁵⁶

Evidently, the more restrictions that are put in place, the more that will follow.

This section has outlined examples of deterrence as seen in the Irish context as well as drawing comparisons with both the UK and Denmark. The examples demonstrate that the rights of asylum seekers have, in many cases, been eroded by policies that are intended to act as deterrents to inward migration. Keeping asylum seekers out of the workforce, in remote and substandard accommodation, and limiting their ability to reunite their families are emblematic of the departure from humanitarian concern, towards more exclusionary politics. While there has not been an outright rejection of the Refugee Convention, the spirit of humanitarian concern and empathy is being tested by incremental policy change seeking to restrict the rights of protection applicants. Given these developments, the following section will explore how effective these policies actually are at reducing the number of incoming asylum seekers. The discussion will then focus on attitudes towards asylum seekers in Europe.

C. DISCUSSION OF DETERRENCE

1. Effectiveness of Deterrence

Evidence suggests that deterrence methods like the punitive domestic measures discussed in this paper have very little impact on the actual number of people coming to a country to seek international protection as “asylum-seekers may have an overall idea of ... states as more or less welcoming, few have more specific and in-depth knowledge of the conditions they are likely to face in them.”¹⁵⁷ It seems logical, therefore, that unless a country is actively taking steps to “brand” itself as unfriendly abroad then deterrence methods centred around creating an unpleasant experience for asylum seekers are unlikely to have the effect of lessening incoming numbers. While there is evidence of countries undertaking such “reputation management” abroad,¹⁵⁸ this is not a method that Ireland is likely to deploy.

¹⁵⁴ David Crouch, “Sweden slams shut its open-door policy towards refugees” (24th November 2015) *The Guardian*.

¹⁵⁵ Bernd Parusel, “Sweden’s U-turn on asylum” (2016) 52 *Forced Migration Review*. Available at: www.fmreview.org/sites/fmr/files/FMRdownloads/en/solutions/parusel.pdf (last accessed: 18th March 2021).

¹⁵⁶ *ibid.*

¹⁵⁷ Gammeltoft-Hansen, “Refugee policy” (n.53) p.109.

¹⁵⁸ Such as Denmark’s anti-refugee advertising campaign in Lebanon, for instance. See: BBC News, “Denmark places anti-immigration adverts in Lebanon newspapers” (7th September 2015). Available at: www.bbc.com/news/world-europe-34173542 (last accessed: 18th March 2021).

The idea of deterrence follows the same reasoning that criminal justice systems use in taking punitive measures in order to discourage unlawful conduct, relying on “the presumption that criminal behaviour is the result of a reasoned decision in which the potential offender weighs up the costs and benefits of a crime and chooses an action based on this assessment.”¹⁵⁹ While remembering that seeking asylum is not illegal, and is protected under international law, the logic amongst government policy makers seems to be as though it were criminal. Deterrence methods involving punishment are criticised in the scholarship of criminal justice systems, as well as in this analysis, for failing to consider wider influences and motivations.¹⁶⁰ In the context of international protection, reception standards and welfare benefits may not be the “pull factors” that many suppose. Rather, the arrival of asylum seekers to a country’s borders is much more influenced by “contributing factors outside of the country, such as a global downturn in displaced populations or changes in the situation in countries of transit.”¹⁶¹ The idea that asylum seekers exercise a *carte blanche* freedom of choice over their ultimate destination does not take into consideration “the choices that asylum seekers make are rarely the outcome of a rational decision making process in which individuals have full knowledge of all the alternatives and weigh them in some conscious process designed to maximise returns.”¹⁶²

Furthermore, evidence suggests that the decision to come to a particular country “is often not made by the asylum seeker but by others involved in their transportation.”¹⁶³ In other words, smugglers, whose interest does not necessarily extend beyond financial reward, decide on a refugee’s ultimate destination. This, of course, casts some doubt on the idea that refugees are “attracted” to particular countries based on welfare entitlements or other “pull factors”. Moreo and Lentin describe the experiences of Somali refugees in Ireland.¹⁶⁴ Many of their participants describe how they thought they were being brought to America and had actually never heard of Ireland before arriving:

*I didn't know Ireland, actually ... because in my country ... most people know America ... people ... they would go to America ... even if somebody is in Europe ... they would say 'oh, the person is in America' ... so at the time I was coming I didn't know I was coming to Ireland ...*¹⁶⁵

¹⁵⁹ Robyn Sampson, “Reframing immigration detention in response to irregular migration: does detention deter?” (2015) *International Detention Coalition* briefing paper, p.3. Available at: https://idcoalition.org/wp-content/uploads/2015/04/Briefing-Paper_Does-Detention-Deter_April-2015-A4_web.pdf (last accessed 18th March 2021).

¹⁶⁰ *ibid*, p.2.

¹⁶¹ *ibid*, p.4.

¹⁶² Heaven Crawley, “Chance or choice? Understanding why asylum seekers come to the UK” (2010) *Refugee Council (UK)*, p.47. Available at: www.refugeecouncil.org.uk/wp-content/uploads/2010/04/Chance-or-choice-2010.pdf (last accessed: 18th March 2021).

¹⁶³ Stuart Turner, “Refugee blues: a UK and European perspective” (2015) 6 *European Journal of Psychotraumatology* p.5.

¹⁶⁴ Elena Moreo & Ronit Lentin, “From Catastrophe to Marginalisation: The experiences of Somali refugees in Ireland” (2010) report for the Migrant Networks Project, Trinity Immigration Initiative (Trinity College Dublin). Available at: www.tara.tcd.ie/bitstream/handle/2262/41175/HAPA_MASTER_COPY_final_edit_RL_%2812%29%20%282%29.pdf?sequence=1&isAllowed=y (last accessed: 18th March 2021).

