

***Submission to the Universal
Periodic Review of the UN
Human Rights Council***

Second Cycle Mid-Term Review

April 2019



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

Submission to the Universal Periodic Review of the UN Human Rights Council

Second Cycle Mid-Term Review

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April 2019

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Irish Human Rights and Equality Commission

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Introduction

1. The Irish Human Rights and Equality Commission (“the Commission” or “IHREC”) exercises a dual capacity as the “A-Status” National Human Rights Institution (“NHRI”) and the National Equality Body for Ireland.¹ Under the *Irish Human Rights and Equality Commission Act 2014*, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to make recommendations to the Government to strengthen and uphold human rights and equality in the State.²
2. In 2015, IHREC undertook a review of Ireland’s human rights record in advance of the State’s second periodic report to the Human Rights Council under the Universal Periodic Review (“UPR”) process.³ This follow-up submission marks the mid-term review of Ireland’s second cycle. It aims at providing a snapshot on the State’s progress in implementing the recommendations made in *Report of the Working Group on the Universal Periodic Review*.⁴
3. IHREC is pleased to have the opportunity to provide this submission to the Council.

Methodology

4. In line with the Universal Periodic Review: information and guidelines for relevant stakeholders’ written submissions, the Commission has limited itself to considering, inter alia, the implementation of the accepted recommendations by the Irish Government in the first UPR, and emerging developments in the human rights and equality situation in Ireland. In this submission the Commission draws on its diverse work to measure the Irish Government’s progress in advancing the recommendations accepted by Government during the Universal Periodic Review (“UPR”) 2016.

International Obligations

5. Since the second UPR, Ireland ratified the Convention on the Rights of Persons with Disabilities (CRPD) (**Recommendations 135.2, 135.4 - 135.6, 135.40 – 135.70**),⁵ and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) (**Recommendations 135.71 – 135.75**). Ireland has, however, not ratified OPCAT,⁶ OPCRPD,⁷ Op-ICESCR,⁸ Second Op-CRC,⁹ CED,¹⁰ (**Recommendations 135.2 – 134.39, 135.71 – 135.75**). Further, Ireland has not ratified CRMW¹¹ although it did not accept the UPR recommendations in relation to the ratification of that treaty (**Recommendations 137.2 – 137.10**).

Constitutional Reform

6. Since the previous UPR, Ireland held two referenda to amend the Constitution of Ireland, *Bunreacht na hÉireann*; one on the Eighth Amendment to the Constitution



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(Recommendations 135.136, 136.11 - 136.19, 136.64 - 136.73), and the second on blasphemy (Recommendations 136.53 - 136.54).

7. In 2016, a Citizens' Assembly considered, among other issues, the Eighth Amendment of the Constitution. This amendment inserted subsection 3 into Article 40.3, which recognised the equal right to life of the pregnant woman and the unborn. The Citizens' Assembly recommended a referendum be held on removing and replacing Article 40.3.3.¹² On 25 May 2018, the Irish people voted to replace the Eighth Amendment with a provision permitting the Oireachtas to legislate for the termination of pregnancy.¹³ The *Health (Regulation of Termination of Pregnancy) Act 2018* was enacted in December 2018.¹⁴ The Act provides for a termination where the pregnancy has not exceeded 12 weeks and there has been a 3 day waiting period,¹⁵ as well as in later stages in cases of fatal foetal abnormality and risk to the health and the life of the mother.¹⁶ The legislation also allows medical practitioners to conscientiously object to carrying out a termination of pregnancy.¹⁷
8. Article 40.6.1.i provided that the "the publication or utterance of blasphemous, seditious, or indecent matter" be punishable by law. The *Defamation Act 2009* includes an offence on blasphemy but there has never been a prosecution on the basis of this offence.¹⁸ In 2014, the Convention on the Constitution considered, among other topics, this article and they recommended that the offence of blasphemy should be removed and replaced with an offence of incitement to religious hatred.¹⁹ The programme for Government agreed in May 2016 that a referendum would be held to remove the blasphemy provision from the Constitution.²⁰ In October 2018, the Irish people voted to remove the blasphemy provision from the Constitution,²¹ which was signed into law in November 2018.²² In December 2018, the Department of Justice published the General Scheme of the *Repeal of Offence of Publication or Utterance of Blasphemous Matter Bill*, which provides for the repeal of the statutory basis for the offence of blasphemy.
9. In 2016, the Government committed to holding a referendum on Article 41.2.2 of the Constitution²³ (**Recommendations 136.12 - 136.15**). That article states that "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved." In July 2018, the government announced that it would hold a referendum to repeal the article.²⁴ Following calls for public discussion,²⁵ the referendum was postponed in order to conduct pre-legislative hearings.²⁶ In September 2018, the Oireachtas Joint Committee on Justice and Equality undertook pre-legislative scrutiny on whether the provision should be deleted or amended.²⁷ The Committee recommended that the provision be replaced with one that "recognises the contributions made by family life and carers to our society".²⁸ The government has yet to comment on the recommendations of the Committee. The *Amendment of the Constitution (Women in the*



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Home) Bill has been scheduled in the Legislation Programme for Spring 2019.²⁹

