

Irish Human Rights Commission

**Submission to the UN CERD
Committee on the Examination of
Ireland's Combined Third and
Fourth Periodic Reports**

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IHRC

AN COIMISIÚN UM CHEARTA AN DUINE
AN IRISH HUMAN RIGHTS COMMISSION

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I. INTRODUCTION

1. The Irish Human Rights Commission (IHRC) welcomes the opportunity to make a submission to the United Nations Committee for the Elimination of Racial Discrimination on Ireland's Third and Fourth Periodic Reports¹ under the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

2. The IHRC is Ireland's independent National Human Rights Institution (NHRI) with "A" status accreditation from the International Co-ordinating Committee of NHRIs.² The statutory mandate of the IHRC is derived from the Human Rights Commission Acts 2000 and 2001.³ The IHRC has a statutory remit under the Human Rights Commission Act 2000, to endeavour to ensure that the human rights of all persons in the State are fully realised and protected in the law and policy of the State. The IHRC seeks to ensure that Irish law and policy meet the standards of best international practice. Its functions include keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights, and making such recommendations to the Government as it deems appropriate in relation to the measures which the IHRC considers should be taken to strengthen, protect and uphold human rights in the State.

3. The IHRC has previously provided a submission to the CERD Committee in relation to Ireland's First and Second Periodic Reports.⁴ The IHRC welcomes the opportunity to provide a further submission to the Committee on this follow up examination. As both Chair of the European Group of National Human Rights Institutions and Ireland's NHRI, the IHRC is committed to engaging with the United Nations treaty monitoring process and improving the collaboration between treaty bodies and NHRIs in a strategic and mutually beneficial manner.

A note on the present Submission

4. This submission is provided with the aim of presenting the Committee with focussed and objective information on Ireland's compliance with CERD, and identifying developments in relation to the CERD Committee's 2005 Concluding Observations and providing information on what the IHRC considers are key challenges for Ireland's implementation of CERD within Irish law, policy and practice. The IHRC recognises the considerable workload of the CERD Committee and has endeavoured to provide its information in as succinct a manner as possible. Additional information is included in footnotes and references to external documents.

¹ *Combined Third and Fourth Reports by Ireland to the UN Committee on the Elimination of Racial Discrimination, 2009*, ("2009 State Report"), 21 December 2009.

² The IHRC received 'A' Status Accreditation in 2003, this was renewed through the scheduled five-year review process, in 2008.

³ For detailed information on the work of the IHRC, see www.ihrc.ie.

⁴ Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Racial Discrimination in respect of Ireland's First National Report under the Convention on the Elimination of All Forms of Racial Discrimination, 2005 ("IHRC 2005 CERD Submission").

II. STRUCTURAL ISSUES RELATING TO THE PROTECTION OF RIGHTS UNDER CERD

a. Status of the CERD Convention under Domestic Law

CERD Concluding Observations 2005

"The Committee invites the State party to envisage incorporating the Convention into its domestic legal order."⁵

In its 2009 State Report the Government expresses the view that there is adequate provision for addressing racism and racial discrimination under domestic legislation and the Constitution.⁶ It also notes that the text of CERD and information on Ireland's reporting obligations are available on various State websites.⁷

5. The IHRC considers that in line with the Concluding Observations of the Committee, some form of incorporation of CERD within the domestic legal order would improve the protection of the rights contained in CERD in the State.⁸ Incorporation would also contribute to greater awareness of the provisions of CERD.⁹ While there is no obligation under CERD to incorporate the Convention, the IHRC recalls that irrespective of the domestic system through which international law is incorporated following ratification, the State party is under an obligation to comply with the Convention and to give it full effect in the domestic legal order.¹⁰

6. The IHRC notes that the Irish State has already incorporated into domestic law a number of international human rights treaties by means of legislation.¹¹ The IHRC has previously advised the CERD Committee on the various forms of incorporation that the IHRC considers are available to the Irish Government in relation to international human rights treaties.¹² Currently there is no indication that the Irish Government envisages incorporating CERD into Irish domestic law as recommended by the Committee in 2005. **Therefore, there has been no progress in relation to this element of the Committee's 2005 Concluding Observations.**

⁵ CERD Concluding Observations on Ireland, 14 April 2005, CERD/C/IRL/CO/2 ("CERD Concluding Observations 2005"). This recommendation was echoed by the CERD Co-ordinator on Follow-Up in 2006, *Report of the Visit of CERD Co-ordinator on Follow-Up to Ireland* (21-23 June 2006), at p. 2.

⁶ 2009 State Report at p. 19.

⁷ *Ibid.* at p. 44.

⁸ See IHRC 2005 CERD Submission, at p. 12.

⁹ *Ibid.*

¹⁰ Concluding Observations of the Committee on Economic, Social and Cultural Rights on Ireland's Second Periodic Report, E/C.12/1/Add.77, (2002), para. 23.

¹¹ In particular, the Irish Government has given indirect legal effect to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) through the European Convention of Human Rights Act 2003. Other examples include Section 4 of the Criminal Justice (United Nations Convention Against Torture Act), 2000, which gave effect in domestic law to Article 3 of the UN Convention Against Torture; and the Genocide Act 1973, which gave effect to certain provisions of the UN Convention on the Prevention and Punishment of the Crime of Genocide.

¹² IHRC 2005 CERD Submission at pp. 7-10.

b. Reservation under Article 4 of CERD

CERD Concluding Observations 2005

“[T]he Committee recommends to the State party that it reconsider its position and encourages it to withdraw the declaration made on article 4 of the Convention.”¹³

The State Report indicates that the State is examining the results of research on this issue.¹⁴

7. The Irish Government's reservation under Article 4 of CERD was entered at the time of ratification. The IHRC welcomes the fact that the Irish Government began to reconsider its position in relation to Article 4 of CERD by commissioning research on *Combating Racism and Xenophobia through the Criminal Law* in 2008.¹⁵ The IHRC also welcomes the statement by Government that the continuing review of the Prohibition of Incitement to Hatred Act 1989 is taking account, *inter alia*, of the concluding remarks of the CERD Co-ordinator on Follow Up in 2006, in this regard.¹⁶

8. The IHRC is not convinced that the reservation is necessary.¹⁷ The IHRC reiterates its recommendation that the reservation under Article 4 should be withdrawn as soon as reasonably possible.¹⁸

c. The Consultation Process for the State Report

9. In its preparation of the CERD State Report, the Irish Government held one, half-day meeting to which a range of NGOs, Civil Society Organisations and Statutory Bodies (including the IHRC) were invited. This meeting was held on 25 November 2008, with the State Report published on 21 December 2009. The participants at the consultation meeting requested a further meeting closer to the publication of the State Report however, no further meetings of this kind took place. The IHRC does not consider that this amounted to sufficient consultation in the preparation of the State Report as recommended by the CERD Committee.

d. The Immigration, Residence and Protection Bill (general note)

10. The CERD Committee's Concluding Observations 2005 comments that “The Committee hopes that all issues pertaining to the [immigration] appeal procedure will be adequately resolved within the framework of the proposed Immigration and Residence Bill”.¹⁹ The Immigration, Residence and Protection Bill, which is the first comprehensive legislation dealing with the legal framework

¹³ CERD Concluding Observations 2005, para 10. Declaration: *A declaration is a notification by which a State clarifies the meaning or the scope it gives to a treaty or to a provision, or by which a State sets down the reasons for becoming a Party United Nations, Treaty Handbook, Glossary.*

¹⁴ 2009 State Report at pp.19, 67-68.

¹⁵ 2009 State Report at p. 16. See also Jennifer Schweppe and Dermot Walsh, *Combating Racism and Xenophobia through the Criminal Law*, NCCRI/NAPAR, September 2008.

¹⁶ 2009 State CERD Report, at pp. 67-68.

¹⁷ IHRC 2005 CERD Submission at p. 6.

¹⁸ *Ibid.*

¹⁹ CERD Committee Concluding Observations 2005, para 24.

for immigration and asylum, was introduced in January 2008. There was extensive interest, discussion and comment on this legislation by Statutory Bodies including the IHRC and by NGOs and Civil Society Organisations as well as before Parliament (Oireachtas). Considerable concern was expressed by both Statutory Bodies and NGOs and CSOs in relation to a range of aspects of the Bill. In July 2010, this Bill was withdrawn and a new Bill was published; the Immigration, Residence and Protection Bill 2010. **The IHRC wishes to highlight the fact that, at time of submission, this Bill is under consideration and there is still no consolidated framework relating to immigration and asylum issues in place in Ireland.**

e. Human Rights Education and Training

11. The IHRC wishes to highlight that it considers there is a lack of sufficient education and training for Civil and Public Servants, including the Garda Síochána, on human rights, including those relating to CERD. The IHRC undertook a comprehensive review of the provision of human rights education and training (HRET) across the formal, informal and continuing professional development sectors (including Civil and Public Servants) and identified that there was a pressing need for education and training for Civil and Public Servants in relation to human rights. The IHRC has therefore launched a Human Rights Education and Training Project, the first phase of which is aimed at Civil and Public Servants. On 29 September 2010, the IHRC published a human rights guide for the Civil and Public Service with the aim of improving awareness of human rights among this group. The IHRC considers that the State must prioritise HRET for those working in the Civil and Public Service and is working with the Government to try to assist it in this goal. However, serious cuts to its budget over the last two years mean that the IHRC is unable to undertake more widespread work in the area of awareness raising of human rights including of CERD. **The IHRC considers that there has been insufficient action by the State in raising awareness of CERD and other international human rights treaties and in ensuring that all Civil and Public Servants are trained in human rights.**

III. GENERAL CONCERNS IN RELATION TO RACIAL DISCRIMINATION IN IRELAND

a. The Human Rights and Equality Infrastructure

CERD Concluding Observations 2005

"...welcoming in particular the establishment by the State party of several independent institutions and judicial bodies in the field of human rights and non-discrimination, as referred to in paragraph 4 above, the Committee wishes to underscore the importance of providing adequate resources to these institutions, in order to enable them to efficiently and effectively exercise their duties and functions (art. 2).

The Committee recommends that the State party provide the newly established institutions in the field of human rights and non-discrimination with adequate funding and resources to enable them to exercise the full range of their statutory functions, and also support the NGO community."²⁰

The main body of the **State Report** does not refer to recent cuts to the Human Rights infrastructure in Ireland.²¹

Introduction

12. Since 2008, as part of the Government's response to the economic crisis, there have been severe cuts to the budgets of the IHRC and the Equality Authority, whose remit includes combating racial and ethnic discrimination. In addition, the state-funded National Consultative Committee on Racism and Interculturalism (NCCRI) and Combat Poverty Agency have been closed down and the National Action Plan Against Racism, which came to an end in 2008, has not been renewed. These measures have had a disproportionately damaging effect on the human rights and equality sector.

Reduction in the Budget of the IHRC

13. The IHRC's grant-in-aid which is provided annually by the Department of Justice, Equality and Law Reform was reduced by 32% in 2009.²² The grant-in-aid for 2010 was set at the same rate as that provided in 2009. The IHRC publicly highlighted the negative impact of this reduction in its budget and stated that any further reduction in its budget would seriously impair its ability to effectively perform its statutory functions.²³ In June 2010, the Government changed the Department to which the IHRC is administratively linked from the Department of Justice, Equality and Law Reform to the Department of Community, Equality and Gaeltacht Affairs. Given that much of the IHRC's work relates to issues covered by the Department of Justice, the Commission has welcomed the recent change as being a step in the right direction but continues to believe that direct accountability to parliament would be the optimal situation.

²⁰ CERD Concluding Observations 2005, para 12.

²¹ The 2009 State Report annex containing comments arising from the State's pre-Report consultation does refer to concerns raised at that consultation about budget cuts, see para 487.

²² IHRC press release, "IHRC launches its 2008 Annual Report," 10 July 2009. The IHRC had a third less financial resources available to it in 2009 with its total grant-in-aid being reduced from €2,342,000 in 2008 to €1,596,000 in 2009. See IHRC, *Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR*, September 2009, at p. 11.

²³ See IHRC, *Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR*, September 2009, at p. 11.

In addition, the IHRC continues to lack adequate financial resources. A moratorium on the recruitment of public sector positions has had an extremely negative impact on the IHRC's staff situation as staff who left could not be replaced. The IHRC's ability to continue operating as an effective NHRI is now seriously jeopardised.