¹⁶⁵ *ibid*, p.21 [italics in original].

Without more legal pathways to Europe,¹⁶⁶ asylum seekers increasingly turn to human smugglers. A 2015 European Commission report on human smuggling recognises that “push factors” in the Middle East and Africa directly result in “the increasing number of people wanting to migrate to EU Member States”:¹⁶⁷

The continued conflicts in Syria, Libya, Afghanistan and Iraq as well as in many Sub-Saharan African states results in ever larger numbers of refugees and displaced persons. There are higher numbers of aspiring migrants than there are legal opportunities for migration. This has resulted in a huge growth in the number of irregular migrants and corresponding demand for smuggling services.¹⁶⁸

The vast majority of asylum seekers are fleeing persecution or conflict and are not, as is widely believed, economic migrants.¹⁶⁹ The decision to leave their home countries is based on “push” factors rather than “pull”. The idea of an asylum seeker *choosing* to leave their country of origin is complicated. While wanting to avoid the narrative of asylum seekers as passive victims devoid of autonomy, it is also important to remember that the primary concern of an asylum seeker is to reach safety, and for many, the decision to seek protection in another country is made within a matter of days or weeks.¹⁷⁰ After all, a refugee is simply someone seeking *refuge*.

What deterrence methods ignore is broader, global patterns of displacement, and they rely on the assumption that there is some alternative “place to go” for asylum seekers. During 2019 alone, 11 million people are predicted to have been newly displaced.¹⁷¹ The global population of displaced persons remained relatively “stable” throughout the 1990s and 2000s: “because even though new displacement continued, at the same time many displaced people eventually repatriated, built permanent homes in their host communities or resettled in third countries.”¹⁷² The situation has changed in the last decade. According to the 2019 UNHCR Global Trends Report, more people have been displaced but are presented with far fewer options for building a life elsewhere, or returning home: “as wars and conflicts dragged on, fewer refugees and internally displaced people were able to return home ... The world has clearly shifted from a decade of solutions to a decade of new and protracted displacement.”¹⁷³

It is not possible to predict with certainty what future numbers of displaced persons could be, but emerging issues like climate change and disasters are likely to exacerbate current trends.¹⁷⁴ The scale of globally displaced persons and refugees is beyond the control of individual nations, or lone EU Member States. National, inward-looking models which seek to deter refugee migration based on the concept of “pull factors”

¹⁶⁶ For a discussion on how restrictive access policies (or “containment” measures as described by this paper) fuel the human smuggling trade, see: Theodore Baird & Ilse van Liempt, “Scrutinising the double disadvantage: knowledge production in the messy field of migrant smuggling” (2016) 42(3) *Journal of Ethnic and Migration Studies* 400-417.

¹⁶⁷ European Commission, DG Migration & Home Affairs, “A study on smuggling of migrants: Characteristics, responses and cooperation with third countries” Final Report (September 2015), p.109. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/study_on_smuggling_of_migrants_final_report_master_091115_final_pdf.pdf (last accessed: 18th March 2021).

¹⁶⁸ *Ibid.*

¹⁶⁹ Crawley, “Chance or choice?” (n.162) p.4.

¹⁷⁰ *Ibid.*

¹⁷¹ UNHCR, *Global Trends: Forced displacement in 2019*. Available at: www.unhcr.org/5ee200e37.pdf (last accessed: 18th March 2021).

¹⁷² *ibid.*, p.11.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*, p.12.

are flawed. Nevertheless, as in other areas of policy, such as pandemic control, the propensity to seek national solutions is marked and international cooperation often eschewed.

2. European Attitude to Refugees and Ireland's Position

The following section will explore European attitudes to asylum seekers, and EU policy responses. While Ireland is not necessarily bound by directives relating to the Area of Freedom, Security and Justice (which governs asylum and refugee policy) what happens on a European level still has an important impact on Ireland's own policy decisions.

European anxiety around migration and asylum seeking is disproportionate according to Spanish MEP Juan Fernando López Aguilar. He claims that there is a negative assumption in Europe that migration is a problem, and a threat to European identity. The truth is, he argues, that Europe already has a very effective returns process and any sense of "invasion" often decried by right-wing, populists is simply untrue.¹⁷⁵ Had the European community displayed more solidarity during the 2015 "refugee crisis", Aguilar argues, we would never have had to describe it as such.¹⁷⁶ While acknowledging that, indeed, the number of forcibly displaced persons has reached record highs¹⁷⁷ – the number of refugees seeking protection in Europe is a very small proportion of the total. In most instances, refugees flee to safer neighbouring countries, or within their region.¹⁷⁸

... the emerging patterns ... show how few of the global refugee population are heading towards those countries that promise economic strength, human development, or peaceful and stable societies, and that geography plays a much bigger role in these population dynamics.¹⁷⁹

Despite this, however, European public reaction seems to suggest a rising fear of being overwhelmed by migrants. In what the literature refers to as the '*innumeracy* phenomenon':

... many people overestimate the number of immigrants in their own country ... thus fostering 'fears of invasion' of their native land from foreigners ... innumeracy effects are the result of a combination of emotional factors and cognitive mistakes induced by non-intimate contacts with migrants and exposure to media messages.¹⁸⁰

Whether emotional or cognitive, migration as a problem is reflected in a real sense of insecurity that provokes adverse responses to minorities. Throughout Europe, right-wing politicians seize upon this *innumeracy* phenomenon and incite more fear: "populists often attempt to blur the boundaries between migrants and refugees in an effort to support arguments for more protectionist policies, including curbing migration."¹⁸¹

¹⁷⁵ Juan Fernando López Aguilar, "Reforming the European Migration Policy, Common European Asylum System" (Webinar) (3rd July 2020) *The Institute of International and European Affairs Webinar series*. Available at: www.iea.com/past-events/webinar-reforming-the-european-migration-policy-and-the-common-european-asylum-system/ (last accessed: 18th March 2021).