10. IHREC is concerned that Article 41.2.2 of the Constitution perpetuates stereotypical attitudes towards the role of women in Irish society and the Commission is of the view that constitutional reform is necessary in order to address stereotyping concerning the roles and responsibilities of women and men in the family and in society.³⁰ The Commission has recommended that the article be amended to be gender-neutral, to reference family life to be understood as including a range of family relationships, and to recognise and support care work in the family.³¹

Rights of persons with disabilities

11. Since the second UPR, Ireland ratified the Convention on the Rights of Persons with Disabilities (CRPD) (**Recommendations 135.2, 135.4 - 135.6, 135.40 – 135.70**).³² However, Ireland has yet to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities.³³ The government has stated that “[t]he matter of signing the optional protocol will be reviewed and further considered following completion of the first reporting cycle under the Convention”.³⁴
12. In 2016, the government published the *Disability (Miscellaneous Provisions) Bill 2016*, which contains a number of provisions which will aim to bring Ireland into CRPD compliance.³⁵ The Bill also designates IHREC as the independent monitoring mechanism required to be established under Article 33 CRPD and will amend the Commission’s founding legislation to empower it to appoint an advisory committee to advise it on its role to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of persons with disabilities.³⁶
13. The original general scheme of the *Disability (Miscellaneous) Provisions Bill 2016* included a section on deprivation of liberty safeguards, which would provide legislative clarity on the issue of deprivation of liberty in residential facilities for older people, persons with a disability, and those with mental health issues.³⁷ The government decided in 2017 that deprivation of liberty should instead be a standalone bill, which will insert Part 13 to the *Assisted Decision-Making Capacity Act 2015*. The Department of Health undertook a consultation on a general scheme of the *Deprivation of Liberty Safeguards Bill*.³⁸ IHREC expressed concern that the proposals did not meet the standards of the CRPD.³⁹ It is expected that the Department of Health will publish a draft Bill in 2019.
14. Since the second UPR, the government developed the National Disability Inclusion Strategy (2017-2021). The Strategy was prepared on foot of a consultation process that took place in 2016.⁴⁰ The Commission is concerned that implementation of the Strategy has been limited



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to date.⁴¹ The Commission further notes that the Steering Group overseeing the implementation of the Strategy is yet to publish an annual progress report, despite a stated commitment in the Strategy to do so annually.⁴²

15. There remain significant barriers to enjoyment of equal rights for persons with disabilities. A research report commissioned by IHREC, *Disability and Discrimination in Ireland*,⁴³ found that people with disabilities continue to experience higher levels of discrimination compared to those without.⁴⁴ Approximately one in every five reports of discrimination among people with disabilities concerns health services.⁴⁵ Education attainment amongst persons with disabilities is much lower than that of the general population.⁴⁶ Ireland has one of the lowest employment rates for people with disabilities in the EU (26.2% compared to 48.1% in the EU in 2017) and one of the highest gaps between people with and without disabilities (45.1 percentage points)⁴⁷ (**Recommendation 135.143**).
16. The *Assisted Decision-Making Capacity Act 2015* was enacted to provide for a system of supporting decision-making and maximising a person's capacity to make decisions. This system will replace the Wards of Court system. A number of sections of the Act have been commenced. These sections have provided for the establishment of the Decision Support Service, the body that will be responsible for oversight of the new system, the appointment of the Director of the Service, as well as the development of codes of practice. However, the 2015 Act is still largely uncommenced over 3 years after it was enacted,⁴⁸ and the budget allocated to the Decision Support Service in 2019 fell short of what is required to make the organisation operational.⁴⁹ Nearly 3000 people⁵⁰ remain in the Wards of Court system, with an increasing number of wardship applications being made thereunder.⁵¹ Significant parts of the *Disability Act 2005* and the *Education for Persons with Special Educational Needs Act 2004* still have not been commenced⁵² (**Recommendation 136.10**).

Prison conditions and complaints

17. Ireland has also not yet ratified the Optional Protocol to the Convention against Torture, though it has indicated that it is developing institutional mechanisms in order to implement the National Preventative Mechanism required under OPCAT in order to be in a position to ratify it soon thereafter (**Recommendations 135.3, 135.8 - 135.25**).⁵³ IHREC again recommends that the government ratify OPCAT. There is no impediment to the immediate ratification, given that OPCAT contains provisions to support State Parties in implementing the Protocol, and allows for postponements.⁵⁴ IHREC has previously advised of its willingness that it lead as the co-ordinating body within the NPM framework in line with Article 18(4) OPCAT.⁵⁵
18. The commencement of the *Children (Amendment) Act 2015* is welcomed. The Commission also welcomes the long awaited closure of St. Patrick's Institution for the detention of children and the ending the sentencing of children to adult prisons⁵⁶ (**Recommendation**



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135.87).