IHRC Accountability to Parliament

14. Since 2003, the IHRC has recommended that it would be preferable for the IHRC to be administratively accountable to the Irish Parliament (Oireachtas) rather than to any Government Department.²⁴ The IHRC considers an administrative link with the Irish Parliament would enhance its compliance with the *Paris Principles* and would strengthen its structural and financial independence.²⁵

Reduction in the Allocation of Resources in the Area of Racial Discrimination

15. In 2009, the budget of the Office of the Minister for Integration²⁶ was reduced by 26% with a slight increase in the 2010 Budget of 6%.²⁷ The Office has not been in a position to establish two of the three new bodies to foster integration that were proposed in its Policy Statement, *Migration Nation*.²⁸

16. The National Action Plan Against Racism (NAPAR), which operated from 2005 to 2008 was set up following the United Nations World Conference Against Racism in Durban in 2001 and sought to take account, *inter alia*, of Irish and EU equality policy and CERD.²⁹ The final report of NAPAR stated that a public driver and champion of antiracism would continue to be required in the future and that leadership and coordination of antiracism activities should be key priorities.³⁰ The NAPAR report emphasised that no matter how restricted the

²⁴ IHRC Report under Section 24 of the Human Rights Commission Act 2000, July 2003 at p. 9.

²⁵ In its examination of Ireland's Third Periodic Report in 2008, the Human Rights Committee recommended that the Irish Government, "should strengthen the independence and the capacity of the [IHRC] ...by endowing it with adequate and sufficient resources and linking it to the Oireachtas (Parliament)". Concluding Observations of the Human Rights Committee in relation to Ireland's Third Periodic Report, CCPR/C/IRL/CO/3 at para. 7.

²⁶The Office of the Minister for Integration is mandated to develop, drive and co-ordinate integration policy across Government Departments, agencies and services. Its functions include the promotion of the integration of immigrants into Irish society, the establishment of new structures for this purpose, the management of the resettlement of refugees and the administration of funding from national and EU sources to promote integration. See <http://www.integration.ie/website/omi/omiwebv6.nsf/page/aboutus-roleforofficeofministerforintegration-overview-en>, last accessed on 18 December 2009.

²⁷ See *2009 Estimates for Public Services and Summary Public Capital Programme*, at p. 19. The estimates were reduced from €9,293,000 to €6,889,000. See also *2009 Estimates for Public Services and Summary Public Capital Programme*, at p. 19.

²⁸ See Office of the Minister for Integration, *Migration Nation*, 2008, at p. 9. Available at [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/\\$File/Migration%20Nation.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-7SQDF91044205-en/$File/Migration%20Nation.pdf).

In October 2010, a Ministerial Council on Integration was reported as being established. See <http://www.integration.ie/website/omi/omiwebv6.nsf/page/47069939A001FADA802577BC004D3BB8>

²⁹ *National Action Plan Against Racism 2005-2008*, p. 40. NAPAR expenditure amounted to €4,946,600 over the four years of the Plan. Funding amounted to €1,000,000 in 2005, €2,001,000 in 2006, €1,224,000 in 2007 and €721,600 in 2008. See *National Action Plan Against Racism (NAPAR) 2005 – 2008: Not an End – Just a Beginning*, January 2009, at p. 29.

³⁰ *Ibid.* at pp. 6-7.

State's resources become, "we will need to put in place a distinct and identifiable antiracist strategy."³¹ NAPAR finished in 2008 and has not been renewed or replaced by a similar programme.

Reduction in the Budget of the Equality and Anti Racism Structures

17. The budget of the Equality Authority, which is the main statutory body tasked with monitoring the implementation of equality legislation including the prohibition against discrimination on grounds of race, was reduced by 43% in 2008, inevitably affecting its ability to carry out its functions.³² In addition, the National Consultative Committee on Racism and Interculturalism (NCCRI), an expert advisory body established to advise the Government in relation to racism and integration, was closed down and its functions, though not its staff, were subsumed into the Office of the Minister for Integration.³³ The NCCRI had operated a scheme for independent recording of racist incidents and this has been discontinued. It also performed an important role in facilitating contact between the immigrant community and Government. The Combat Poverty Agency, which was a statutory agency tasked with promoting social inclusion and making recommendations to Government in relation to the reduction of poverty,

³¹ *Ibid.* at p. 11. In the final report on NAPAR, 2005-2008, considerable progress was noted including in relation to the appointment by the Gardaí (Police) of ethnic liaison officers, increased Garda recruitment from minority communities, the production of many antiracism and diversity plans by local authorities, the creation of a model for promoting the business case for diversity and a cultural diversity toolkit for businesses, a very successful antiracism workplace week, media campaigns, national award schemes, the funding of sports activities and support to sectoral intercultural strategies in the areas of health and education *Ibid.* at pp. 8-9. However, the Report highlighted three key challenges: continuing the formal commitment to antiracism, using the experience of the NAPAR and maintaining critical progress in times of scarce resources. *Ibid.*, at pp. 5-12. It expressed concern that the policy statement on integration, *Migration Nation*, focussed exclusively on newcomers, and noted that provision will need to be made in the future for non-immigrant antiracism activities, in particular those relating to members of the Traveller Community *Ibid.*, at p. 8. The Report noted a number of specific initiatives that it would like to have progressed. It recommended measures to encourage more media programming focussing on cultural diversity and positive actions to encourage the employment of people from cultural and ethnic minorities at all levels within the media *Ibid.*, at p. 13. It also recommended that the childcare sector be encouraged to make reasonable accommodation for cultural diversity and that there be greater development of diversity strategies within the Justice Sector, while acknowledging that there had been some progress in that regard, particularly with the Gardaí (Police) *Ibid.*, at pp. 13-14. The Report also called for further examination and consideration of research carried out in relation to racially motivated crime (explored further below) and housing policy.

³² Equality Authority press release, "Budget 2009 may render Equality Authority unable to carry out the full range of its core functions," 11 November 2008. The 2009 Budget required the decentralisation of a further 15 staff posts to Roscrea in Co. Tipperary.

³³ Dáil written answer of Conor Lenihan TD, Minister of State for Integration, Dáil Éireann - Volume 665 - 04 November, 2008. See also NCCRI Briefing, *The Role and Work of the NCCRI and Implications of the Ceasing of Funding Announced in the Budget*, October 2008. <http://www.nccri.ie/press-funding.html> The Briefing noted that "Unless reversed the decision will result in: The loss of the collective expertise of the NCCRI built up over the past decade which has played key role in shaping government policy in anti racism and integration; The loss of the bridge/space between Government and broader civil society provided by the NCCRI and the consensus building sought in such approaches; Closure of the NCCRI offices and laying off of all staff (who will not be subsumed into the Office for Integration); The potential loss of a €4m EU funding programme which is at an advanced stage of development.

was subsumed into the Office of the Minister for Social Inclusion, thus ceasing to be an independent voice in this area.³⁴

18. Cuts to the human rights and equality infrastructure were among the heaviest cuts across all sectors of the public service, and were among the first cuts announced by the Government following the economic crisis. **The IHRC considers that the significant and disproportionate cuts to the human rights and equality infrastructure will have a long-term negative impact on the elimination of racial discrimination in Ireland.**

b. Prevalence of Racial Discrimination in Ireland

CERD Concluding Observations 2005

"The Committee remains concerned that racist and xenophobic incidents and discriminatory attitudes towards ethnic minorities are still encountered in the country (art.2)...The Committee encourages the State party to continue to combat prejudice and xenophobic stereotyping, especially in the media, and fight prejudice and discriminatory attitudes...[T]he Committee recommends that the State party introduce in its criminal law a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance allowing for a more severe punishment."³⁵

19. The IHRC was concerned at the findings of a 2009 survey by the EU Fundamental Rights Agency (FRA) that indicated that there was a perception by some minority communities that there was a high level of racial discrimination and abuse in Ireland.³⁶ The FRA published a survey of immigrant and ethnic minority groups' experiences of discrimination and racist crime in the European Union in April 2009.³⁷ 73% of people of Sub-Saharan African origin surveyed in Ireland and 25% of those from new EU Member States stated that they considered discrimination based on ethnic or immigrant origin is widespread in the State.³⁸ In the prior 12 months, discrimination was perceived as occurring in a range of areas, including when seeking employment, buying or renting a

³⁴ See <http://www.combatpoverty.ie/aboutus/integrationDSFA.html>. The impact of these budget reductions and ending of their mandate has been noted in a study on adapting to diversity in Irish schools undertaken by the Economic and Social Research Institute. This study states that the capacity to underpin school provision with the promotion of intercultural awareness in the society as a whole is likely to have been impeded by the closure of NCCRI and the significant reduction in funding to the Equality Authority. ESRI, *Adapting to Diversity: Irish Schools and Newcomer Students*, June 2009, at p. 187.

³⁵ In addition, the CERD Co-ordinator on Follow-up recommended in 2006 that the effectiveness of awareness-raising activities to combat prejudice and xenophobic stereotyping be evaluated and that anti-discrimination and equal treatment principles should be mainstreamed in Irish society *Report of the Visit of CERD Co-ordinator on Follow-Up to Ireland (21-23 June 2006)*, at pp. 2-3, 6.

³⁶ EU-MIDIS: European Union Minorities and Discrimination Survey, at p. 9 http://www.fra.europa.eu/fraWebsite/eu-midis/index_en.htm.

³⁷ See IHRC press release, "Ireland figures among the worst of all EU countries in an EU survey of racial discrimination & abuse," 22 April 2009. www.ihrc.ie

³⁸ *Ibid*. The survey also reported that sub-Saharan Africans interviewed regarded Ireland as one of the worst 10 countries in the EU where people of Sub-Saharan African origin had experienced discrimination on the basis of their background.

house, at school or in a restaurant or bar, or in accessing health and social services.³⁹

The IHRC reiterates the call made by the EU Fundamental Rights Agency for States to tackle racist discrimination and abuse by promoting the reporting and recording of discrimination and racist crimes, fully applying anti-discrimination laws, and better informing vulnerable minorities about their rights.⁴⁰

c. Racially Motivated Crime

20. In 2008, the NCCRI and the NAPAR commissioned a study on combating racism and xenophobia through the criminal law.⁴¹ The report noted that according to Garda statistics, the number of racially motivated offences in Ireland increased sharply and then levelled off,⁴² although it was noted that there is a significant level of under-reporting of crimes of this nature.⁴³ The report recommended that judges should be guided to consider racism as an aggravating factor deserving a tougher sentence.⁴⁴ The report stated that greater use should be made of other legislation, including public order legislation, against racism, including hateful expression in public places not involving incitement.⁴⁵ It further emphasised the need for measures to address racism to be included as part of an overall integration and anti-racism strategy in Ireland.⁴⁶ The report also recommended enhanced Garda (police) reporting, systematic monitoring and reporting by the Courts Services, additional resources to the Garda Racial and Intercultural Unit, consultative forums with minority and migrant communities across all Garda Divisions, further initiatives to encourage the reporting of racism as a crime, adequate training for victim support bodies and that local authorities should include policies to address racism in their strategic planning process.⁴⁷ To date it is unclear to what extent the recommendations in this report have been implemented.

³⁹ *Ibid.*

⁴⁰ IHRC press release, "Ireland figures among the worst of all EU countries in an EU survey of racial discrimination & abuse," 22 April 2009. www.ihrc.ie

⁴¹ Jennifer Schweppe and Dermot Walsh, *Combating Racism and Xenophobia through the Criminal Law*, NCCRI/NAPAR, September 2008. The Final Report of the NAPAR, 2005-2008 stated that the findings and recommendations outlined in this report require further consideration and examination. *National Action Plan Against Racism (NAPAR) 2005 – 2008: Not an End – Just a Beginning*, January 2009, at p. 14.

⁴² 84 in 2004, 94 in 2005, 174 in 2006 and 180 in 2007.

⁴³ Jennifer Schweppe and Dermot Walsh, *Combating Racism and Xenophobia through the Criminal Law*, NCCRI/NAPAR, September 2008, at p. 3. The most common offences are public order offences, minor assault, assault causing harm and criminal damage. *Ibid.*

⁴⁴ It also recommends that the Prohibition of Incitement to Hatred Act 1989 should be updated to be specifically inclusive of racism on the internet.

⁴⁵ *Ibid.*, at p. 4.

⁴⁶ *Ibid.*, at p. 5.