¹⁷⁶ *ibid.*

¹⁷⁷ Benjamin D. Hennig & Dimitris Ballas, "Nationality, Citizenship and Refugees: A Global Perspective" (September 2020) *Political Insight* (Political Studies Association) 20-21, p.20.

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid* p.21.

¹⁸⁰ Basile & Olmastroni, "Sharing the burden" (n.4) p.675.

¹⁸¹ Hennig & Ballas, "Nationality, Citizenship and Refugees" (n.177) p.20.

This merging of groups is significant because European public opinion research¹⁸² from 15 countries suggests that: “public preferences over asylum seekers are shaped by sociotropic evaluations of their potential economic contributions, humanitarian concerns about the deservingness of their claims, and anti-Muslim bias.”¹⁸³ Attitudes are similar when controlled for age, education, incomes, and political ideologies. Recent research confirms the tendency among Europeans to favour those seeking asylum from more prosperous and ethnically similar backgrounds.¹⁸⁴ Those on the political right often reference these preferences. Thus, for example, at a community meeting to welcome a Syrian refugee family in Lismore, Co. Waterford, questions from non-local activists referenced membership of Islamic State and the claim that “the Government ‘intends’ to bring two million Syrians to Ireland.”¹⁸⁵ Similar hyperbole is found in other states and may have more influence in some countries such as Hungary and Poland where “aggressive mobilizations and strong anti-immigrant rhetoric might instigate drastic increases in anti-migrant sentiments.”¹⁸⁶

The UK’s approach to immigration since 2010 has been relatively simple: to try to reduce it.¹⁸⁷ This attitude was reflected in the debate around Brexit so it is possible that asylum policies in the UK may become more stringent but such a development would mirror trends elsewhere in Europe.

Within the European Union, geography ... plays a significant role, with outlying states seemingly favouring intensified border management, and more developed welfare states often implementing indirect deterrence measures to push asylum flows toward neighbouring countries.¹⁸⁸

Most countries are influenced by their close neighbours. Ireland’s position has always been heavily swayed by its relationship with the United Kingdom, even when the latter was an EU insider.¹⁸⁹ The desire to avoid a hard border on the island coupled with the UK’s position on matters of border control practices makes for an awkward balancing act. Ireland’s opt-in provisions in the Treaty of Amsterdam,¹⁹⁰ for instance, “makes clear that Ireland wishes to participate in as much of the Schengen co-operation as possible and that its inability to do so fully relates to the desire to preserve the common travel area with Britain.”¹⁹¹ Nevertheless, Ireland makes attempts to show solidarity with European counterparts through opting into schemes to which it is not legally bound. For instance, in 2015 Ireland committed to relocating 4,000 refugees from frontier

¹⁸² Kirk Bansak, Jens Hainmueller & Dominik Hangartner, “How economic, humanitarian, and religious concerns shape European attitudes toward asylum seekers” (2016) 354(6309) *Science* 217-222. Available at: http://eprints.lse.ac.uk/67898/1/Hangartner_How%20economic%2C%20humanitarian%2C%20and%20religious%20concerns.pdf?gathStatIcon=true (last accessed: 18th March 2021).

¹⁸³ *ibid*, p.217.

¹⁸⁴ David De Coninck, “Migrant categorizations and European public opinion: diverging attitudes towards immigrants and refugees” (2020) 46(9) *Journal of Ethnic and Migration Studies* 1667-1686.

¹⁸⁵ Conor Gallagher & Sorcha Pollak, “How the far-right is exploiting immigration concerns in Oughterard: Anti-immigrant activists trying to dominate and exploit local debates on direct provision” (23rd September 2019) *The Irish Times*. Available at: www.irishtimes.com/news/ireland/irish-news/how-the-far-right-is-exploiting-immigration-concerns-in-ouughterard-1.4026612 (last accessed: 18th March 2021).

¹⁸⁶ Arno Van Hootegeem, Bart Meuleman & Koen Abts, “Attitudes Toward Asylum Policy in a Divided Europe: Diverging Contexts, Diverging Attitudes?” (2020) 5(35) *Frontiers in Sociology* 1-16, p.13.

¹⁸⁷ Joe Owen, Maddy Thimont Jack Adela Iacovov & Elliott Christensen, *Managing migration after Brexit* (London: Institute for Government, 2019) p.19.

¹⁸⁸ Gammeltoft-Hansen & Tan, “The End of Deterrence Paradigm?” (n.3) p.34.

¹⁸⁹ Elliott, “Ireland’s evolving migration policies” (n.67).

¹⁹⁰ European Union: Council of the European Union, *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts*, 10th November 1997; “Main provisions of The Amsterdam Treaty” (6th May 1998) *The Irish Times*. Available at: www.irishtimes.com/news/main-provisions-of-the-amsterdam-treaty-1.149741 (last accessed: 18th March 2021).