19. While the size of the prison population has significantly reduced, the number of female prisoners continues to rise⁵⁷ (**Recommendations 135.121 - 135.124**). Ireland's two women's prisons are consistently overcrowded.⁵⁸ Figures from March 2019 show both prisons to be operating far above the Inspector of Prisons' recommended capacity: 129% at the Dóchas Centre and 179% at Limerick Female Prison.⁵⁹
20. In-cell sanitation continues to be poor. While the practice of slopping out has significantly reduced, the practice has not been fully ended – as of January 2019, 20 prisoners in Limerick's male prison and 40 prisoners in Portlaoise had to slop out.⁶⁰ During a consultative visit to the Limerick Female Prison in May 2018, the issue of feminine hygiene was raised with the Commission. Products are poor quality and must be purchased by prisoners.
21. Inter-prisoner violence and violence against prison officers are prevalent.⁶¹ Remand and convicted prisoners continue to be held together in some facilities⁶² (**Recommendation 135.125**). Solitary confinement has been used for prolonged periods, sometimes for disciplinary purposes.⁶³ In 2015 and 2017, the Commission acted as *amicus curiae* in two cases concerning the segregation of a prisoner for his own safety,⁶⁴ and the solitary confinement of children in Oberstown Detention Campus, respectively.⁶⁵ A recent inspection of Oberstown Children Detention Campus found, despite significant improvements in standards, there was still concerns regarding record-keeping on physical interventions and the use of handcuffs on children.⁶⁶
22. There are deficiencies in access to the health care services, including services for mentally ill prisoners.⁶⁷ In July 2018, it was reported that mentally ill prisoners were forced to sleep on the floor in prison because of lack of room in the Central Mental Hospital.⁶⁸ Others on the waiting list for the hospital are forced to stay in isolation cells for their own protection because of a shortage of qualified staff.⁶⁹ There is also a prevalence of self-harm in prisons, particularly among young female prisoners.⁷⁰ There are also concerns regarding the treatment of prisoners with intellectual disabilities.⁷¹ The former Director General of the Irish Prison Service has acknowledged that "imprisonment is inappropriate for people with severe and enduring mental illness as prisons are not therapeutic environments" and "prison is not and should never be a substitute for an appropriate clinical environment."⁷²
23. The Inspector of Prisons has identified a number of concerns regarding complaint procedures in prisons, including a failure to report alleged rape to An Garda Síochána for investigation, failures to send serious complaints to the Inspector of prisons and failures to investigate and log serious complaints.⁷³



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Police reform

24. An Garda Síochána, the Irish police force, has been the subject of public controversy in recent years.⁷⁴ A number of efforts have been made to improve oversight of An Garda Síochána. The Policing Authority was set up with effect from January 2016, with the purpose of overseeing performance of An Garda Síochána, promoting public awareness of policing matters, and supporting their continuous improvement.⁷⁵ In July 2016, the government approved a Five Year Reform and High-level Workforce Plan for An Garda Síochána, to implement recommendations of the 2015 report by the Garda Inspectorate, *Changing Policing in Ireland*.⁷⁶ The Commission on the Future of Policing in Ireland (the Policing Commission) was established in May 2017, to “carry out a fundamental review of the role, structures, leadership and management, ethos and culture of policing and existing oversight and consultative arrangements.”⁷⁷ IHREC, in its consultation submission to the Policing Commission, recommended that human rights training should be provided for members of An Garda Síochána and that policies, procedures and practices of An Garda Síochána should be equality and human rights proofed and made accessible to the public.⁷⁸ Following the consultation period, the Policing Commission published *The Future of Policing in Ireland Report* in September 2018.⁷⁹ The Report laid out the Policing Commission’s views of changes that need to be made across the government and police service. The first principle, under which the recommendations were summarised, was that “human rights are the foundation and purpose of policing”. The report recommended that “An Garda Síochána should have a human rights strategy, and a human rights unit within the organisation to develop, implement and monitor the strategy. It should work with the Irish Human Rights and Equality Commission to fulfil its human rights and equality responsibilities”,⁸⁰ and that “human rights training should be both the starting point of the recruit course and a theme running through every aspect of it”,⁸¹ among other issues (**Recommendations 135.79, 136.44**). In December 2018, the Minister for Justice and Equality announced an implementation plan for the Report and endorsed the Policing Commission’s vision for a human-rights-based police service.⁸²

Protection against racial discrimination

25. IHREC has commissioned a Human Rights and Equality Research Programme from the Economic and Social Research Institute in order to provide evidence for monitoring and for the development of policy. Seven research reports have been produced through the first phase of the programme (2017-2018) addressing equality and discrimination across the grounds covered by equality legislation and human rights instruments. As part of this research programme, a 2017 study into *Who experiences discrimination in Ireland?*,⁸³ found that Black respondents experience discrimination in the workplace, in public services and in private services at much higher rates than “White Irish” people. Asian respondents also reported more discrimination than White Irish respondents in private services.⁸⁴ A second study, *Ethnicity and Nationality in the Irish Labour Market*, found that Black non-Irish people



are five times more likely to experience discrimination when seeking employment in Ireland when compared to White Irish people, and they are over two and a half times more likely to experience discrimination when in employment.⁸⁵