⁴⁷ *Ibid.*

IV. ASYLUM SEEKERS AND THE POLICY OF DIRECT PROVISION

CERD Concluding Observations 2005

"The Committee is concerned at the possible implications of the policy of dispersal of and direct provision for asylum-seekers (art. 3)

The Committee encourages the State party to take all necessary steps with a view to avoiding negative consequences for individual asylum-seekers and to adopt measures promoting their full participation in society."⁴⁸

The **State Report** indicates that the State does not intend to amend its existing policies in relation to direct provision or access to the labour market for asylum seekers. The State indicates that it is satisfied that "this is a fair and humane system for meeting the needs of asylum seekers and that it is in line with asylum seekers accommodation arrangements in other EU Member States".⁴⁹

a. Overview of the Policy of Direct Provision

21. The policy of direct provision has been in place on an administrative basis in Ireland since 1999. In accordance with this policy, asylum seekers and those seeking humanitarian leave to remain in the State are accommodated on a full board basis in allocated accommodation centres around the country. They are not permitted to work and are not generally entitled to certain mainstream social welfare benefits.⁵⁰ They are not regarded as satisfying a Habitual Residence Condition for receiving social welfare benefits, including Child Benefit, which is described by Government as a universal benefit. They are provided with "a residual income maintenance payment to cover personal requisites"⁵¹ of €19.10 per week for adults and €9.60 per week for children.⁵² **This allowance has not been increased since 1999.** Asylum seekers can claim once-off "Exceptional Needs Payments" (ENP) or "Urgent Needs Payments" (UNP) from the Supplementary Welfare Allowance Scheme in respect of travel, cost of nappies, and can also receive allowances under the Back to School Clothing and Footwear Schemes.⁵³

22. Following some administrative decisions that asylum seekers, who had been in the state for substantial periods and had established families here, could qualify for benefits, a recent amendment to the law explicitly provides that asylum seekers cannot be regarded as habitually resident in the State and therefore cannot qualify for *inter alia*, Child Benefit, One-Parent Family Payment, Disability

⁴⁸ CERD Concluding Observations 2005, at para. 13.

⁴⁹ 2009 State Report, page 30, para 87. The appended report of the Consultation held by the Government indicates some of the concerns of those who participated in the consultation meeting, with the current system of direct provision. See 2009 State Report pp.158-159.

⁵⁰ It is noteworthy that Ireland and Denmark are the only EU States which do not allow asylum-seekers any access to the labour market after a certain period of time if a final decision has not been reached on their applications for protection.

⁵¹ Section 9(4) of the Refugee Act 1996 (as amended); internal circular issued by B O'Raghallaigh, Principal Officer, Department of Social and Family Affairs, 10 December 1999. Also see Free Legal Advice Centres, *Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland*, July 2003 at p. 9. For the purposes of this section, the term 'asylum seeker' can be taken to include those seeking humanitarian leave to remain, since the Direct Provision regime applies to both categories of persons.

⁵² *Ibid.*

⁵³ Supplementary Welfare Allowance Scheme administered by the Health Service Executive.

Allowance or any supplementary welfare allowance that is not an 'Exceptional Needs Payment'.⁵⁴ In addition, asylum seekers are not entitled to rent supplement.⁵⁵

23. The Government originally envisaged that a person would remain in the direct provision system on "a short-term basis (not more than six months)".⁵⁶ In practice however statistics from the Reception and Integration Agency (RIA) indicate that in October 2009, 32% of residents spent over 3 years in direct provision; 19% spent 2 to 3 years in direct provision; 24% spent 1 to 2 years in direct provision and 24% spent less than a year.⁵⁷ Asylum seekers are legally required to "reside and remain" in direct provision accommodation centres until a decision is taken on their asylum application.⁵⁸ It is a criminal offence to breach this requirement.⁵⁹

The IHRC is concerned at the low level of direct provision payments and the length of time which people remain in this system.

b. Negative Physical and Mental Health Status of Asylum Seekers

24. Asylum seekers have access to free healthcare through the medical card system.⁶⁰ A number of reports demonstrate the vulnerable health status of many people living in direct provision. A report on the National Intercultural Health Strategy by the Health Service Executive (HSE) cited studies showing problematic nutritional status and health and well-being among asylum seekers living in direct provision, with weight gain, high calorie intake from protein and fats, limited food choice and overall food poverty.⁶¹ There have also been reports of individual hostels refusing to provide an alternative diet even where an individual's health requires it.⁶² The HSE stated that while generalisations should be avoided, work was needed to ensure "the provision of quality, culturally appropriate food and associated aspects around health promotion."⁶³

⁵⁴ Sections 173(6), 192, 210(9), 220(3) and 246(3) of the Social Welfare Consolidation Act 2005.

⁵⁵ Section 13 of the Social Welfare (Miscellaneous Provisions) Act 2003; Section 198(4) of the Social Welfare Consolidation Act 2005; Supplementary Welfare Allowance Circulars 04/00 and 05/00, introduced on 10 April 2000. In December 2009 there were 54 direct provision centres operating in Ireland. There are two reception centres and 48 accommodation centres, seven of which are state-owned and four of which are self-catering, See Reception and Integration Agency (RIA) Monthly Statistics Report, December 2009.

⁵⁶ Press release issued by the Minister for Justice, Equality and Law Reform, John O' Donoghue. Reported in Irish Times, 28 March 2008.

⁵⁷ See RIA Monthly Statistics Report, December 2009.

⁵⁸ Section 9(5)(a) of the Refugee Act 1996 (as amended).

⁵⁹ *Ibid.*

⁶⁰ http://www.ria.gov.ie/the_asylum_process/medical_services_and_entitlements/ last accessed 6 July 2009.

⁶¹ HSE, *National Intercultural Health Strategy 2007-2012*, February 2008, at p. 42.

⁶² *Ibid.* at pp. 5, 22-24, 35. See also M. Mandahar et al, *Food, Nutrition and Poverty among Asylum-Seekers in North-West Ireland*, Combat Poverty Agency, Dublin, 2006; *The Needs of Asylum Seeker Men Living in Viking House Direct Provision Centre, Waterford* Waterford Area Partnership The Men's Development Network & RAPID, November 2006. See also

http://www.ria.gov.ie/the_asylum_process/reception_and_dispersal/ - last accessed 3 June 2009.

⁶³ HSE, *National Intercultural Health Strategy 2007-2012*, February 2008, at p. 42.

25. The prevalence of mental health problems for asylum seekers living in direct provision has also been documented. The HSE report on the National Intercultural Health Strategy noted that asylum seekers' mental health is affected, *inter alia*, by social isolation, a lack of understanding about services, poverty and poor housing. It also stated that the lack of entitlement to work, when extended over a long period, "may further compound mental health, with boredom, depression, sense of isolation and loss of self esteem commonly reported symptoms."⁶⁴ Problems may be particularly acute for those who have been in the process for a lengthy period.⁶⁵

26. A study of asylum seekers' medical practice service utilisation and morbidity patterns found that they were five times as likely to attend with a psychiatric condition as their matched Irish patient and three times more likely to be assigned a diagnosis of anxiety.⁶⁶ In a study carried out by the Royal College of Surgeons Medical School, it was found that "asylum seekers had a significantly higher risk of Post Traumatic Stress Disorder and depression/anxiety symptoms". The authors of the study also observed that the length of the asylum process "has been associated with an increase in psychiatric disorders".⁶⁷

The IHRC is concerned at the high incidence of mental health problems among persons in direct provision and the negative impact which the length of the asylum process, the prohibition on working and the resulting social isolation may be having on those in direct provision.

c. Conditions of Accommodation and Lack of Personal Autonomy in Direct Provision Centres

27. Research and studies undertaken by a number of NGOs indicate a number of concerns in relation to the conditions of accommodation in direct provision centres.⁶⁸ While the situation in direct provision varies from centre to centre, inadequate and restricted space and overcrowding have been highlighted as problems by families living in direct provision accommodation and by reports undertaken by NGOs.⁶⁹ The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, following a visit to Ireland expressed concern about the current state of accommodation for families and of the deficiencies reported by independent inspections of asylum seeker accommodation.⁷⁰ He also noted with concern the low degree of personal autonomy asylum-seekers may retain

⁶⁴ HSE, *National Intercultural Health Strategy 2007-2012*, February 2008, at p. 42.

⁶⁵ Many asylum-seekers spend several years in the State before their claims and any subsequent applications for leave to remain on humanitarian grounds are finally determined. In March 2009, there were 6,956 residents availing of direct provision accommodation. Of these, 1,312 had been in the system between 24 and 36 months and 1,976 for over 36 months. RIA *Monthly Statistics Report*, March 2009, at p. 20.

⁶⁶ McMahon J, MacFarlane A, Avalos G, Cantillon P, Murphy AW, "A survey of asylum seekers' general practice (GP) service utilisation and morbidity patterns," *Irish Medical Journal*, 2007; 100(5):461-464

⁶⁷ *Ibid.*

⁶⁸ Free Legal Advice Centre, *One Size Doesn't Fit All, A Legal Analysis of the Direct Provision and Dispersal System in Ireland, 10 years on*, February 2010; AKIDWA, *Am Only Saying it Now, Experiences of Women Seeking Asylum in Ireland*, March 2010.

⁶⁹ *Ibid.*

⁷⁰ Report by Commissioner for Human Rights Thomas Hammarberg on his visit to Ireland 26-30 November 2007, CommDH(2008)9, at para. 107.

throughout the process, knowing that it can take three to five years to have an asylum application determined.⁷¹ He recommended that the Government should provide appropriate family accommodation to families with children who were seeking asylum.⁷²

28. The Reception and Integration Agency (RIA), which is responsible for “coordinating the provision of services to both asylum seekers and refugees, coordinating the implementation of integration policy for all refugees and persons granted leave to remain in the State”⁷³ retains the discretion to transfer a resident to a different accommodation centre or to expel him or her from Direct Provision accommodation without notice in circumstances of “extreme gravity”.⁷⁴ The Department of Justice has reported that 22 asylum seekers had been expelled from direct provision accommodation in the 18 months prior to October 2008.⁷⁵ Where an asylum seeker is expelled from direct provision accommodation he or she is not entitled to access social welfare benefits which other homeless persons usually receive and there is no obligation on any other State-run organisation to provide accommodation. There is no independent mechanism whereby asylum seekers can appeal such decisions.

29. Asylum seekers must give prior notice to centre managers if they intend to be absent for more than one night from a centre. If the asylum seeker has not used the accommodation “for any period of time” or is “consistently absent” from the centre, accommodation may be re-allocated, and it may also affect their welfare entitlements.⁷⁶ The Human Rights Committee has indicated its concern that the requirements relating to direct provision should not infringe the right to liberty of movement protected under Article 12 of the ICCPR.⁷⁷

The IHRC is concerned by the lack of provision for asylum seekers who may become homeless, and by the low degree of personal autonomy granted to asylum seekers.

⁷¹ *Ibid.* at para. 108.

⁷² In response, the Irish Government asserted that it has always provided family accommodation to families seeking asylum in Ireland, that families are never assigned a room suitable for single people and that service providers are contractually obliged to conform to relevant statutory requirements in relation to room capacity. *Ibid.*

⁷³ See <http://www.ria.gov.ie>.

⁷⁴ *RIA House Rules*, at para. 3.22.

⁷⁵ Response to Parliamentary Questions 253 to 258, 10 October 2008. Asylum seekers who have been expelled may then make an appeal to RIA stating why they should be re-accommodated and the RIA appeals officer then decides on their case. *Ibid.* An asylum seeker can challenge RIA’s decision before an independent body by seeking a judicial review in the High Court of the decision. However, such a review is confined to procedural grounds only. An asylum seeker is not entitled to access to legal aid assistance in these circumstances. In one legal action, which the State settled, an asylum seeker who was mentally ill had been expelled from direct provision and took a claim on the grounds of having become homeless and destitute, having been denied permission to work and access to any social welfare entitlements. *Nadri v. Minister for Justice, Equality and Law Reform*.

⁷⁶ *Ibid.*

⁷⁶ *Ibid.* at para. 2.19. The Citizen’s Information Bureau indicates where an asylum seeker is absent for more than three consecutive nights, the Reception and Integration Agency will deem the bed space abandoned see <http://www.citizensinformation.ie/categories>.

⁷⁷ Concluding Observations of Human Rights Committee: Ireland, 24 July 2000, A/55/40(SUPP), at para. 26.

V. NON-DENOMINATIONAL AND MULTIDENOMINATIONAL SCHOOLS

CERD Concluding Observations 2005

"The Committee, noting that almost all primary schools are run by Catholic groups and that non-denominational or multid denominational schools represent less than 1 per cent of the total number of primary education facilities, is concerned that existing laws and practice would favour Catholic pupils in the admission to Catholic schools in case of shortage of places, particularly in the light of the limited alternatives available (art. 5 (d) (vii) and 5 (e) (v)).