¹⁹¹ *The Irish Times* (6th May 1998) “An Area of Freedom, Security and Justice”. Available at: www.irishtimes.com/news/an-area-of-freedom-security-and-justice-1.149725 (last accessed: 18th March 2021).

countries like Greece and Italy in the spirit of European solidarity.¹⁹² In 2019, a renewed commitment was made to relocate 2,900 people.¹⁹³ Perhaps it is a diplomatic strategy, or maybe “a moral duty”.¹⁹⁴ Whatever the motivations, it is especially significant considering other EU countries like Austria, Czech Republic, Hungary and Poland have shirked their (legal) obligations in this regard.¹⁹⁵ The UK and Denmark, similarly not bound by the Area of Freedom, Security and Justice,¹⁹⁶ also committed to relocating refugees from frontier states during Europe’s 2015 refugee crisis.¹⁹⁷

Some have tried to advance European cooperation through proposed “Dublin IV” regulations which would centralise the process of applying for international protection.¹⁹⁸ Under these regulations, an applicant would essentially apply for asylum with the EU rather than individual Member States and then responsibility would be assigned. There has been enough disagreement, however, so as to prevent the progress of this legislation.¹⁹⁹

The bickering among governments over these burden-sharing measures reveals profound national divisions and conflicting interests across the EU.²⁰⁰

On 23rd September 2020, the European Commission launched its “New Pact on Migration and Asylum.”²⁰¹ This “new pact” is intended to act as a Europe-wide framework for regularising migration and asylum policies, including burden-sharing mechanisms. It followed petitioning by several Member States to introduce mandatory, or “near-mandatory”, systems of “fair and rapid distribution of asylum seekers arriving irregularly to the EU.”²⁰² How Ireland will be affected by this new framework remains to be seen – Ireland’s “opt-in” provisions with regard to the Area of Freedom, Security and Justice may not make for a straightforward transition. Some reports already suggest that even countries without this legal flexibility already show signs of non-compliance.²⁰³

¹⁹² Statement by Minister of State, Department of Justice & Equality, David Stanton TD (Thursday, 28th September 2017) Joint Committee on Justice & Equality – Report on Immigration, Asylum and the Refugee Crisis, *Dáil Éireann*. Available at: www.justice.ie/en/JELR/Pages/SP17000309 (last accessed: 18th March 2021).

¹⁹³ Department of Justice press statement, “Ireland commits to a new Refugee Protection Programme”. Available at: www.justice.ie/en/JELR/Pages/PR19000319 (last accessed: 18th March 2021).

¹⁹⁴ Statement by Minister of State (n.192).

¹⁹⁵ Basile & Olmastroni, “Sharing the burden” (n.4).

¹⁹⁶ *Protocol (No 21)* (n.25).

¹⁹⁷ EU Briefing “Refugee Crisis – Q&A on Emergency Relocation” (22nd September 2015). Available at: https://ec.europa.eu/commission/presscorner/detail/es/MEMO_15_5698 (last accessed: 18th March 2021).

¹⁹⁸ Kimara Davis, “The European Union’s Dublin Regulation and the Migrant Crisis” (2020) 19(2) *Washington University Global Studies Law Review* 261-290, p.276.

¹⁹⁹ *ibid.*

²⁰⁰ Basile & Olmastroni, “Sharing the burden” (n.4) p.671.

²⁰¹ European Commission, *Communication From The Commission On A New Pact On Migration And Asylum*, (Brussels: COM, 2020). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM%3A2020%3A609%3AFIN> (last accessed: 18th March 2021).

²⁰² Alberto-Horst Neidhardt & Olivia Sundberg Diez, Discussion paper: “The upcoming New Pact on Migration and Asylum: Will it be up to the challenge?” (29th April 2020) European Policy Centre, p.5. Available at: http://aei.pitt.edu/102738/1/The_upcoming_New_Pact_on_Migration_and_Asylum.pdf (last accessed: 18th March 2021).

²⁰³ For example, Austria, Czech Republic, Hungary and Poland have signalled reluctance. See: Lorne Cook, “EU tries to sell migrant pact amid claims the hardliners won” (24th September 2020) *AP News*. Available at: <https://apnews.com/article/poland-czech-republic-austria-slovakia-greece-172a7603464e82828ebc397bd42dfd35> (last accessed: 18th March 2021).

The “new pact” introduces the concept of “sponsored returns.”²⁰⁴ This means that instead of accepting relocation responsibility, a state could choose instead to oversee the repatriation of a person deemed to have no legal right to stay in Europe. This, perhaps, confirms fears that negotiations on an EU relocation scheme would lead to a “watering down” of responsibility with a “focus on lowest-common-denominator compromises, and that consensus may come at the cost of an ambitious and humane migration and asylum policy.”²⁰⁵

The “return sponsorship” element of the new pact is an attempt at appeasing anti-immigration parties across Europe. Thus, the financial burden of returning illegal migrants would be shared without the responsibility for receiving them. It will, however, become impractical if too many Member States opt for it. There is also little clarity on the enforcement mechanisms to ensure the new rules are effectively applied. The new pact seems primarily to address the concerns of states on “securing the borders” and fast-tracking deportations.²⁰⁶

The outline of the “new pact” seems to introduce the idea of abandoning the Dublin system altogether. Vice President Margaritis Schinas described the Dublin regulations as symbolic of a different time, and no longer fit for purpose.²⁰⁷ The Dublin system, he suggests, is not robust enough to deal with mass influx like that seen in 2015 – clearly anticipating the prospect of future “refugee crises”.

The rhetoric surrounding the “new pact” is forceful – with Commissioner Ylva Johansson stating that “solidarity is not optional.”²⁰⁸ Although, while the rhetoric may be strong, this is an emerging area and its impacts remain to be seen. According to Austrian Chancellor Sebastian Kurz, who has “consistently refused to house refugees”, the solution is that “the EU’s external borders should ‘remain perfectly sealed along all sections’.”²⁰⁹

Buonanno asks why EU Member States have struggled so much with the migration crisis, and whether or not the solutions adopted have “resulted in ‘more’ or ‘less’ Europe?”²¹⁰ It begs the question, has European identity and solidarity been threatened more by its *response* to mass migration than by the migrants themselves?