26. A further report into *Attitudes to Diversity in Ireland*,⁸⁶ reported that “Just under half of adults born in Ireland believe some cultures to be superior to others, and 45 per cent that some races/ethnic groups were born harder working.”⁸⁷ This attitude is more common in Ireland than across a ten-country sample of the EU (40 per cent).⁸⁸ The report also found that 17 per cent of adults born in Ireland believe that “some races were born less intelligent.”⁸⁹ Again, this belief is more prevalent in Ireland than across the EU average (14 per cent).⁹⁰
27. Another recent study, *Hate Track: Tracking and Monitoring Racist Speech Online*, co-funded by IHREC and the Irish Research Council, examined online racist hate speech in the Irish context.⁹¹ It codified racially-loaded toxic content on Twitter and Facebook in Ireland and observed that “[t]he way mainstream media frame and present news is likely to have an impact on the type of comments that are likely to appear.”⁹²
28. The Commission notes the publication of the Ireland’s State Report to the Committee on the Elimination of Racial Discrimination (**Recommendation 135.82**).⁹³
29. The State still has not renewed the National Action Plan Against Racism which lapsed in 2008 (**Recommendations 135.105 - 135.106, 135.114, 1135.117 - 135.118**). However, in 2017 the Migrant Integration Strategy was published, which contains action plans on “Promoting Intercultural Awareness and Combating Racism and Xenophobia”.⁹⁴
30. Ireland does not have effective hate crime or hate speech legislation. The *Prohibition on Incitement to Hatred Act 1989*⁹⁵ (1989 Act) is largely unused with the apparent lack of prosecutions calling into question the effectiveness of this legal framework.⁹⁶ The operation of the 1989 Act is under review (**Recommendations 136.45 - 136.46**).⁹⁷
31. The years 2015 – 2024 are the International Decade for People of African Descent.⁹⁸ In April 2019, the Office for the Promotion of Migrant Integration held a public consultation on how to achieve the Decade’s objective.⁹⁹ The Commission calls for the Government to support this important initiative recognising that the human rights of people of African descent must be promoted and protected.

Protection against domestic violence

32. The Commission welcomes important progress that has been made by the State in this area. In March 2019, the State ratified the Istanbul Convention (**Recommendations 135.71 – 135.75**),¹⁰⁰ albeit with reservations to the provisions on state compensation to domestic



violence victims and jurisdiction.¹⁰¹ In the two years preceding the ratification, the *Domestic Violence Act 2018 (Recommendations 135.99 – 135.102)*, the *Criminal Justice (Sexual Offences) Act 2017*, the *Victims of Crime Act 2017* and the *Criminal Law (Extraterritorial Jurisdiction) Act 2018* were enacted in order to bring Ireland's laws in line with the requirements of Istanbul Convention.

33. In the Commission's consultation for its submission to the Committee on the Elimination of Discrimination against Women, the issue of domestic violence featured prominently.¹⁰² Domestic violence is prevalent in Ireland.¹⁰³ There are gaps in the legal framework for domestic violence not filled by the aforementioned legislation. The Commission has recommended that new criminal offences to deal with the posting online of intimate images without consent be enacted, that the State opt-in to the EU Directive on Family Reunification and introduce implementing legislation in order to ensure that victims of domestic violence may be granted autonomous residence permits, and also that legal arrangements for undocumented women who are victims of domestic violence be considered.¹⁰⁴
34. Ireland has less than a third of the number of refuge spaces that it should have under EU guidelines on domestic abuse.¹⁰⁵ In 2016, Domestic Violence services were unable to meet 3,981 requests for emergency accommodation because refuges were full.¹⁰⁶ There was also a notable lack of emergency accommodation in rural areas. The Commission has recommended that the State increase the number and geographical spread domestic violence refuges, and that housing authorities develop clear policies in relation to applications for social housing from victims of domestic violence (**Recommendations 136.35 – 136.42**). Victims of domestic violence also continue to face barriers in accessing justice, including due to the lack of a specialised family or children's court system, with appropriate waiting facilities;¹⁰⁷ the absence of regulation for legal interpretation services;¹⁰⁸ the lack of provision for children to make applications for protection and safety orders in their own right;¹⁰⁹ and the existence of negative attitudes among members of An Garda Síochána towards domestic violence victims.¹¹⁰

Traveller and Roma Communities

35. The Irish Government recognised Travellers as an ethnic minority on 1st March 2017¹¹¹ (**Recommendation 136.83**). While important and symbolic, this recognition was not provided for in statute. Travellers continue to experience barriers to the enjoyment of the rights to adequate and culturally appropriate housing,¹¹² education,¹¹³ and healthcare.¹¹⁴ An IHREC-commissioned study found that Travellers are almost ten times more likely than the 'White Irish' group to experience discrimination in seeking work.¹¹⁵ Indeed, the 2016 Census showed an unemployment rate of 80% in the Travelling community, compared to a 12.9% rate in the general population.¹¹⁶ The negative stereotypes of Travellers in public discourse reinforces barriers to public services, and exacerbates the disadvantages.¹¹⁷ In a study of the 2011



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Census statistics, the ESRI stated that “findings point to a level of extreme disadvantage experienced by Travellers across the domains of education, employment, housing and health, with evidence of a widening gap in health over the life course”.¹¹⁸ Further, the Child Care Law Reporting Project found that 4.4 per cent of the cases in child care courts involve Traveller families.¹¹⁹ Roma in Ireland report high levels of discrimination in a variety of situations, such as accessing accommodation, getting a job, accessing social protection and in public settings.¹²⁰ Many Roma report having to hide their identity in order to avoid discrimination.¹²¹ A National Traveller and Roma Integration Strategy 2017-2021 was published in 2016.¹²² (**Recommendations 135.145 – 135.147**).