The Committee, recognising the 'intersectionality' of racial and religious discrimination, encourages the State party to promote the establishment of non-denominational or multi denominational schools and to amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils (of all religions) to schools is concerned."

a. Introduction

30. The issue of religious patronage of Irish primary and indeed post-primary schools has received a large amount of media coverage and been the subject of considerable debate in Ireland. It is an area in which there are ongoing developments. In the period 2009-2010, the IHRC has also received an increasing number of communications concerning religious education and instruction in both primary and secondary schools.

31. The State Report indicates that there are "approximately 3,300 primary schools and 750 post primary schools in the State and the vast majority are privately owned and managed but funded by the State".⁷⁸ Some 98% of primary schools are run under religious patronage, with some 92% under the patronage of the Catholic Church.⁷⁹ This means that the Patron of such schools is often a Roman Catholic Bishop and there is Church representation on the Boards of Management of each school.⁸⁰ A similar situation pertains to Church of Ireland Schools.⁸¹ The State has traditionally provided funding for national schools, and

⁷⁸ State Report 2009, page 38, para 108.

⁷⁹ *Supplementary additional information by the Government of Ireland concerning the List of Issues (CCPR/C/IRL/Q/3) taken up in connection with the consideration of the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights (CCPR/C/IRL/3)*, at p. 10. See also www.rte.ie/news/2010/0305/education.html and Educate Together website, www.educatetogether.ie According to a recently produced report on the Department of Education and Science website, the figure is 97%: see *Information on Areas for Possible Divesting of Primary Schools*, www.education.ie, accessed 13 August 2010. A Report published by the Department of Education on 3 August 2010, indicates the following break down for primary schools in Ireland in the 2009/2010 school year: CATHOLIC: 2888 schools, 91.25% (% of total), CHURCH OF IRELAND: 181 schools 5.72%, PRESBYTERIAN: 14 schools 0.44%, METHODIST 1 school 0.03%, JEWISH 1 school 0.03%, INTER-DENOMINATIONAL 8 schools 0.25%, MUSLIM 2 schools 0.06%, MULTI-DENOMINATIONAL 69 schools, 2.18%, QUAKER 1 school 0.03%. Total 3165 Schools. *Information on Areas for Possible Divesting of Patronage of Primary Schools*.

http://www.education.ie/servlet/blobServlet/report_divesting_of_patronage_primary_schools.pdf

⁸⁰ Although all non private primary schools in the State are referred to as national schools, they are in the vast majority of cases owned and run by the Roman Catholic Church. For a brief history of the Irish primary education system see; *The multi-denominational experience*, Áine Hyland, Irish Education Studies, 8 1:1.

⁸¹ Approximately 5.72% of schools are owned and run by the Church of Ireland.

prescribed a certain minimum curriculum to be followed. The State, in the form of the Department of Education and Science (“the Department”), takes no direct role in the management of such schools which are largely self governing.⁸² The Board of Management of each school is accountable to the school patron to uphold the characteristic spirit of the school as determined by, *inter alia*, the moral, religious and spiritual values which inform the character and objectives of the school.⁸³

Students and their parents in many areas of the State have little choice but to avail of the local schools which are available to them, particularly in rural areas.

32. The Irish Constitution requires the State to respect parents’ wishes in relation to the religious education of their children.⁸⁴ The State shall not discriminate in relation to the religious ethos of a school in its financial support.⁸⁵ The Education Act 1998 provides that the State shall not require any student to attend instruction in any subject which is contrary to the conscience of the parent or of a student who has reached the age of 18 years.⁸⁶ However, the Rules of National Schools emphasise that religious education is a fundamental part of the school course and should vivify the whole work of the school. The Primary School Curriculum states that the school curriculum subjects should be integrated with each other.⁸⁷

33. Empirical research carried out in 2007 on the integrated curriculum found that according to 50% of questionnaire respondents there was no ‘opt-out’ arrangement available from time-tabled religious instruction classes.⁸⁸ Where an opt-out arrangement was provided, among the most common options was for the children to be collected from school by their parents.⁸⁹ A 2006 carried study found that 60% of schools surveyed used additional time outside religious class

⁸² Under the 1998 Education Act, Minister for Education has a largely supervisory role in relation to schools, and takes no direct role in relation to how each school is managed and in particular it is left to each school which particular ethos or character it wishes to adopt, and how this is reflected in the way the school is run.

⁸³ Section 15(2)(a) Education Act 1998.

⁸⁴ Articles 42 and 43.4 of the Irish Constitution.

⁸⁵ Article 44.2 of the Irish Constitution.

⁸⁶ Section 30(2)(e) of the Education Act 1998. In addition, the Education Act 1998 states that schools shall “promote the moral, spiritual, social and personal development of students ... having regard to the characteristic spirit of the school.” Section 9(d) of the Education Act 1998.

⁸⁷ Rule 68 of the Rules of National Schools; Department of Education and Science, Primary School Curriculum, 1999, at p. 16. The Rules of National Schools were promulgated by the Department in 1965. The Rules are comprehensive in dealing with all aspects of the running of national schools, but do not have a legislative basis. Nonetheless they are adhered to by every State funded national school in the country. In addition to the Education Act 1998, the Rules deal with such matters as Patronage and Management, the physical structure of schools and equipment, the school year, staffing and so on. Adherence to the Rules is required in order for each school to draw down funding to pay staff and teachers’ salaries.

⁸⁸ Alison Mawhinney, *Freedom of Religion in the Irish Primary School System: a Failure to Protect Human Rights*, (2007) 27(3) Legal Studies 379, at p. 390, cited in Eoin O’Daly, *Religious Freedom and the Denominational Education Model in the Republic of Ireland: The Shortcomings of “Accommodationist” Reform* [2008] Ed. Law 242.

⁸⁹ *Ibid.*

but within school hours for sacrament preparation.⁹⁰ Parents surveyed also reported difficulties in practice in obtaining alternative educational activities or supervision under opt-out arrangements, a lack of understanding of their choices in some instances and concerns about the amount of time spent on sacrament preparation in the lead up to communion and confirmation.⁹¹

Issues arise where the statutory option of withdrawing children from religious instruction classes is difficult to exercise in practice, for example where a) this is not an actual or reasonable option in a given school and there is no alternative school in a given catchment area or b) while a child may be excused from a religious class, religious instruction may still occur throughout the school day, contrary to the right to freedom of thought, conscience and religion of the child/ family concerned.

34. Under Irish law, schools providing primary or post-primary education may not discriminate in relation to admission of pupils. However, where the objective is to provide education in an environment which promotes certain religious values, they are permitted to prefer students of a particular religious denomination or to refuse to admit students on grounds of their denomination where this is deemed essential to maintain the ethos of the school.⁹² It has been argued that the fairness of these provisions on school admissions, in the absence of an adequate network of alternative schools, either non-denominational or neutral as regards beliefs.

35. In its 2008 Concluding Observations on Ireland's Third Report under the International Covenant on Civil and Political Rights, the Human Rights Committee echoed the 2005 recommendation of the CERD Committee, stating that Ireland should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State party, in view of its increasingly diverse and multi-ethnic population.⁹³

Areas of Progress

36. The Government's one year follow-up report to the Human Rights Committee noted a number of points of progress in relation to the education system's recognition of the changing composition of Irish society.⁹⁴ These include a conference for the main school patron bodies to discuss issues such as school ethos and inclusion, initiation of pilot schemes for new models of Vocational

⁹⁰ Alison Mawhinney, *The opt-out clause: imperfect protection for the right to freedom of religion* [2006] Ed Law 102.

⁹¹ *Ibid.*

⁹² Section 7(3)(c) of the Equal Status Act 2000.

⁹³ Human Rights Committee Concluding Observations on Ireland 2008, at para. 22. The Human Rights Committee has noted that public education that includes instruction in a particular religion or belief is inconsistent with the ICCPR unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians Human Rights Committee, General Comment 22, 1993, HRI/GEN/1/Rev 5, p. 145.

⁹⁴ Information provided by Ireland on the Human Rights Committee's recommendations made in paragraphs 11, 15 and 22 of the Committee's Concluding Observations in respect of the third periodic report submitted by Ireland under Article 40 of the International Covenant on Civil and Political Rights (Reference: CCPR/C/IRL/CO/3 of July 2008), 30 July 2009 ("Government follow-up report to the Human Rights Committee 2009"), at pp. 8-12.

Education Committee (VEC) schools,⁹⁵ and a Commission on School Accommodation to review the issues of school patronage and the establishment of new schools.⁹⁶ On 3 August 2010, the Department of Education published details on areas for possible divesting of Catholic primary school patronage.⁹⁷

37. The Minister for Education and Science announced a new State model of primary schools, under the patronage of the Vocational Education Committee (VEC). Since September 2008, the new model was piloted in two locations.⁹⁸

The new model of patronage will not replace the existing models but in effect provide an additional option. The VEC school is stated to be interdenominational in nature and to operate in the spirit of partnership between patrons, teachers, students, parents and the wider community served by the school.⁹⁹ However, concern has been expressed about the approach taken to education on religion in these pilot schools. Children are reportedly separated according to their religion and provided with faith formation lessons during school hours. Such an approach does not factor in the needs of children who are being brought up without a religious ethos. Legislation is necessary to underpin the legal framework which will facilitate this new model of patronage in the primary system. The Education (Amendment) Bill 2010 was published at the end of September 2010 with the stated purpose of providing “for a legislative framework to facilitate the involvement of Vocational Education Committees (VECs) in the provision of primary education.”¹⁰⁰

38. The IHRC considers that parents and older children (in accordance with their level of maturity) should have adequate choice in the range of primary and post-primary schools available in keeping with the increased diversity and changing nature of Irish society,¹⁰¹ this would include how religion and the broader question of ethics is addressed in and beyond the classroom. Sustained progress is required in this area, particularly in the development of a new legal framework to facilitate the new model of patronage in the primary system and the roll out of the pilot scheme of multi-denominational schools.¹⁰² This should also provide an opportunity to embed human rights education within any new system.

⁹⁵ VECs are statutory bodies set up by Local Authorities (usually County Councils) under the Vocational Education Act 1930 as amended by the Vocational Education (Amendment) Act 2001. Traditionally VEC schools only provided second level and further education, and were largely funded by the Department of Education and Science. Unlike at second level, where the boards of management for these schools are sub-committees of the VEC (which acts as patron), at primary level the boards of managements will be independent of the patron. Membership of the boards includes VEC representatives and parent, teacher and community representatives, as outlined under the Education Act 1988.

⁹⁶ Government follow-up report to the Human Rights Committee 2009, at pp. 8-12.

⁹⁷ Information on Areas for Possible Divesting of Patronage of Primary Schools, available at http://www.education.ie/servlet/blobServlet/report_divesting_of_patronage_primary_schools.pdf.

⁹⁸ *Ibid.*, at p. 10.

⁹⁹ Intercultural Education Strategy., at pp. 10-11

¹⁰⁰ Available at <http://www.oireachtas.ie/documents/bills28/bills/2010/4510/b4510d.pdf>

¹⁰¹ See IHRC, *Submission to the UN Human Rights Committee on Ireland's 1 Year Follow-up Report to its Third Periodic Report under the ICCPR*, September 2009, at p. 9.

¹⁰² *Ibid.*

b. Selective Employment and Enrolment of Teachers

39. The Employment Equality Act 1998 permits bodies providing “vocational training”, that is, professional teacher training, to primary school teachers to apply to the Minister for Education and Science for orders permitting them to reserve places on their courses to ensure the availability of teachers in denominational schools and the maintenance of the “religious ethos” of denominational primary schools.¹⁰³ The five institutions presently providing professional training for primary school teachers are all under denominational religious control.

40. The Act also permits denominational schools to treat employees or prospective employees more favourably in order to maintain the religious ethos of the institution.¹⁰⁴ In addition, it allows denominational schools to take such action as is reasonably necessary to prevent an employee or a prospective employee from “undermining the religious ethos of the institution”.¹⁰⁵ The Irish Supreme Court has upheld this provision on the grounds that it represents a reasonable balancing between the principles of equality before the law and freedom of religion under the Irish Constitution.¹⁰⁶

41. Concern has recently been raised in the media in relation to the ability of putative teachers from non-faith backgrounds to enter teacher training colleges in the State. The concern raised centres on whether the Bachelor of Education courses provided by the Colleges of Education include compulsory modules on religious education and the possible absence of a separate qualification for primary teaching available in the State which would not include religious education.¹⁰⁷

The IHRC considers that the situation pertaining to would-be teachers should be clarified to ensure persons of non-faith or minority religious backgrounds are not deterred from training as teachers and subsequently taking up employment as teachers in the State.