3. The Irish at Home – Attitudes to “Outsiders”

Having explored the wider European context, the discussion will now focus on Irish attitudes to asylum and refugee issues specifically.

²⁰⁴ European Commission, Migration: New Pact on Migration and Asylum. Available at: https://ec.europa.eu/info/sites/info/files/new-pact-on-migration-and-asylum-package_0.pdf (last accessed: 18th March 2021).

²⁰⁵ Neidhardt & Sundberg Diez, “The upcoming New Pact on Migration and Asylum” (n.202) p.3; BBC Global News Podcast, “EU proposes new migration rules” broadcast 23rd September 2020.

²⁰⁶ Romit Bhandari, “New EU migration pact driven by political compromise, not humanitarianism” (26th September 2020) *The Conversation*. Available at <https://theconversation.com/new-eu-migration-pact-driven-by-political-compromise-not-humanitarianism-146862> (last accessed: 18th March 2021).

²⁰⁷ Press conference on the New Pact on Migration & Asylum with Margaritis Schinas and Ylva Johansson. Available at: www.pscp.tv/w/1OdKrWLQEyIGX (last accessed: 18th March 2021).

²⁰⁸ *ibid.*

²⁰⁹ *Murcia Today* (Spain). Available at <https://murciatoday.com/migrant-transit-centres-to-be-re-opened-in-spain-following-increased-pressure-from-migrant-boats-1508764-a.html> (last accessed: 18th March 2021).

²¹⁰ Laurie Buonanno, “The European Migration Crisis” in Desmond Dinan, Neill Nugent & William E. Paterson (eds) *The European Union in Crisis* (London: Palgrave, 2017) pp.100-113, p.100.

... indirect deterrence has prompted intense political discussions, often deeply dividing both the public and policy-makers in terms of different visions of 'the nation' and 'national values'.²¹¹

If Europe has shown a "schizophrenic" attitude to refugees, Ireland presents a microcosm of this. The Irish view themselves as the rebellious, plucky underdog,²¹² and as an oppressed victim of colonialism.²¹³ Ireland has a long and proud history of supporting minority causes and showing solidarity with occupied nations – sharing what is seen as a common struggle.²¹⁴

Ireland's sense of itself as both a postcolonial nation and an advanced Western democracy found expression in an intense preoccupation with humanitarian aid in the 1950s and beyond.²¹⁵

Even in earlier Irish history, Frederick Douglass famously described his time in Ireland as "transformative" and as "the happiest moments of [his] life."²¹⁶ Nevertheless, since Independence, Irish government policies have been conservative and exclusive. In the early decades:

The key element in the Irish reaction to refugees was an almost desperate desire to keep anybody out who could be an added burden on a comparatively impoverished society, one that suffered the ongoing trauma of emigration and was not willing or able to respond to the persecution in Germany with particular generosity on a national scale (though many individuals did respond generously).²¹⁷

While there may be some self-preservation motivations for its reluctance to get involved in WWII, Ireland's disinclination to accept Jewish refugees may have been influenced by racial biases:

the anti-refugee agenda ... sprang from xenophobic and anti-Semitic sentiments. The popular 'dislike' of Jews, which de Valera found prevalent among his fellow citizens in 1933, had developed with 19th century nationalist thinking in Europe.²¹⁸

Such anti-Semitism may have also been reflected in the views of influential Catholic figures: "Expressions of anti-Semitism in the writings and sermons of Irish Catholic clergy during the twentieth century mirrored those in other countries ... [They] combined to portray the Jews as enemies of both church and state."²¹⁹

²¹¹ Gammeltoft-Hansen, "Refugee policy" (n.53) p.109.

²¹² Shane Hegarty, "You don't have to be a plucky underdog to be Irish, but it helps" (15th October 2011) *The Irish Times*.

²¹³ Ronan Murphy, *Inside Irish Aid: The Impulse to Help*, (Liffey Press, Business & Econ, 2012).

²¹⁴ Popular solidarity movements have arisen in Ireland in response to struggles in Palestine, South Africa, and the African American community in the United States. For further discussion see: Bill Rolston, "The Brothers on the Walls: International Solidarity and Irish Political Murals" (2009) 39(3) *Journal of Black Studies* 446-470.

²¹⁵ Matthew Eatough, "The Global Contemporary: The Humanitarian Legacy in Irish Fiction", in Paige Reynolds (ed.) *The New Irish Studies* (Cambridge: CUP, 2020) 113-128, p.116.

²¹⁶ Christine Kinealy, *Frederick Douglass and Ireland: In His Own Words* (London: Routledge, 2018) entry for 1st January 1846, p.71.

²¹⁷ Gisela Holfter & Horst Dickel, *An Irish Sanctuary: German-speaking Refugees in Ireland 1933-1945* (Berlin: De Gruyter, 2017) p.146.

²¹⁸ *ibid.*

²¹⁹ Bryan Fanning, *Racism and Social Change in the Republic of Ireland* (Manchester: Manchester University Press, 2002) p.66.