36. IHREC notes that Roma and Travellers face many barriers to justice. IHREC has represented¹²³ members of the Traveller community in a number of cases concerning refusal of entry to a hotel or bar on the basis of their ethnicity¹²⁴ and cases concerning access to social housing.¹²⁵ In particular, IHREC has assisted in cases regarding the requirement to have a fixed address for a period of time in order to access social housing, which leads to indirect discrimination against Travellers.¹²⁶

International Protection

37. The Direct Provision system continues to be critiqued due to long delays in the determination of a protection claim,¹²⁷ inappropriate living conditions in centres,¹²⁸ and adverse impacts on physical and mental health¹²⁹ (**Recommendations 135.148 - 135.149, 136.88 - 136.89**). In June 2015, the government published the McMahon report with recommendations for reform of the protection process.¹³⁰ Moreover, even after people are granted status, people have to remain living in Direct Provision centres because of the difficulty in obtaining private rental during the housing crisis.¹³¹ The current lack of available spaces in Direct Provision has led to a growing reliance on emergency accommodation in guesthouses, and hotels. As of March 2019, there were 517 persons living in hotels and guesthouses awaiting permanent accommodation.¹³² In January 2019, the Department of Justice invited expressions of interest from hotels and guesthouses interested in providing meals and accommodation for persons seeking international protection.¹³³ The Commission is concerned that all those awaiting permanent accommodation receive the assessments, services and supports that must be provided within a reasonable period under the Reception Conditions Directive (Directive 2013/33/EU).
38. Since the second UPR, asylum seekers have been permitted to gain employment in limited circumstances. IHREC intervened as *amicus curiae*¹³⁴ in the Supreme Court case of *NHV v Minister for Justice & Equality*.¹³⁵ In May 2017, the Supreme Court held in that in circumstances where there is no time limit on the asylum process, the absolute prohibition on seeking employment is unconstitutional, and the relevant legal provisions were unconstitutional.¹³⁶ In the course of this decision, the Supreme Court considered



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commentary by the UN Committee on Economic Social and Cultural Rights on the right to work.

39. In June 2018, a new scheme was announced to allow for access to the labour market by applicants for international protection.¹³⁷ The scheme opens almost all sectors of employment to eligible applicants for international protection, and also provides for access to vocational training. However, the eligibility for the scheme is restricted to those who have waited over 9 months for a first instance decision from the International Protection Office. The short duration of the permit – just six months – could be a disincentive for employers when considering recruitment. The requirement to contribute towards Direct Provision accommodation, while in line with the provisions of the recast *Reception Conditions Directive*, could also be a disincentive to take up work if it is too onerous.¹³⁸ Applicants for international protection are also entitled to self-employment permission.¹³⁹ While this is a welcome measure, IHREC has raised concerns about the possibility of labour exploitation.¹⁴⁰ The government has also committed to launching an information campaign.¹⁴¹
40. The Commission has expressed concern that the definition of family within the *International Protection Act 2015* omitted the “dependent family member” category, which was contained in the previous governing legislation, and has therefore limited a protection beneficiary’s rights to family reunification with the nuclear family. While the right to family reunification was extended to siblings of a child refugee or adult with subsidiary protection status, siblings of adult protection applicants no longer come within the scope of the regime. Parents and children of adult protection applicants are also excluded from the scheme (**Recommendations 136.90 - 136.93**).¹⁴² Further, under the *International Protection Act 2015*, naturalised refugees are excluded from the statutory family reunification regime.¹⁴³ IHREC has been an *amicus curiae* in a case concerning the Minister for Justice’s refusal to grant family reunification rights to naturalised refugees.¹⁴⁴ In March 2019, the Court of Appeal held that refugee status ends automatically upon obtaining a certificate of naturalisation, and that family reunification rights end with it.¹⁴⁵
41. IHREC has recommended that the *International Protection Act 2015* and the Department of Justice and Equality’s *Policy Document on Non-EEA Family Reunification* be amended to comply with international human rights obligations, and that an independent appeals process be introduced.¹⁴⁶ In 2017, the *International Protection (Family Reunification) (Amendment) Bill* was introduced to provide for a refugee to apply for their family members to enter and reside in the state.¹⁴⁷

Gender pay gap

42. Women in Ireland earn 13.9% less than men.¹⁴⁸ In April 2017, the National Strategy for Women and Girls 2017-2020 was launched.¹⁴⁹ The first objective thereunder is to “Advance



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Socio-Economic Equality for Women and Girls” (Recommendations 135.91, 136.33 - 136.35).

43. Two bills relating to the gender pay gap are being considered by the Oireachtas. The first is a Private Member’s Bill that was introduced to Seanad Éireann in May 2017.¹⁵⁰ In June 2018, the government announced the publication of the General Scheme of the Gender Pay Gap Information Bill.¹⁵¹ The government’s Bill was sent to the Joint Oireachtas Committee on Justice and Equality for pre-legislative consideration in July 2018.