¹⁰³ Section 12 of the Employment Equality Act 1998.

¹⁰⁴ Section 37(1)(a) of the Employment Equality Act 1998.

¹⁰⁵ Section 37(1)(b) of the Employment Equality Act 1998.

¹⁰⁶ *In the Matter of Article 26 of the Constitution of Ireland and In the Matter of the Employment Equality Bill 1996* [1998] WJSC-SC 6758, at 6814. The Humanist Association of Ireland has criticised provisions allowing reserved training places and more favourable treatment of employees or prospective employees in order to maintain the religious ethos of a school because of the common lack of an alternative in the locality, noting that denominational schools “are providing what, in many countries, would be normal state services to the whole community and not just to the members of a particular religious denomination. Humanist Association of Ireland, *Equality for the Non-Religious: The treatment of people of no religion in the Constitution, in legislation and by other practices of the State and its agencies* (“Equality for the Non-Religious”), 2009, at p. 10.

¹⁰⁷ See for example

<http://www.irishtimes.com/newspaper/opinion/2010/0427/1224269158535.html>

VI. THE TRAVELLER COMMUNITY

CERD Concluding Observations 2005

"[T]he Committee encourages the State party to work more concretely towards recognizing the Traveller community as an ethnic group"¹⁰⁸

"The Committee recommends to the State party that it intensify its efforts to fully implement the recommendations of the Task Force on the Traveller community, and that all necessary measures be taken urgently to improve access by Travellers to all levels of education, their employment rates as well as their access to health services and to accommodation suitable to their lifestyle."¹⁰⁹

"The Committee invites the State party to consider adopting affirmative action programmes to improve the political representation of Travellers, particularly at the level of Dáil Éireann and/or Seanad Éireann."¹¹⁰

a. Recognition of Travellers as an Ethnic Minority

42. The IHRC notes that in the 2009 State Report the Government reiterates its position that in its view Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or ethnic origin.¹¹¹ The IHRC has previously outlined its position that the refusal to recognise Travellers as an ethnic minority suggests a lack of understanding by the Government of the importance Travellers place on the recognition of their culture and identity. The lack of recognition may also place obstacles in the way of Travellers accessing protections under international human rights conventions. This point has also been highlighted by the Equality Authority.¹¹²

43. The IHRC is of the view, based on an examination of some of the objective social criteria that establish an ethnic minority, that Travellers should be recognised as an ethnic minority group. Travellers clearly display common cultural values such as a nomadic tradition and culture and a reliance on an expanded family unit. Travellers often marry within their own community. Travellers constitute a distinct social group and have suffered a high level of discrimination. Travellers not only identify themselves as Travellers, but are also identified as such by settled society.¹¹³ The IHRC has expressed the view that in accordance with the CERD Committee General Recommendation VIII on the principle of self-identification and the Concluding Observations of the Committee in respect of Ireland's First and Second Periodic Reports the Government should recognise the Traveller Community as an ethnic minority group.¹¹⁴

b. The Right to Education

44. The 2006 Census demonstrates that primary school is the highest level of education completed for more than two-thirds of Travellers aged 15 years or

¹⁰⁸ CERD Committee Concluding Observations 2005, para 20.

¹⁰⁹ *Ibid.*, para. 21.

¹¹⁰ *Ibid.*, para 22.

¹¹¹ 2009 State Report at pp. 5-6.

¹¹² *Ibid.* See also Equality Authority, *Traveller Ethnicity- An Equality Authority Report*, 2006.

¹¹³ *IHRC 2008 Submission on ICCPR*, at p. 51.

¹¹⁴ Concluding Observations of Committee on the Elimination of Racial Discrimination in relation to Ireland's First and Second Periodic Reports, CERD/C/IRL/CO/2, at para. 20; General Recommendation VIII of the CERD Committee, 1990.

over.¹¹⁵ 43% of Travellers over 15 years had left school before the age of 15, compared to around 9.5% of the general population.¹¹⁶ While post-primary completion rates for Travellers have seen a seven-fold increase since 1999, they remain extremely low compared to the overall population.¹¹⁷ Further information relating to the educational disadvantage of the Traveller Community is provided in the 2009 State Report.¹¹⁸

45. Educational establishments are prohibited from discriminating against Travellers in relation to admissions, access to courses and facilities, participation or expulsion.¹¹⁹ Positive action is also permitted to enhance equal opportunities in relation to vocational education and the prevention of disadvantages in the professional careers of Travellers.¹²⁰ Schools are required to provide maximum accessibility and aim for equality of access and participation. Where the board of a school refuses to enrol a pupil there is provision for appeal to the Secretary-General of the Department of Education and Science.¹²¹ Universities are required to promote access by economically or socially disadvantaged people. The precise manner in which that obligation is to be measured or enforced is not specified.¹²²

46. As outlined in the 2009 State Report, the *Report and Recommendations for a National Traveller Education Strategy* was published in November 2006.¹²³ A Co-ordinating Committee of senior officials from the Department of Education and Science has been established to oversee the implementation of its recommendations.¹²⁴ **The 2009 State Report does not provide any information on the progress achieved in the implementation of the recommendations contained in the 2006 National Traveller Education Strategy.**¹²⁵ In addition, the 2006 Strategy states that at the end of the fourth year of the plan a review

¹¹⁵ Of those who responded, 16% completed lower secondary level, 4% had completed upper secondary level and 0.8% had engaged in third level education, compared to 30.5% of the population as a whole. Central Statistics Office, *Equality in Ireland, 2007*, at p. 32; Brian Nolan (School of Applied Social Science, UCD) and Bertrand Maitre (Economic and Social Research Institute), *A Social Portrait of Communities in Ireland*, report prepared for the Office for Social Inclusion, November 2008 ("*A Social Portrait of Communities in Ireland*"), at p. 63. The study also notes that a substantial proportion gave no response to this question.

¹¹⁶ *A Social Portrait of Communities in Ireland*, at p. 63; Central Statistics Office, *Census 2006*, Volume 10, Table 11, 'Persons, males and females aged 15 years and over, classified by present age and age at which full-time education ceased, 2002 and 2006.'

¹¹⁷ Department of Education and Science, *Special Group on Public Service Numbers and Expenditure Programmes Evaluation Paper Part 1*, March 2009 ("*Department of Education Expenditure Evaluation Part 1*"), at p. 10.

¹¹⁸ See further 2009 State Report at pp.163-168.

¹¹⁹ Section 7(2) of the Equal Status Act 2000.

¹²⁰ Section 15 of the Equality Act 2004.

¹²¹ Sections 21(2) and 29 of the Education Act 1998.

¹²² Section 18(6)(b) of the Universities Act 1997.

¹²³ 2009 State Report at pp.164-165.

¹²⁴ Department of Education and Science press release, 'Education is vital element in supporting greater participation and empowerment in society,' 21 November 2006.

¹²⁵ See further 2009 State Report pp.164-165. The Education Strategy states that "the Department of Education and Science should take a leading role in preparing an implementation plan that will activate the Strategy. Such a plan would specify what sections of the department and other organisations would be responsible for implementing the different recommendations. The implementation plan would also examine the cost of implementing the different recommendations". *Report and Recommendations for a National Traveller Education Strategy* November 2006 at p. 98.

and evaluation of the strategy should take place and a further survey of Traveller education provision should be undertaken to determine what progress has been made.¹²⁶ **The 2009 State Report does not provide any information on whether these measures have been initiated.**

47. The 2009 State Report provides information on the Traveller-specific educational initiatives that have been undertaken in recent years.¹²⁷ The Department of Education allocates additional teaching resources to second level schools to cater for the special needs of Traveller children, which is generally 1.5 hours per pupil, per week. As of March 2009, there were 205 whole-time equivalent teaching posts allocated to support Traveller children at second level.¹²⁸ An additional *per capita* grant was introduced for Traveller pupils enrolled at second level. Approximately €2.4 million was made available for this in 2008. Budget measures in 2009 reduced this to about €1.2 million.¹²⁹ In the 2010 Budget, there were further reductions in funding of educational programmes that might assist marginalised groups.¹³⁰ **Information in relation to these budget cuts is not outlined in the 2009 State Report.**

48. In consultation meetings undertaken by the IHRC with NGOs advocating on behalf of the Traveller Community for the purposes of the CERD process, the NGOs asserted that there is a lack of representation of Traveller organisations in monitoring the implementation of the Traveller Education Strategy. While Traveller organisations formed part of the original Advisory Committee that advised in the drafting of the Education Strategy, NGOs raised concerns that the Department of Education and Science has not actively engaged with Travellers in relation to the delivery of the goals set in the Traveller Education Strategy. The NGOs generally asserted that there is a lack of transparency around monitoring progress in the implementation of the goals set in the Education Strategy.¹³¹

c. The Right to Work

49. The 2006 census demonstrates that only 14.4% of all Travellers within the age range of 15 to 64 were recorded as being in employment compared with 65.2% of the population as a whole. 43% of Travellers of normal working age are

¹²⁶ *Ibid.* at p. 99.

¹²⁷ 2009 State Report pp.166-168. For example, as of March 2009, there were approximately 503 Resource Teachers for Travellers allocated to primary schools to cater for the educational needs of Traveller children, with an allocation of one resource teacher for each 14 Traveller pupils. Department of Education and Science, *Special Group on Public Service Numbers and Expenditure Programmes Evaluation Paper Part 2*, March 2009 ("*Department of Education Expenditure Evaluation Part 2*"), at p. 78. In addition, there were over 40 Visiting Teachers for Traveller Education, with a remit to promote, facilitate and support the education of Travellers from pre-school to third level access. *Ibid.* at p. 78.

¹²⁸ *Ibid.* at p. 79.

¹²⁹ *Ibid.* at p. 79.

¹³⁰ There was a reduction of funding of adult education services between 2009 and 2010 of 5%, a reduction of funding to the National Council for Special Education of 21%, a reduction of the Educational Disadvantage (Dormant Accounts Funding) of 62% and a reduction of special education initiatives by 4%. See *2010 Estimates for Public Services and Summary Public Capital Programme*, at p. 26.

¹³¹ Meeting of the Irish Traveller Movement, Pavee Point and the National Traveller Women's Forum with the IHRC, 16 November 2009.

reported as being unemployed, compared with 6% for the working-age population as a whole.¹³²

50. The Equality Authority, in a 2008 report on positive action to improve Traveller employment, asserts the high level of unemployment amongst Travellers is a result of educational disadvantage, training deficits and lack of workplace experience.¹³³ It recommends that workplace practices, policies and procedures need to take specific account of Traveller culture and identity.¹³⁴ It also found that one of the key barriers for Travellers in availing of employment opportunities is the high level of discrimination, which can deter them from taking up opportunities in new environments.¹³⁵

51. The High Level Group on Traveller Issues, a working group of senior public servants chaired by a Minister of State of the Department of Justice, Equality and Law Reform, with a remit to discuss barriers to service delivery and explore possibilities of approaching service delivery in a more integrated way,¹³⁶ notes a number of barriers or disincentives to employment for Travellers, including the educational standard required, the lack of role models, discrimination in the labour market and the need for recognition of the Traveller culture in employment, flexible and accredited training provision and mediated or supported transitions from training into employment.¹³⁷

52. The 2009 State Report outlines in detail in the employment and training initiatives undertaken by various Government Departments including the Department of Justice and Department of Social and Family Affairs and the National Training and Employment Authority (FÁS).¹³⁸ **These measures are welcome however, it is not clear from the 2009 State Report what impact these measures are having on Traveller access to employment.**

d. The Right to Health

Data in relation to the Health Status of Travellers

53. As outlined in the 2009 State Report, 20 years have passed since specific data on Traveller health has been gathered by the relevant State agencies.¹³⁹ However, an analysis of data from the 2006 Census demonstrates that the age profile of Travellers is markedly different from that of the population as a whole. Over 40% of Travellers are children aged between 0 and 14, which is twice as large as the corresponding figure for the general population.¹⁴⁰ Only 24% of Travellers are aged 35 or over, which is half the figure for the general

¹³² *A Social Portrait of Communities in Ireland*, at p. 64.

¹³³ Equality Authority, *Positive Action for Traveller Employment* (2008), at p. 6.

¹³⁴ *Ibid.*.

¹³⁵ *Ibid.*, at p. 10.

¹³⁶ See written response to Parliamentary Question 26825 of 2006.