Three “cherished” myths shape the notion of Irish identity according to O’Connell:

These are the ‘underdog myth’, the ‘homogeneity myth’ and the ‘we have no foreigners so how can we be xenophobic?’ myth.²²⁰

While, admittedly, the “underdog myth” may have a robustness due to the country’s history of being colonised – it also supports an unfounded belief that the Irish are somehow incapable of being oppressors themselves.²²¹ The idea of homogeneity is also problematic and dangerous. It leaves very little room for even historically prominent minorities such as Travellers and Protestants, and further, it ignores other Irish identities including, but of course not limited to, mixed-race Irish people.²²² And finally, the idea that the presence of foreigners *makes* Ireland xenophobic is simply, logically inconsistent.

Following the 2004 “citizenship referendum”, the Irish constitution was amended to remove *jus soli* constitutional rights to citizenship to persons born on the island of Ireland.²²³ The national debate around this issue, at the time, centred on “a populist distinction repeatedly drawn by Irish politicians and media between nationals and non-nationals. At the same time racialised hostility towards asylum seekers and their Irish born children was mobilised in support of the Referendum.”²²⁴ The underlying presumption is that a significant proportion of asylum seekers are “playing the system”. Even before the referendum, asylum seekers were met with suspicion. As Human Rights Commissioner Michael Farrell put it in 2001: “official attitudes to asylum-seekers were grudging and unwelcoming. Official pronouncements proclaimed that the vast majority were ‘bogus’, sending very negative signals to the population as a whole.”²²⁵ Deterrence measures stigmatise asylum seekers and foster a culture of disbelief. The attitude described by Commissioner Farrell still prevails today. Referring to his time as Minister of State, meeting with senior officials at the Department of Justice and Equality, Senator Aodhán Ó Ríordáin describes a culture where he “cannot remember a single meeting ... where the term ‘pull factor’ was not used ... [he said] I have come to the conclusion that the Department believes that half the people who are seeking asylum, if not more, are just liars.”²²⁶ He describes how the Department of Justice and Equality approaches the area of asylum, immigration and integration with a “law and order mentality” and not from a place of “humanitarianism or decency.”²²⁷

While the processing of asylum claims will remain with the Department of Justice and Equality, it is worth noting that the department responsible for the reception of asylum seekers and Direct Provision is transitioning to the Department of Children, Equality, Disability, Integration and Youth. It remains to be seen whether or not this means simply moving the civil servants from one department to another without addressing the issue of workplace culture. It is, nevertheless, part of a commitment in the Programme for

²²⁰ Rory O’Connell, “Ireland: Myths of Innocence” in Bernd Baumgartl & Adrian Favell (eds.) *New Xenophobia in Europe*, (The Hague, NL: Kluwer Law International, 1995) p.192.

²²¹ *ibid*, p.193.

²²² A creative project, *I am Irish*, documenting the experiences of mixed-race Irish people can be seen here: <https://iamirish.org> (last accessed: 18th March 2021).

²²³ Twenty-seventh Amendment of the Constitution Act 2004 [*Irish citizenship of children of non-national parents*].

²²⁴ Bryan Fanning & Fidele Mutwarasibo, “Nationals/non-nationals: immigration, citizenship and politics in the Republic of Ireland” (2007) 30(3) *Ethnic and Racial Studies* 439-460, p.439.

²²⁵ Commissioner Michael Farrell (2001), *Statement on Ireland given at the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*. Available at: www.un.org/WCAR/statements/ireland_hrE.htm (last accessed: 18th March 2021).

²²⁶ Senator Aodhán Ó Ríordáin, Seanad Éireann Debate (n.131).

²²⁷ *ibid*.

Government to end Direct Provision and replace it with a “policy centred on a not-for-profit approach”. This includes in the short term:

... to improve conditions for asylum seekers currently living in the system. This includes vulnerability assessments, the right to work, the ability to apply for drivers’ licences and bank accounts ... [and] measures to reduce the length of time in processing decisions ...²²⁸

Ireland’s track record of incremental changes demonstrates both the resistance of successive governments to liberalising asylum policy, but also the reactionary and ad hoc nature of policy change in the area of refugee law in Ireland. Thornton points out that “it took fifteen years for the existence of direct provision to become a matter of governmental and public concern”²²⁹ and that the commissioning of the McMahon Report appeared to have been “simply a way to deal with political and public concern surrounding reception rights and systems for asylum seekers in Ireland”²³⁰ and not a genuine concern on the part of the government to implement sustainable system reform. The target for fulfilling the current reforms is 2025. Hopefully the commitments alluded to in the 2020 Programme for Government will result in concrete change, rather than another example of unfulfilled promises. For instance, the reference to “vulnerability assessments” is already something the government has been obliged to produce. The European Communities (Reception Conditions) Regulations introduced the concept of a vulnerability assessment in 2018, and yet “no person has been identified as vulnerable through a formal vulnerability assessment”²³¹ since its introduction.

Nevertheless, the 2020 Programme for Government possibly reflects a societal shift. The public are more aware of the plight of asylum seekers both in Ireland and abroad. This increased public awareness is clearly influencing government policies. It forms part of a wider recognition of the challenges of ethnic minorities, in part accentuated by events in the United States of America. The global Black Lives Matter (BLM) protests even manifested in Ireland as support for asylum seekers, and a call to end Direct Provision.²³²

As outlined in this section, there is a dichotomy presented by the Irish response to refugees and asylum seekers. On the one hand, as a post-colonial nation there is a sympathy for those who face oppression and occupation. On the other hand, a general conservatism and, possibly, concerns about racial homogeneity have also influenced the willingness of the nation to extend the hand of welcome to those seeking protection in the state itself. Nevertheless, we may be observing a “turning point” in Irish politics where the public is becoming more aware and sympathetic to the plight of asylum seekers within our borders, as evidenced by the BLM protests – this in turn may have an impact on political action.