Homelessness and housing

44. As of February 2019, there were 10,264 homeless people in Ireland.¹⁵² Homeless families and youth are increasingly prevalent phenomena.¹⁵³ IHREC has expressed concerns about the gender dimensions of this homelessness crisis¹⁵⁴ as well as its impact on children’s rights.¹⁵⁵ The social housing supply has been criticised for not reflecting the population characteristics of the waiting list, which includes a large proportion of single persons and families of different sizes.¹⁵⁶ In February 2019, there were 1,709 homeless families, and 4,071 homeless persons without children.¹⁵⁷ There are concerns that accommodation is overcrowded, as there is a lack of housing for large families.¹⁵⁸ The composition of social housing should reflect the mix of household sizes and needs of homeless persons. The national strategy on housing and homelessness, *Rebuilding Ireland: Action Plan for Housing and Homelessness*, recognises that “families with children presenting as homeless require a response that is separate and distinct from presentations by adult individuals and couples”.¹⁵⁹ The June 2017 *Rebuilding Ireland* progress report noted that housing authorities will both procure new properties and reconfigure existing emergency accommodation to provide “supported temporary accommodation arrangements such as family hubs” for families experiencing homelessness. While the Commission welcomes the recognition that emergency accommodation must provide for family needs, it is concerned that the use of family hubs has normalised family homelessness, which may lead to families being institutionalised.¹⁶⁰
45. Further, while the government is increasingly relying on Housing Assistance Payment as part of its social housing strategy,¹⁶¹ the Commission is increasingly supporting individuals who have been discriminated on the basis of being in receipt of Housing Assistance Payment.¹⁶² An IHREC-commissioned study, *Discrimination and Inequality in Housing in Ireland*, found that young people, people with disabilities and lone mothers are among those facing the highest levels of discrimination and inequality in relation to access to housing.¹⁶³ The Commission has recommended reform of key aspects of housing law and policy, such as the supply of quality permanent social housing and security of tenure.¹⁶⁴
46. The Commission believes that the provision of social housing can significantly contribute to the homeless crisis. The Commission is disappointed in the government’s attempt to take the emphasis off the human face of the homelessness crises, and instead recasting the crisis as



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the by-product of market dynamics, or the price our society pays for progress. The Commission believes that the rise in homelessness, and family homelessness in particular, has been significantly exacerbated by government policy choices in this regard. The decision to withdraw from building social housing and to instead provide rent supplement for low-income private renters has made low-income households extremely vulnerable to shocks in the housing market.¹⁶⁵

¹ For detailed information on the work of IHREC, see www.ihrec.ie.

² Section 10(2) of the Irish Human Rights and Equality Commission Act 2014.

³ IHREC (2015) [Irish Human Rights and Equality Commission Submission to the Second Universal Periodic Review Cycle for Ireland](#), Sep 2015.

⁴ Human Rights Council (2016) [Report of the Working Group on the Universal Periodic Review](#), 18 Jul 2016.

⁵ IHREC (2018) [Statement on the UN Convention on the Rights of Persons with Disabilities](#), Jul 2017.

⁶ Optional Protocol to the UN Convention Against Torture. The Irish Government signed OPCAT in 2007, but has not yet ratified it.

⁷ Optional Protocol to the Convention on the Rights of Persons Disabilities. Ireland signed OPCRPD in March 2007.

⁸ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Ireland signed OP ICESCR in March 2012.

⁹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Ireland signed the Second OPCRC in 2000.

¹⁰ International Convention for the Protection of All Persons from Enforced Disappearance. Ireland signed CED in Mar 2007.

¹¹ Convention relating to the Rights of All Migrant Workers and Members of their Families.

¹² Citizens Assembly, [The Eighth Amendment of the Constitution](#).

¹³ IHREC (2018) [Oireachtas must now legislate to vindicate the human rights of women and girls in accessing healthcare](#), May 2018.

¹⁴ See IHREC (2018) [Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) Bill 2018](#), Sep 2018.

¹⁵ Section 12.

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¹⁷ Section 22.

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- ²⁵ National Women’s Council of Ireland (2018) [NWCI calls for a public discussion before the Women in the Home referendum](#), 5 Sep 2018.
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- ³² IHREC (2018) [Statement on the UN Convention on the Rights of Persons with Disabilities](#), 7 Mar 2018.
- ³³ Department of Justice (2015) [Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities \(UN CRPD\)](#), July 2015.
- ³⁴ Joint Committee on Justice and Equality debate [\(2018\) Update on Disability Issues: Minister of State at the Department of Justice and Equality 27 June 2018](#).
- ³⁵ [Disability \(Miscellaneous Provisions\) Bill 2016](#).
- ³⁶ Section 6 of [Disability \(Miscellaneous Provisions\) Bill 2016](#).
- ³⁷ Department of Justice (2016) [Deprivation of Liberty: Safeguard Proposals Consultation Paper](#); Department of Justice (2016) [General Scheme of the Equality/Disability \(Miscellaneous Provisions\) Bill](#), 17 Aug 2016.
- ³⁸ Department of Health (2017) [Ministers Harris and McGrath announce opening of a Public Consultation on Deprivation of Liberty Safeguards](#), 8 Dec 2017.
- ³⁹ IHREC (2018) [Submission to the public consultation on Deprivation of Liberty: Safeguard Proposals](#), Mar 2018.
- ⁴⁰ Department of Justice (2017) [National Disability Inclusion Strategy 2017-2021](#), Jul 2017.
- ⁴¹ For example, despite the commitment in the Strategy to progress the Disability (Miscellaneous Provisions) Bill to enactment by 2017, the Bill is yet to be enacted. The Strategy also commits to commencing the Assisted Decision-Making (Capacity) Act in early 2018, but much of the Act is still yet to be commenced.
- ⁴² Department of Justice (2017) [National Disability Inclusion Strategy 2017-2021](#), Jul 2017, at p. 9.
- ⁴³ Banks, Grotti, Fahey and Watson, [Disability Discrimination in Ireland](#), IHREC/ESRI (2018).
- ⁴⁴ Banks, Grotti, Fahey and Watson, [Disability Discrimination in Ireland](#), IHREC/ESRI (2018), at p. 54.
- ⁴⁵ Banks, Grotti, Fahey and Watson, [Disability Discrimination in Ireland](#), IHREC/ESRI (2018), at 54-56.
- ⁴⁶ “Amongst those aged 15 to 50 (inclusive), 13.7% had completed no higher than primary level education, compared with 4.2% of the general population; 37.0% had completed third level education compared with 53.4% of all those aged 15-50.” See Central Statistics Office (2017) [Press Statement Census 2016 Results Profile 9 - Health, Disability and Carers](#), Nov 2017.
- ⁴⁷ EU Commission (2019) [Country Report Ireland 2019](#), 27 Feb 2019, at p. 37.
- ⁴⁸ [Assisted Decision-Making Capacity Act 2015](#), [Commencement table](#). At the time of submission only ss. 1, 2, 5, 6, 82, 91, 94, 95, 97, 98, 103 were commenced. In Ireland, legislation is not always immediately operational when it is enacted. An Act may provide that it will enter into operation when commencement provisions in the Act are invoked. Commencement provisions may specify a date or may delegate to a specified government minister the power to designate the day upon which an Act, or part of an Act, will enter into operation. The delegation of power to a government minister is more common. The Minister will then issue an order (secondary legislation) prescribing the date upon which the Act or part of the Act will enter into operation. It is therefore often entirely at the Minister’s discretion to decide when a piece of legislation will enter into operation. If an Act does not contain a commencement provision, the Act will be deemed to have entered into force on the date upon which it is signed by the President of Ireland.