¹³⁷ *Report of the High Level Group on Traveller Issues*, March 2006, at pp. 33-34. Other barriers in their view include legal and infrastructure restrictions to self-employed activity, the opportunity cost of employment. The Group also noted that increasing regulation and formalisation has made it difficult for Travellers to maintain their involvement in self-employed activities traditionally associated with the Traveller economy.

¹³⁸ 2009 State Report, pp.175-182.

¹³⁹ 2009 State Report, p. 170, para. 26.

¹⁴⁰ *A Social Portrait of Communities in Ireland*, at p. 57. See also Central Statistics Office, *Equality in Ireland*, 2007, at p. 32.

population.¹⁴¹ Travellers aged 65 years and older accounted for just 2.6% of the entire Traveller population in 2006, down from 3.3% in the 2002 Census. The same cohort in the general population comprises 11% of the population.¹⁴² Statistics demonstrate Travellers have higher rates of disability, with 35.4% of those aged 55-64 reporting a disability as compared with 15.3% for the general population.¹⁴³

54. The Report of the Health Service Executive (HSE) *National Intercultural Health Strategy 2007-2012* has noted that although no national studies have been conducted on Traveller health since 1987, some research has been carried out in recent years, which suggest that the health status of Travellers has not improved and may even have deteriorated when compared with the general population.¹⁴⁴ The HSE has noted that the population profile of Travellers is similar to that seen in developing countries, where high birth rates and high mortality rates at a younger age make a broad based population pyramid. Thus, Travellers have a median age of 18 years, compared to the national figure of 33 years.¹⁴⁵ The Report on the HSE *National Intercultural Health Strategy* found that the compromised health status of Travellers is further compounded by a range of social determinants, most notably poor living conditions, educational disadvantage and significant experience of racism and discrimination.¹⁴⁶

55. An All-Ireland Traveller Health Study was launched in July 2007 and was published on 2 September 2010. This study provides a more comprehensive and updated indication of the health status of the Traveller population and the Government has stated this will inform the framework for policy development and practice in relation to Travellers. The study found the life expectancy level of Traveller males to be at 61.7 years which is 15.1 years below the national average. The life expectancy level of Traveller females was found to be at 70.1 years which is 11.5 years below the national average.¹⁴⁷ Thus, the general mortality rate amongst Travellers was found to be 3.5 times higher than that of the general population.¹⁴⁸ Traveller infants were found to be 3.6 times more likely to die than infants in the general population.¹⁴⁹ In relation to suicide, the rate

¹⁴¹ *A Social Portrait of Communities in Ireland*, at p. 57.

¹⁴² Pavee Point, *Pre-Budget Submission* (September 2007), at p. 2. See also Central Statistics Office, *Equality in Ireland, 2007*, at p. 25; Central Statistics Office, *Census 2002 – Irish Traveller Community*, 2002, at p. 16.

¹⁴³ *Ibid.*, at p. 66.

¹⁴⁴ HSE, *National Intercultural Health Strategy, 2007-2012*, at p. 46. One hospital study found that only 2% of the patients were Travellers aged over 65 years, compared to 34% of hospital patients from the general population aged 65 years and over. *Ibid.*, at p. 47.

¹⁴⁵ *Ibid.*, 2007-2012, at p. 49.

¹⁴⁶ *Ibid.*, 2007-2012, at p. 49. The last national health study conducted in relation to Travellers in 1987 revealed that the life expectancy for Traveller males is 10 years less than for the general population, while for females the gap is 12 years. In addition, the National Health Strategy 2002-2005 noted that Travellers have much higher mortality in early life, with perinatal mortality two and a half times more than the general population, infant mortality twice that of the general population. Sudden infant death syndrome occurred in 8.8 cases per 1,000 live births for Travellers and in 0.7 per 1,000 with the general population. *A Social Portrait of Communities in Ireland*, at p. 66.

¹⁴⁷ *All Ireland Traveller Health Study*, September 2010, at p. 94

¹⁴⁸ *Ibid.*, at p. 89.

¹⁴⁹ *Ibid.*, at p. 87. Where 'infant' is defined as a baby under the age of one year who is born alive.

amongst Traveller males was found to be 6.6 times higher than that of the general population.¹⁵⁰

Barriers in Access to Health Care for Travellers

56. In consultations with service users, the HSE found barriers to access to General Practitioner (GP) services to be a particular problem for Travellers.¹⁵¹ The report noted that negative experiences around accessing health services may not be unique to members of migrant or minority ethnic groups, such as Travellers.¹⁵² The report noted barriers in accessing adequate health care include refusals to be accepted onto a GP's list, perceptions or experiences of racism and discrimination, a lack of understanding around entitlements and ways of using the health services and a perception of hostility from some staff.¹⁵³ A number of Traveller women had difficulty in accessing specific services, such as cervical screening or Breast Check.¹⁵⁴ The HSE has noted that research conducted on Travellers' access to hospital services by the Traveller Health Unit in the Eastern Region found a low referral rate of Travellers by GPs to hospital care. The research also indicated that the only access Travellers had to inpatient and outpatient services appeared to be via Accident and Emergency.¹⁵⁵ The HSE also noted that there was a clear detrimental impact on physical and mental health from "poor accommodation, coupled with conditions of cold, damp, lack of basic facilities and overcrowding".¹⁵⁶

Mental Health amongst Travellers

57. A study of suicide among Travellers in Ireland from 2000 to 2006 found that the national rate of suicide among Irish Travellers (3.7 per 10,000) was over three times that of the national population, peaking in 2005 when it was over five times the national rate.¹⁵⁷ Families living by the side of the road were found to be at greater risk of suicide, while rates were lower for those in houses, particularly group housing and privately owned or rented housing.¹⁵⁸ Incarcerated Travellers also had greater rates of drug and alcohol problems than other prisoners.¹⁵⁹ A study published in 2005 found that 98.3% of Travellers on remand had a lifetime history of substance use disorders, with alcohol use being particularly problematic.¹⁶⁰

¹⁵⁰ *Ibid.*, at p. 93.

¹⁵¹ HSE, *National Intercultural Health Strategy, 2007-2012*, at p. 77.

¹⁵² *Ibid.*.

¹⁵³ *Ibid.*, at pp. 77-78.

¹⁵⁴ *Ibid.*, at p. 77.

¹⁵⁵ HSE, *National Intercultural Health Strategy, 2007-2012*, at p. 80.

¹⁵⁶ HSE, *National Intercultural Health Strategy, 2007-2012*, at p. 49.

¹⁵⁷ Mary Rose Walker (Wicklow County Council), *Suicide among the Irish Traveller Community, 2000-2006*, report funded by the Department of Justice, Equality and Law Reform Traveller Interagency and Communications Fund, at pp. xi-xii ("*Suicide among the Irish Traveller Community, 2000-2006*"). See also Dáil debates 18 February 2009.

¹⁵⁸ A study conducted in 2002 found that Irish Travellers accounted for 3.4% of forensic psychiatric admissions compared to 0.38% of the adult population, which reflected the excess of Travellers amongst prison committals. *Suicide among the Irish Traveller Community, 2000-2006*, at p. xii. See also Dáil debates 18 February 2009.

¹⁵⁹ S. Linehan, D. Duffy, H. O'Neill, C. O'Neill and H.G. Kennedy, 'Irish Travellers and forensic mental health', *Irish Journal of Psychiatric Medicine*, 2002, 19(3): 76-69, at 76.

¹⁶⁰ Central Mental Hospital, *Mental Illness in Irish Prisoners: Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners*, 2005, at p. 101.

State Initiatives in Relation to Traveller Health

58. The 2009 State Report provides information on the funding that has been allocated to Traveller-specific health services since 1997 which has been used to provide Public Health nurses for Travellers and to put in place primary health care projects for Travellers amongst other projects.¹⁶¹ The National Traveller Health Strategy 2002-2005 included a range of recommendations.¹⁶² The Strategy also identified 122 action points relating to Traveller Health. **The 2009 State Report does not provide any information in relation to the implementation of the National Traveller Health Strategy or whether an evaluation has been carried out of this Strategy.** A *National Intercultural Health Strategy 2007-2010* has more recently been agreed which encompasses members of the Traveller community as well as immigrant and other minority groups. This Strategy makes a number of recommendations around ensuring access to health care for Travellers. The impact of this Strategy is as yet unclear.

59. In addition to the Health Strategies outlined above, a Traveller Health Advisory Committee has been established with the aim of ensuring that Traveller health is a priority area within the Department of Health and Children and liaising with Traveller Health Units in the HSE in the formulation of national policy.¹⁶³ Also, the National Office for Suicide Prevention funds one national Travellers' suicide prevention project officer with the aim of building on the work of Traveller organisations, on a Traveller led basis using a community development approach.¹⁶⁴

Funding of Traveller Health Initiatives

60. Pavee Point, an NGO advocating on behalf of Travellers, has raised concerns around the lack of transparency concerning budget allocation by the Health Service Executive to Traveller health development. In a submission to the Oireachtas Joint Committee on Health and Children in March 2009 and in consultation meetings with the IHRC, Pavee Point stated that out of a potential budget of €2 million in 2007 and 2008, it understands that €1.8 million was used to balance the overall budget of the HSE.¹⁶⁵ Pavee Point emphasised that although over €13.2 million had been allocated to Traveller health developments since 1998, there was a lack of transparency within the HSE as to whether that money was in fact allocated to Traveller-specific programmes only or whether it was distributed more broadly.¹⁶⁶

¹⁶¹ 2009 State Report p. 171, para. 29.

¹⁶² These included: active partnerships between health personnel and Travellers and Traveller organisations, awareness training for health personnel and Travellers, strengthening Traveller Health Units, making services more accessible, providing designated public health nurses, replication of the successful primary health care for Travellers project and establishment of liaison between the Department of Health and Children and the Department of the Environment, Heritage and Local Government. *Report of the High Level Group on Traveller Issues*, March 2006, at p. 45.

¹⁶³ See Department of Health and Children website at http://www.dohc.ie/issues/traveller_health/ last accessed on 16 November 2010.

¹⁶⁴ Dáil debates 18 February 2009.

¹⁶⁵ Submission of Director of Pavee Point to the Oireachtas Joint Committee on Health and Children, 10 March 2009.

¹⁶⁶ *Ibid.*

e. The Right to Adequate Housing and Accommodation

Data in relation to Traveller Accommodation and Housing

61. The 2009 State Report provides statistics on the accommodation and housing provision for Traveller families provided by the annual count of the Department of Environment, Heritage and Local Government from 2007.¹⁶⁷ The data provided does not adequately define the different types of housing and accommodation provided and does not break down what percentage of accommodation is provided by or with the assistance of the Local Authorities and what accommodation is privately owned by the Traveller Community. In addition, the data provided in the State Report does not indicate what percentage of accommodation provided by the Local Authorities is Traveller-specific accommodation.¹⁶⁸

62. According to the statistics from 2007, 2,663 Traveller families did not reside in local authority housing or accommodation. This included 594 Traveller families who were living in “unauthorised sites” which includes families living on the roadside, in private yards, gardens, fields and unofficial sites out of a total of 8,099 families (around 7.3%).¹⁶⁹ In November 2008, according to the Department of the Environment, Heritage and Local Government’s annual count there were 524 Traveller families living in what are termed ‘unauthorised sites’, out of a total of 8,398 families (around 6.2%). The HSE has noted that living in “unauthorised sites” is characterised by the absence of electricity, running water, toilet facilities and refuse collection.¹⁷⁰

Level of Compliance with the Statutory Duty to Provide Suitable Accommodation for Travellers

63. Under Irish law, Local Authorities (County and City Councils) housing authorities are required to adopt accommodation programmes to meet the existing and projected accommodation needs of Travellers in their areas.¹⁷¹ They are required to appoint Traveller accommodation consultative committees to

¹⁶⁷ 2009 State Report at p. 184, Annex 2.

¹⁶⁸ Upon further analysis of the statistics provided in the 2009 State Report, of the Traveller families that were accommodated by or with the assistance of the Local Authorities, there were 1140 Traveller families living in halting sites which include permanent halting sites, transient halting sites and shared permanent and transient halting sites. There were 677 living in group housing schemes which is another form of Traveller-specific accommodation. In total, this amounts to 33% of the accommodation provided by Local Authorities which is Traveller-specific accommodation. The remaining two thirds of Traveller families that were accommodated by or with the assistance of the Local Authorities were accommodated in standard housing or private rented housing. According to these statistics 3175 families were accommodated in standard houses (including voluntary houses) and 1143 in private rented accommodation. See 2009 State Report, p. 184, Annex 2. See further Irish Traveller Movement, *Feasibility Study for the establishment of a Traveller-led Voluntary Accommodation Association: Building a better future for Traveller Accommodation*, 2009.