As the broader issues addressed in this section have suggested the European response to asylum seekers and refugees also plays a significant role in how the Irish government deals with issues of migration and asylum. There appears to be a growing fear in Europe of “invasion” – an anticipation of some kind of cultural erasure heralded by asylum seekers and other migrants. The fear is stoked by anti-immigration parties and populist politicians throughout the region. This attitude appears to be winning some battles. For instance, the under-

²²⁸ *Programme for Government – Our Shared Future*, p.88. Available at: <https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf> (last accessed: 18th March 2021).

²²⁹ Liam Thornton, “A View from Outside the EU Reception *Acquis*: Reception Rights for Asylum Seekers in Ireland”, in Paul Minderhoud and Karin Zwaan (eds.) *The recast Reception Conditions Directive: Central Themes, Problem Issues, and Implementation in Selected Member States* (Oisterwijk; WLP, 2016) p.25.

²³⁰ *ibid.*

²³¹ Hennigan, *Reception Conditions Directive* (n.51) p.18.

²³² Sorcha Pollak, “‘Frustrated and angry’: Thousands march in Dublin to protest death of George Floyd Black Lives Matter activists rally at US embassy after man dies in police custody in Minneapolis” (1st June 2020) *The Irish Times*.

ambitious scope of new European policy initiatives like the “new pact” has clearly been influenced by anti-immigration concerns. European solidarity appears to be in jeopardy – this is evidenced starkly by movements like the successful Brexit campaign. And so, in the near future at least, ambitious and open policies to asylum seekers are unlikely. Appealing to the “lowest common denominator” still appears to be the *status quo*. While Ireland is not bound to follow the exact same asylum procedures as European counterparts, the importance of the European response must not be underestimated.

D. CONCLUSIONS

The global refugee population shows no signs of abating. In the case of Syrian refugees alone:

In 2020, Syrian refugees again represent the refugee population with the highest estimated resettlement needs globally ... With no end in sight to their displacement, resettlement will continue to be a vital tool to safeguard the international community’s accountability towards Syrian refugees in the region.²³³

It is sensible to anticipate more displacement crises in the future – as well as seemingly never-ending conflict, the world will also have to contend with the global climate emergency. It has been suggested that due to rising tides, water scarcity and an increase in extreme weather events, that this century could threaten the largest displacement crisis yet.²³⁴ Sustainable solutions are required.

In recent decades, the EU has grappled poorly with the challenge of migration influx. A harsh light has been shone on the concept of solidarity, or lack thereof, amongst Member States. Refugee burden-sharing, in particular, has been at the centre of the disagreement. Efforts instead have been made to “contain” the flow of migrants in other regions. This has been attempted through physical border infrastructure and arrangements with third countries.²³⁵ The core idea is to keep in check the problem and avoid direct involvement in mitigating its effects.

Alongside “containment”, many countries, including Ireland, have attempted to stem the flow of international protection applicants through deterrence. Punitive measures, such as those outlined in this paper, are based on the unfounded belief that refugees exercise a *carte blanche* freedom when “choosing” a country of refuge. This premise ignores factors such as the influence of human smugglers over the final destination, and wider contributing factors such as global displacement trends. The deterrence viewpoint also departs from the humanitarian foundations upon which refugee law is conceived – to protect those fleeing persecution and war.

Europe’s largest refugee camp, Moria, houses thousands of asylum seekers – many times more than it was built to accommodate.²³⁶ Despite the fact that vast sums of money have been invested in the camp over the

²³³ UNHCR, *Projected Global Resettlement Needs 2020*. Available at: www.unhcr.org/5d1384047.pdf (last accessed: 18th March 2021).

²³⁴ Frank Bierman, “Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees” (2010) 10(1) *Global Environmental Politics* 60-88.

²³⁵ Edina Illa Mészáros, “Barbed Wire, Border Walls and the ‘Art’ of Fencing Out Migrants and Refugees: An assessment of the EU and American bordering practices” (2019) 18(2) *Research and Science Today* 75-89, p.84.

²³⁶ Andrew Connelly, “Europe’s Failed Migration Policy Caused Greece’s Latest Refugee Crisis” (20th September 2020) *Foreign Policy*. Available at: <https://foreignpolicy.com/2020/09/20/europes-failed-migration-policy-caused-greeces-latest-refugee-crisis/> (last accessed: 18th March 2021).

years – many speculate that the camp has been purposefully kept in “slum-like condition” as a form of deterrence.²³⁷ Reporting on Moria, Connelly points out that:

This approach has been manifestly disproven. Most of the asylum seekers currently on the island are from Afghanistan, where the Taliban is on the verge of returning to government two decades after the US led invasion to remove them. And the majority of Afghans end up being successful in their asylum claims. So for the few that do head to Europe, Moria was not a deterrent but purely a prolonged suffering.²³⁸

President Higgins frequently expresses the aspiration that “Ireland will continue to stand with refugees both at home and abroad”²³⁹ but, over the years, this official stance has been sorely tested. The failure to prepare for mass immigration in the 1990s led to enormous administrative backlogs, and undeniable human suffering.

In the words of An Tánaiste Leo Varadkar at the turn of the millennium: “The response of Irish people to refugees and immigration has turned our economic miracle sour.”²⁴⁰ It will be important, therefore, that Irish leaders think carefully about their values and a long-term strategy for integrating refugee populations. This begins with a humane reception system and a rights-based international protection process.

Liberal democracies, such as Ireland, cannot afford to continue relying on deterrence policies as an effective measure to reduce asylum-seeking populations. As this analysis has attempted to show, deterrence does little to affect actual numbers of refugees seeking protection – the real effect of deterrence measures is simply to harm integration, and cause ongoing trauma.