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- ⁵⁰ As of 30 September 2017, there was 2,909 wards of court. The Office of the Accountant of The Courts of Justice, [Report and Financial Statements for the Year Ended 30 September 2017](#), at page 5.
- ⁵¹ There were 425 incoming applications for wardship in 2017, compared with 368 in 2016. See Courts Service (2017) [Annual Report 2017](#), at page 75.
- ⁵² The government has indicated that it is consulting with stakeholders on how to progress aspects of the Act on a non-statutory basis. See Minister for Education and Skills (2018) [Special Educational Needs Service Provision Dáil Éireann Debate](#), 6 Nov 2018.
- ⁵³ Minister for Justice and Equality, [UN Conventions Dáil Éireann Debate](#), 5 July 2018.
- ⁵⁴ Article 24 OPCAT affords State Parties the option to “make a declaration postponing their obligations ... for a maximum of three years”, with the possibility of a further extension of two years.
- ⁵⁵ IHREC (2018) [Submission to the UN Committee against Torture on Ireland’s one year follow-up to its second periodic report under CAT](#).
- ⁵⁶ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), 31 Aug 2017, para. 4(c).
- ⁵⁷ Houses of the Oireachtas (2018) [Joint Committee on Justice and Equality Report on Penal Reform and Sentencing](#) May 2018, at 53, 71.
- ⁵⁸ Progress in the Penal System (2018) [32.1: Women who offend Spotlight 3](#); Irish Prison Service (2019) [2019 Prison Populations](#).
- ⁵⁹ Irish Prison Service (2019) [Prisoner Population on Tuesday 19th March 2019](#), 19 Mar 2019.
- ⁶⁰ In July 2018, 58 prisoners had to ‘slop out’ and 45% of all prisoners had to use a toilet in the presence of another prisoner. This is compared to the 465 prisoners slopping out in January 2014. See Irish Prison Service (2018) [Census Prison Population January 2019 – Cell occupancy – In-Cell Sanitation](#), Jan 2019.
- ⁶¹ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), 31 Aug 2017, para. 17; See Mr John Clinton, [Parliamentary Debates: Joint Committee on Justice and Equality](#), 22 March 2017.
- ⁶² Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), 31 Aug 2017, para. 15(b).
- ⁶³ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), 31 Aug 2017, para. 15(f).
- ⁶⁴ IHREC (2015) Press Release: [IHREC appears as amicus curiae in case concerning prisoner’s rights](#), 4 Feb 2015.
- ⁶⁵ IHREC (2017) Press Release: [Irish Human Rights and Equality Commission Secures Court Role in Oberstown Child Detention Cases](#), 9 Jan 2017.
- ⁶⁶ Health Information and Quality Authority (2018) [Monitoring Inspection Report - Detention Schools Services under the Children Act, 2001 \(as amended by section 152 of the Criminal Justice Act 2006\). Oberstown Children Detention Campus](#), Oct 2018.
- ⁶⁷ Committee against Torture (2017) [Concluding observations on the second periodic report of Ireland](#), 31 Aug 2017, para. 15(e).
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- ⁶⁹ Irish Penal Reform Trust (2018) [‘Unacceptable’ conditions for mentally ill prisoners](#), 11 Jul 2018.
- ⁷⁰ Irish Penal Reform Trust (2018) [Self-Harm in Irish Prisons 2017 Report](#), 4 Oct 2018.
- ⁷¹ The Irish Times (2019) [Rights of prisoners with intellectual disabilities must be respected](#), 11 Jan 2019.
- ⁷² Oireachtas (2018) [Remarks by Michael Donnellan, Director General of the Irish Prison Service, Joint Committee on the Future of Mental Health Care](#) 23 May 2018.
- ⁷³ Inspector of Prisons (2016) [Review, Evaluation and Analysis of the Operation of the present Irish Prison Service Prisoner Complaints Procedure](#), Apr 2016; Irish Times (2017) [Garda scandals: Force dogged by controversy over number of decades](#), 6 Apr 2017.
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- ⁸¹ The Commission on the Future of Policing in Ireland (2018) [The Future of Policing in Ireland](#), Sep 2018, at p. 12.
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- ⁸⁹ McGinnity, Grotti, Russell, Fahey (2018) [Attitudes to Diversity in Ireland](#), IHREC/ESRI (2018), at p. 50.
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- ⁹³ Ireland (2018) [Committee on the Elimination of Racial Discrimination: Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014](#), 3 Oct 2018.
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- ⁹⁷ Minister for Justice and Equality (2018) [Proposed Legislation Dáil Éireann Debate](#), 5 Jul 2018.
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¹¹⁰ Women's Aid, [Submission to the Commission on the Future of Policing in Ireland](#) (January 2018) at pp. 15-16.