¹⁶⁹ See Department of the Environment, Heritage and Local Government, *Annual Housing Statistics Bulletin 2008*, at pp. 89 and 91.

¹⁷⁰ HSE, *National Intercultural Health Strategy, 2007-2012*, at p. 49.

¹⁷¹ Housing (Traveller Accommodation) Act 1998 as amended. See also, Department of the Environment, Heritage and Local Government, *Memorandum on the Preparation, Adoption and Implementation of Local Authority Traveller Accommodation Programmes 2009-2013* (August 2008) (“Department of the Environment 2008 Memorandum on Traveller Accommodation Programmes”), at p. 5.

provide advice and facilitate consultation between housing authorities and Travellers.¹⁷²

64. In a review of Traveller-specific accommodation (including halting sites and Traveller-specific group housing schemes), the Centre for Housing Research¹⁷³ found that the large degree of local variability in service delivery approaches was a barrier to the development of good practice, and that more systematic data collection on service delivery was required.¹⁷⁴ The Centre concluded that there are variations between national policy on Traveller accommodation and local practice of Local Authorities. It cited a number of potential reasons for this, including a lack of political commitment within local authorities, inconsistencies in local authority staff practice, reports of institutional racism and discrimination, negative public opinion regarding Traveller accommodation and problems with existing consultation mechanisms.¹⁷⁵ In addition, the Centre found a lack of consistent, transparent, fair procedures and dissatisfaction with the progress of Traveller Accommodation Programmes, particularly with the provision of transient sites.¹⁷⁶

65. An EU Fundamental Rights Agency Comparative Report on Housing Conditions of Roma and Travellers published in 2009, found that although Ireland has enacted legislation for the provision of Traveller-specific social housing in the form of halting sites or group housing schemes, the quantity of Traveller-specific accommodation being provided is inadequate.¹⁷⁷ It found that the “non-existence

¹⁷² *Ibid.*, at p. 7. See also Sections 21 and 22 of the Housing (Traveller Accommodation) Act 1998. Accommodation programmes are required to be reviewed by the housing authority at least once in each three-year period. *Department of the Environment 2008 Memorandum on Traveller Accommodation Programmes*, at p. 18. The Department of the Environment, Heritage and Local Government also provides financial support towards the employment of Accommodation Officers to support participation by Travellers and Traveller organisations on local Traveller accommodation consultative committees. *Ibid.*, at p. 8. The remit of the Traveller Accommodation Officers is to support participation by Travellers and Traveller organisations on local Traveller accommodation consultative committees and in management and maintenance arrangements for Traveller accommodation, to develop a Traveller perspective on the provision of transient sites and to foster a greater understanding among Travellers of the range of means by which their accommodation needs may be met. The Department has recommended that pending the provision of suitable permanent accommodation, local authorities should seek to improve the position of Travellers on the roadside or other unauthorised sites by considering making available services, including water, toilets and waste removal, “if there are no significant legal, planning, environmental, social, technical or other restraints.” *Ibid.*, at p. 21.

¹⁷³ The aim of the Centre for Housing Research is to improve the management of the social and affordable housing sectors through research, training and policy advice. The Department of the Environment, Heritage and Local Government and local authorities fund its work. See http://www.chr.ie/Our_Organisation/Default.18.html.

In May 2010, the Housing and Communities Agency was established by the Department of the Environment, Heritage and Local Government. It replaced a number of existing housing related agencies: the Affordable Homes Partnership, the Centre for Housing Research, the Homeless Agency and the National Building Agency. www.housing.ie.

¹⁷⁴ Centre for Housing Research, *Traveller-Specific Accommodation: Practice, Design and Management* (“*Traveller-Specific Accommodation*”), 2008, at p. xviii. The Centre found that 27 out of 40 sites/houses surveyed failed to meet any of the special needs criteria in Departmental guidelines for Traveller-specific accommodation and that 14 sites/group housing schemes failed to fulfil the environmental standards in the guidelines. *Ibid.*, at p. xxi.

¹⁷⁵ *Traveller Specific Accommodation*, 2008, at p. 76.

¹⁷⁶ *Ibid.*, at p. 77.

¹⁷⁷ FRA Comparative Report 2009, at pp. 34, 62-63.

of available spaces coupled with the lack of any prospect of progress and the constant threat of eviction has led many Travellers to seek accommodation in settled accommodation.”¹⁷⁸ In a High Court case, Travellers claimed that they had been under pressure to accept standard accommodation due to the non-availability of halting site accommodation.¹⁷⁹

66. In addition, a number of County Councils have adopted policies in their Traveller Accommodation Plans 2009 to 2013 whereby they will only provide transient accommodation (or in some cases any accommodation) to so-called “indigenous” Travellers, which is usually defined as Travellers who have been resident in the county on a permanent basis for at least three years prior to the adoption of the Traveller Accommodation Plan.¹⁸⁰ **The IHRC is concerned that the “indigenous” only policy employed by a number of Local Authorities is incompatible with respect for Travellers’ nomadic culture, since it only permits a Traveller to be provided with transient accommodation where he or she has resided on a permanent basis for at least three years in a particular area.**¹⁸¹

Criminal Provisions that affect Travellers on “Unauthorised Sites”

67. Under the Criminal Justice (Public Order) Act 1994 as amended a member of the Garda Síochána (police officer) may direct a person who enters and occupies any land to which the public have access, or brings onto such land any object, to vacate the land and remove the object where the police officer has reason to believe that the person’s presence on the land is likely to have an

¹⁷⁸ *Ibid.*

¹⁷⁹ *In the matter of the Housing Acts 1966 to 2002, Noreen O’Reilly and Others v. Limerick County Council and Others*, 29 March 2006, Unreported (HC), at para. 5. It was held that while the applicants could not have been said to have been coerced in the classical legal sense of the term, “it cannot be said that the choice which they made came within the category of free or fully informed consent.” *Ibid.*, at para. 79. In that case the Local Authority was found not to have fulfilled its statutory duty to provide sufficient halting site accommodation. *Ibid.* This related to Section 13(2) of the Housing Act 1988, as amended by Section 29 of the Housing (Traveller Accommodation) Act 1998.

¹⁸⁰ *See for example* Limerick County Council Traveller Accommodation Plan, 2009-2013, at p. 11, Fingal County Council Traveller Accommodation Plan, 2009-2013, at p. 5, Carlow County Council Traveller Accommodation Plan, 2009-2013, at p. 10, Meath County Council Traveller Accommodation Plan, 2009-2013, at p. 6, Dublin City Council Traveller Accommodation Plan, 2009-2013, at p. 10, South Dublin County Council Traveller Accommodation Plan, 2009-2013, at pp. 1, 4 and 7 and Dún Laoghaire-Rathdown County Council Traveller Accommodation Plan, 2009-2013. In a High Court case in 2002, the applicants argued that an indigenous requirement was discriminatory in that a Traveller was required to satisfy it whereas a settled person was not. It was held that the policy was lawful but could not be applied so rigidly as to become an effective bar to a consideration of an application for housing by a Traveller. *McDonagh v. Clare County Council*, 19 July 2002, Unreported (HC), at para. 31.

¹⁸¹ The IHRC recalls that the CERD Committee has called on states to take all necessary measures to offer Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities. CERD General Recommendation 27, Discrimination against Roma, 16 August 2000, at para. 32. The IHRC recalls that CERD has called on states to act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing, and to act firmly against local measures denying residence. CERD General Recommendation 27, Discrimination against Roma, 16 August 2000, at para. 31.

adverse effect on the land, or any amenities in respect of the land.¹⁸² Where a person fails to comply with such a direction, the police may remove the object from the land.¹⁸³ This provision, commonly referred to as the 'criminal trespass' legislation, has been used to remove Traveller families from unauthorised sites even where no other accommodation is available and has been used on occasion to confiscate their caravans or mobile homes, without a requirement for notice to be given or a formal Court order. The IHRC is concerned that this law on criminal trespass can lead to the eviction or removal of Traveller families and has exposed them to unjustified and disproportionate interference with their rights, particularly given the fact that the group targeted by this law is one of the most marginalized groups in Irish society.¹⁸⁴ The IHRC is particularly concerned that this measure was introduced in the context of an ongoing failure on the part of public authorities to provide adequate Traveller accommodation.¹⁸⁵

68. In an *amicus curiae* brief to the High Court in the case of *Lawrence and Others v. Ballina Town Council and Others*, the IHRC also asserted that this law gives rise to a number of due process concerns.¹⁸⁶ It does not provide for the possibility of arguing that there was a lawful or reasonable excuse for entering upon land, such as where the person had nowhere else to reside (as was the case in *Lawrence*).¹⁸⁷ It also allows a caravan to be confiscated and destroyed where a police officer of any rank has reason to believe the person is committing or has committed an offence, with no requirement to justify that belief.¹⁸⁸ The IHRC is concerned that this law criminalises trespass on public lands in circumstances where a public body has failed in its statutory obligation to house Travellers and that the law, though on its face neutral was, according to a Government press statement, aimed at dealing with "large scale encampments of Travellers".¹⁸⁹

69. In 2008, the Department of the Environment recommended that the question of further closures of traditional or unofficial halting sites should be reviewed pending the provision of adequate accommodation.¹⁹⁰ The IHRC welcomes reports that Local Authorities have largely followed that policy and the advice of the National Traveller Accommodation Consultative Committee, which

¹⁸² Section 19C of the Criminal Justice (Public Order) Act 1994, as inserted by Section 24 of the Housing (Miscellaneous Provisions) Act 2002. The adverse effects are that it would substantially damage or substantially and prejudicially affect any amenity in respect of the land, prevent persons entitled to use the land or any amenity in respect of it from making reasonable use of the land or amenity, render the land or any amenity in respect of the land, or the lawful use of the land or any amenity in respect of the land, unsanitary or unsafe, or substantially interfere with the land, any amenity in respect of the land, the lawful use of the land or any amenity in respect of the land.

¹⁸³ Section 19F of the Criminal Justice (Public Order) Act 1994, as inserted by Section 24 of the Housing (Miscellaneous Provisions) Act 2002.

¹⁸⁴ *IHRC 2005 Submission to CERD*, at p. 9. See also *Submissions on behalf of the Human Rights Commission, Amicus Curiae, Lawrence and Others v. Ballina Town Council and Others*, High Court, 5813P/2003, at p. 37 ("*IHRC Amicus Curiae Submission 2003*").

¹⁸⁵ *IHRC 2005 Submission to CERD*, at p. 9.

¹⁸⁶ *IHRC Amicus Curiae Submission 2003*, at p. 27.

¹⁸⁷ *Ibid.*, at pp. 37-38.

¹⁸⁸ *Ibid.*, at p. 58.

¹⁸⁹ *IHRC Amicus Curiae Submission 2003*, at pp. 55-56, 66.

¹⁹⁰ *Department of the Environment 2008 Memorandum on Traveller Accommodation Programmes*, at p. 21.

is not to evict a family or confiscate a caravan or seek to fine or imprison them when a family is waiting to be accommodation.¹⁹¹ **However, the IHRC considers such an approach should be a matter of law and not merely of discretionary policy.**

Traveller Input into Traveller Accommodation Policy

70. The National Traveller Accommodation Consultative Committee is an advisory body to the Minister for the Environment, Heritage and Local Government. It has 12 members, four of whom are Travellers or Traveller representatives. It carried out a review of the operation of the Housing (Traveller Accommodation) Act 1998 and all of its recommendations were accepted.¹⁹² The Irish Traveller Movement has indicated to the IHRC that despite the fact that there are Guidelines for the Operation of Local Traveller Accommodation Consultative Committees, they vary enormously and there is a dearth of research as to how they function.¹⁹³ Pavee Point, another Traveller organisation, has also stated that local Traveller organisations often have to be very persistent to get representation on a committee.¹⁹⁴

¹⁹¹ Submission of Pavee Point to Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, 2 December 2008.

¹⁹² *Report of the High Level Group on Traveller Issues*, March 2006, at p. 31.

¹⁹³ Meeting of the Irish Traveller Movement, Pavee Point and the National Traveller Women's Forum with the Racism Committee of the IHRC on 16 November 2009.