This is particularly the case for policies involving deliberate delays in processing asylum claims, a lack of access to labour markets during the asylum phase, automatic national dispersal policies and short-term residence permits, which have each been shown to impact negatively on the later employment opportunities and economic performance of those who are subsequently afforded protection.²⁴¹

Activists and NGOs have faced resistance for decades in trying to improve conditions for those in the international protection process in Ireland. While some improvements have been mandated by the courts, the markers of Irish public policy remain restrictive employment conditions, inadequate reception facilities, disruptive dispersal policies and tight controls on family reunification eligibility. Changes have been signalled repeatedly but the lives of asylum seekers bear testimony to ongoing problems of poor provision and inadequate understanding of the issues involved. The guiding principles still seem to be that most asylum seekers are bogus opportunists playing the system.

The impression given by the process is “guilty” until disproven. It is analogous to how many marginalised groups are treated but, in the case of asylum seekers, the counter arguments gain little or no political weight.

²³⁷ Andrew Connelly, *RTÉ: World Report* (radio programme) (27th September 2020). Available at: www.rte.ie/news/player/world-report/2020/0927/ (last accessed: 18th March 2021).

²³⁸ *ibid.*

²³⁹ President Michael D. Higgins at Fordham University in New York. See: Dominic McGrath, “Irish people cannot ‘remain silent’ in face of attacks on refugees, warns President” (30th September 2019) *thejournal.ie*. Available at: www.thejournal.ie/direct-provision-ireland-michael-d-higgins-4831180-Sep2019/ (last accessed: 18th March 2021).

²⁴⁰ At the time of making this remark, Leo Varadkar was 21 years old and the public relations officer for Young Fine Gael, the youth arm of the political party Fine Gael. See: “A New Ireland: Community and Economy” (Feb 2000) Conference Programme for *Young Fine Gael’s 16th National Conference*, p.7.

²⁴¹ Gammeltoft-Hansen, “Refugee policy” (n.53) p.117.

There are no votes or kudos to be gained in any politician championing their cause – indeed the reverse may well be true. Politicians and policy makers have to take account of overall public opinion and must, *appear* to remedy any perceived undue burdens on the public purse. When issues like rates of homelessness or unemployment are rising, citizens may “perceive themselves to be in ‘competition’ with asylum seekers for resources.”²⁴² Regardless of *actual* financial cost or long-term gain, politicians perhaps feel they must address these concerns by restricting certain rights and entitlements of asylum seekers.

Ireland’s policies relating to refugees have become increasingly restrictive over the years. This should concern us as “deterrence policies not only threaten asylum seekers but also the very fabric of the liberal democratic state.”²⁴³ As discussed above, attitudes in Ireland are mirrored in other EU countries, including Denmark. Opinion data confirms that Danes too often see:

... asylum seekers’ as a security and socio-economic threat, as persons not in “real” fear of persecution, together with prejudicial attitudes to them had a boosting effect on excluding asylum seekers from the Danish collective in terms of entry and rights.²⁴⁴

It would be misleading, therefore, to conclude that Irish attitudes are *sui generis*, indeed on the European spectrum they may be relatively liberal. In some fellow Member States, much more populist and unwelcoming attitudes prevail. Nevertheless, right-wing populism has the potential to garner strength, even in Ireland. As Nigel Farage’s final address to the European Parliament puts it:

Indeed, there is a historic battle going on now across the West, in Europe, America and elsewhere. It is globalism against populism and you may loathe populism, but I tell you a funny thing, it’s becoming very popular.²⁴⁵

It seems that many countries are frustrated by the limits imposed by international law. A tentative balancing act plays out between states and international institutions. Looking no further than Britain, we see that state sovereignty centring around border control and immigration restrictions appeal to a broad political spectrum. The example of Brexit should serve as a warning that the rise of populist politics can lead to the dismantling of regional cooperation.

The analysis above explores deterrence as a policy option in the context of asylum-seeking. It concentrates on Ireland but does so with comparative reference to the UK and Denmark, states with similar legal provisions and treaty obligations. Overall, the research suggests that Ireland’s policies have been informed by delayed responses, unreliable models of asylum-seeking behaviour as well as a need to accommodate international commitments and constraints. It is hoped that a recognition of these limitations and a more informed public debate will facilitate a more generous and productive response to the issues presented by the ongoing needs of those battling forced displacement. Political trends in Europe have a powerful influence on policy in Ireland, so it is likely that patterns in the rest of the region will influence Irish government policy significantly. The scale of the global displacement crisis is beyond the scope of individual nations – particularly if future predictions which include “climate refugees” are accurate. Inward looking models are flawed in the face of

²⁴² Hassan, “Deterrence Measures” (n.5) p.194.

²⁴³ *ibid*, p.20.

²⁴⁴ Adi Hercowitz-Amir & Rebeca Raijman, “Restrictive borders and rights: attitudes of the Danish public to asylum seekers” (2020) 43(4) *Ethnic and Racial Studies* 787-806, p.787.

²⁴⁵ BBC News, “Nigel Farage’s last words to the European Parliament” (29th January 2020). Available at: www.bbc.com/news/av/uk-51294356 (last accessed: 18th March 2021).

such global-scale issues. Within the European Union, this research points to the need for greater “solidarity” and “burden-sharing”. This solidarity, however, should be based on a shared vision of humanitarian concern and non-discrimination. Regional and broader international cooperation will be required to deal adequately with displacement in a fair and humane way – including the eradication of ineffective national deterrence measures.