¹¹¹ [Statement by An Taoiseach Enda Kenny TD on the recognition of Travellers as an ethnic group, Dáil Éireann](#), 1 March 2017.

¹¹² Travellers have a high risk of being homeless; while they make up less than 1% of the population, they represent 9% of the homeless population. Travellers are almost 10 times more likely to report discrimination in access to housing. The proportion of Travellers lacking heating and sanitary facilities is higher than it is for the general population, with 2% of Travellers having no piped water and 3% not having a sewerage connection. See Grotti, Russell, Fahey, Maître (2018) [Discrimination and Inequality in Housing in Ireland](#), IHREC/ESRI (2018). See also Watson, Kenny, McGinnity (2017) [A Social Portrait of Travellers in Ireland](#), ESRI (2017).

¹¹³ 78% of Travellers had completed no more than primary education compared to 10% of non-Travellers. Only 1% of Travellers had a degree or higher, compared to 30% of non-Travellers. The odds of leaving school without having completed second level were 33 times higher for Travellers than for non-Travellers. See Watson, Kenny, McGinnity (2017) [A Social Portrait of Travellers in Ireland](#), IHREC/ESRI (2017), at p. 21.

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¹¹⁵ McGinnity, Grotti, Kenny Russell (2017) [Who experiences discrimination in Ireland?](#) IHREC/ESRI (2017), at P. iv.

¹¹⁶ In 2011 only 11 per cent of Traveller adults were in employment, compared to 66 per cent of non-Travellers. See Watson, Kenny, McGinnity (2017) [A Social Portrait of Travellers in Ireland](#), ESRI (2017), at p. 70

¹¹⁷ Travellers in Prison Initiative (2017) [National Conference Report](#), Oct 2017, at pages 11 -12.

¹¹⁸ Watson, Kenny, McGinnity (2017) [A Social Portrait of Travellers in Ireland](#), ESRI (2017), at p. 74.

¹¹⁹ Child Care Law Reporting Project (2015) [Final Report](#), Nov 2015.

¹²⁰ Pavee Point Traveller and Roma Centre & Department of Justice and Equality (2018) [Roma in Ireland – A National Needs Assessment](#), at p. 50 - 53.

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¹²² Department of Justice and Equality (2016) [National Traveller and Roma Inclusion Strategy 2017 – 2021](#) 2016.

¹²³ Under its legal functions set out in Section 40 of the Irish Human Rights and Equality Commission Act 2014, the Commission can, in certain circumstances, provide legal assistance to a person related to proceedings on a matter of human rights or equality of treatment. Legal assistance, can take the form of the provision of legal advice; legal representation or other assistance to the applicant as the Commission deems appropriate in the circumstance.

¹²⁴ In particular, since section 19 of the *Intoxicating Liquor Act 2003* came into force, these cases are heard in the District Court rather than the equality-specialist Workplace Relations Commission. The District Court, in contrast to the Workplace Relations Commission, entail court fees and an adversarial public forum.

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¹³⁰ See [Department of Justice Progress Reports on Improvements to the Protection Process](#) and [Nasc Working Paper on the Progress of Implementation of the McMahon Report](#).

¹³¹ Irish Times (2019) [What are the alternatives to our broken direct provision system?](#), 12 Feb 2019.

¹³² theJournal.ie (2019) [Emergency accommodation: Over 500 asylum seekers now living in hotels and B and Bs across Ireland](#), 31 Mar 2019.



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- ¹³⁴ Section 10(2)(e) of the *Irish Human Rights and Equality Commission Act 2014*.
- ¹³⁵ [2017] IESC 35, at para. 22. In 2016, the Commission was granted liberty to appear in the Supreme Court as amicus curiae in the case of *NHV. v Minister for Justice & Equality and ors*. In the Commission's legal submission, it argued that the absolute prohibition on asylum seekers accessing the labour market was unconstitutional, and that it also ran contrary to the State's international legal obligations. See IHREC (2016) [Legal Submission on Behalf of the Irish Human Rights and Equality Commission in N.H.V. v Minister for Justice and Equality](#), at paras. 26 & 35.
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- ¹³⁸ IHREC (2018) [Human Rights and Equality Commission welcomes scheme to grant access to the labour market for applicants for international protection](#), 27 Jun 2018.
- ¹³⁹ Department of Justice and Equality (2018) [Information Booklet: Labour Market Access for International Protection Applicants](#), Jun 2018.
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