¹⁹⁴ *Ibid.*

VII. DETENTION OF ASYLUM SEEKERS AND IMMIGRANTS

CERD Concluding Observations 2005

"The Committee regrets the absence of special detention facilities for asylum-seekers whose request for asylum has been rejected and for undocumented migrants awaiting deportation [and] recommends that the State party provide additional information [...] on the conditions of detention of asylum-seekers and undocumented migrants awaiting deportation."¹⁹⁵

The **State Report** indicates that in 2008, 961 persons were detained on immigration matters of which 26.5% (255 people) were detained for more than 8 days and 10% (95 people) were detained for more than 31 days.¹⁹⁶ The State Report references the State's 2006 update which indicates that Cloverhill Prison is the primary facility used for detention in immigration-related cases.¹⁹⁷

a. Introduction

71. Under Irish law, asylum seekers and other immigration related detainees can be detained on specific legislative grounds in prisons or police stations. In its most recent visit to Ireland in 2007, the European Committee for the Prevention of Torture recommended that asylum seekers and other immigration detainees "should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel".¹⁹⁸ In addition, the UN Human Rights Committee in its Concluding Observations addressed to the Irish Government in 2008, expressed concern about this issue.¹⁹⁹

b. Places and Conditions of Detention

72. Current law allows asylum seekers to be detained in any prescribed place which includes prisons and police stations.²⁰⁰ While the IHRC considers that the detention of asylum seekers should be a measure of last resort, in the limited circumstances where it does occur, detention must be in a place which is suitable and in line with international standards. The most recent report of the Inspector of Prisons highlighted ongoing and persistent problems in Irish prisons that include overcrowding, lack of adequate sanitation in many prisons and inter-

¹⁹⁵ CERD Concluding Observations 2005, para. 14.

¹⁹⁶ 2009 State Report, p.47, Table 6.

¹⁹⁷ *Comments by the Government of Ireland to the concluding observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/IRL/CO/2/Add.1, 16 June 2006, paras 104-109. The 2009 Annual Report of the Irish Prison Service indicated overcrowding in Cloverhill Prison which has an operational capacity of 431 and an average daily occupancy in 2009 of 448 people. Available at:

<http://www.irishprisons.ie/documents/AnnualReport2009PDF.pdf>

¹⁹⁸ Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 13 October 2006 (Strasbourg, 10 October 2007), at p. 38.

¹⁹⁹ CERD Concluding Observations 2005, at p.5.

²⁰⁰ Sections 1(1) and 9(8) of the Refugee Act 1996; Section 3 of the Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000; Section 70(3)(a) of the 2008 Immigration Bill as amended.

prisoner violence.²⁰¹ The IHRC considers that prisons and police stations are not suitable places for the detention of asylum applicants who have not been convicted of a criminal offence. In addition, the IHRC considers people should *only* be detained in suitable centres pending deportation where there is a real risk that the person will abscond, and the period of their detention pending deportation should be as short as possible. Alternatives to detention such as the use of sureties should be used as much as possible.²⁰²

c. Detention of Minor Asylum Seekers

73. Under current Irish law asylum seekers and undocumented migrants under 18 years of age cannot be detained.²⁰³ However, where an immigration officer or member of the police has reasonable grounds for believing that the person is not under the age of 18, he or she may be detained on the same grounds as an adult asylum seeker.²⁰⁴

74. The 2010 Immigration, Residence and Protection Bill, proposes to replicate the provisions of the current law in relation to the detention of minors who are seeking asylum. In its Observations on the 2008 Immigration, Residence and Protection Bill, which contained a substantively similar provision, the IHRC expressed concern that this proposal does not comply with international human rights standards on this issue. In accordance with *UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* the IHRC recommended that it should be assumed the person in such circumstances is a child, until the contrary is proven.²⁰⁵ Where age assessments are deemed necessary, they should be carried out in an age and gender-sensitive manner by a person with the relevant expertise.²⁰⁶ The IHRC recommendations on this issue have not been implemented in the proposed legislation in this area to date.

The IHRC is concerned that there remains a lack of appropriate facilities for the detention of asylum seekers and other immigration detainees who are awaiting deportation. The Commission is also concerned about the provisions for the detention of minors contained in the proposed legislation.

d. Immigration Appeals

CERD Concluding Observations 2005

"The Committee remains concerned that a fairly short time limit has been introduced in respect of the judicial review of administrative decisions on immigration issues (art. 6.).

²⁰¹ Annual Report 2008 presented to the Minister for Justice, Equality and Law Reform by Judge Michael Reilly, Inspector of Prisons (May 2009), at p. 23, 41.

²⁰² See further IHRC, *Submission on the National Action Plan Against Racism*, December 2002.

²⁰³ Section 9 (12) (a), Refugee Act 1996.

²⁰⁴ Section 9(12) of the Refugee Act 1996; Sections 5(2)(b) and 5(2)(c) of the Immigration Act 2003.

²⁰⁵ UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1 February 1997, p. 8.

²⁰⁶ See recommendations regarding asylum seekers in IHRC, *Submission to the UN Human Rights Committee on the Examination of Ireland's Third Periodic Report on the ICCPR*, March 2008, at p. 63.

The Committee hopes that all issues pertaining to the appeal procedure will be adequately resolved within the framework of the proposed Immigration and Residence Bill.²⁰⁷

Figures on applications for a Declaration as a Refugee

Figures published by the Office of the Refugee Applications Commissioner (ORAC) for 2010, show 14 positive recommendations to grant refugee status to asylum seekers were made up to July 2010 by the Department of Justice out of 1,014 cases.²⁰⁸ The acceptance rate of 1.38%, which was overseen by the ORAC, ranks Ireland at the bottom of the EU league for granting protection. The United Nations High Commissioner for Refugees (UNHCR) criticised the acceptance rates as “low” and expressed its intention to engage with the Government in order to further understand the contributory factors behind the current rates.²⁰⁹

Limited Time Limits in relation Judicial Review Proceedings

75. The 2010 Immigration, Residence and Protection Bill provides that an application for leave to apply for judicial review must be made within a period of 14 calendar days beginning on the date on which the person was notified of the act, decision or determination.²¹⁰ The High Court may extend the 14 day period where the specific conditions specified in the legislation are satisfied.²¹¹ This contrasts with the time limits for judicial review generally which are provided for under Order 84, Rule 21 (1) of the Rules of the Superior Courts 1986.²¹²

76. This same provision was contained in the 2008 Immigration, Residence and Protection Bill and the IHRC expressed its concern at the short time-limit in its Observations in relation to that Bill. **The IHRC considers that the 14 day time limit, within which an application for judicial review can be made combined with the proposed restriction of the grounds on which the High Court can extend the 14 day time limit, creates unnecessary difficulties for people seeking to challenge immigration decisions, and may prevent some people from making such applications. This is likely to render the judicial review remedy in relation to immigration decisions less effective in practice.**²¹³

²⁰⁷ CERD Concluding Observations 2005, at Para. 24.

²⁰⁸ Irish Times, *State has EU's lowest rate of granting refugee status*, 10 July 2010. Office of the Refugee Applications Commissioner Monthly Statistics available at <http://www.orac.ie/pages/Stats/2010.htm>.

²⁰⁹ *Ibid.*

²¹⁰ <http://www.inis.gov.ie/en/INIS/IRP%20Bill%202010.pdf/Files/IRP%20Bill%202010.pdf> Page 162, Section 133(2).

²¹¹ Immigration, Residence and Protection Bill 2010, *Ibid* p.163 Section 133(4).

²¹² Generally, applications for judicial review “shall be made promptly” and in any event within three months from the date when the grounds for the application first arose, or six months when the relief is certiorari”. Where “there is good reason” for doing so, “the court has a discretion to extend these time limits”. Hogan, G. and Gwynn Morgan, D. (1998), *Administrative Law in Ireland*, Round Hall Sweet and Maxwell, at p.722.

²¹³ The IHRC has recommended that the time limit for judicial review proceedings should be extended, and the grounds on which the High Court can extend this time limit as currently set out the Illegal Immigrants (Trafficking) Act 2000, should be retained. IHRC, *Observations on the Immigration, Residence and Protection Bill 2008* pp.55-62.

VIII. THE RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

CERD Concluding Observations 2005

"The Committee...encourages the State party to ensure full practical implementation of legislation prohibiting discrimination in employment and in the labour market...[T]he State party could also consider reviewing the legislation governing work permits and envisage issuing work permits directly to employees."²¹⁴

"The Committee wishes to encourage the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the ILO Migration for Employment Convention (Revised), 1949 (No.97)..."²¹⁵

The State Report submits that in relation to the Convention on Migrant Workers "[t]here is no indication at this point of any inadequacies in national measures in this area or of any pressing need for Ireland to change its previous position. It is noted that no EU Member State has signed or ratified the Convention".²¹⁶ The State Report references the State's 2006 update which provides that a review of the Convention across several Government Departments had indicated that for the State to ratify the Convention "*significant changes would have to be made across a wide range of existing legislation, including legislation addressing employment, social welfare provision, education, taxation and electoral law. These changes would also have implications for our relations with our EU partners... possibly for the operation of the common travel area between Ireland and the UK*".²¹⁷

a. UN Convention on the Rights of Migrant Workers

77. Ireland has not ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. The Minister for Justice, Equality and Law Reform has stated that the Irish Government does not envisage ratifying the Convention in the absence of ratification by Ireland's EU partners. The Minister observed that the Convention does not distinguish between legal and illegal migrant workers and expressed the view that in any case Ireland's law comprehensively protects the rights of migrant workers.²¹⁸ The IHRC has recommended on a number of occasions that the Irish Government should move to ratify the Convention and should take a leadership role amongst its EU partners in that regard.

b. The Conditions of Employment of Migrant Workers

78. A study undertaken by the ESRI and the Equality Authority found that non-Irish nationals are three times more likely to report having experienced discrimination while looking for work, even after controlling for differences between gender, age and education.²¹⁹ The report also found that while in

²¹⁴ CERD Concluding Observations 2005, para 14.

²¹⁵ CERD Concluding Observations 2005, para 25.

²¹⁶ 2009 State Report, p.30.

²¹⁷ *Comments by the Government of Ireland to the concluding observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/IRL/CO/2/Add.1, 16 June 2006, para 208.

²¹⁸ Immigration, Residence and Protection Bill (Committee Stage debates), 15 May 2008.

²¹⁹ ESRI and Equality Authority, *Immigrants at Work, Ethnicity, and Nationality in the Irish Labour Market*, 2008, at p. x.

employment, non-Irish nationals are twice as likely to report experiencing discrimination.²²⁰ In general non-Irish nationals are less likely to secure positions in the professional and vocational sector.²²¹ Language also plays an important role in determining whether workers can secure employment that matches their qualifications and skills.²²² English language skills are positively related to earnings.²²³

c. Vulnerable Groups of Migrant Workers

79. Vulnerable workers include those working in the hospitality industry, rural workers, especially those working in agriculture and women migrant workers, particularly those working in domestic households. One study found that women tend to be clustered in lower paid and lower skilled jobs.²²⁴ Migrant workers make up just over 28% of the workforce in the hospitality sector, 13.4% of the construction industry, and 9.6% of wholesale and retail industries.²²⁵

80. The Migrant Rights Centre of Ireland (MRCI), an NGO advocating on behalf of migrant workers, reported that 43% of immigrants employed in the restaurant industry work in excess of the legal limit of 48 hours per week and 44% do not receive regular rest breaks.²²⁶ The MRCI study found that 85% worked overtime for no extra pay, 34% received no annual holidays, 51% received no pay slip and 84% received no written contract or terms of employment.²²⁷ 74% stated that they had never complained to their employer, the primary reason reported being fear of losing their job and legal status because of the nature of their work permit.²²⁸

81. MRCI reports that mushroom workers are generally paid wages below the agricultural minimum wage of €8.12 per hour, sometimes as low as €2.50 per hour, and are denied entitlements such as paid annual leave, overtime pay, contracts, pay slips and contributions to include them in the revenue and social insurance systems.²²⁹ MRCI also states that they are subjected to illegal pay deductions and excessive working hours and are often not provided with adequate safety training or equipment.²³⁰ Health and safety concerns exist due to the speed of work required, long working hours, heavy lifting (particularly for

²²⁰ *Ibid.*, at p. xi.

²²¹ *Ibid.*, at p. 29.

²²² *Ibid.*, at p. 15

²²³ *Ibid.*, at p. 33.

²²⁴ Jane Pillinger, *An introduction to the situation and experience of women migrant workers in Ireland*, 2006, at 2.2.

²²⁵ MRCI, *Realising Integration: Migrant Workers Undertaking Essential Low-Paid Work in Dublin*, 2007, at p. 6. Although this report is about the experience of migrant workers in Dublin, these figures are nationwide. See pages 16 to 18 of the report.

²²⁶ MRCI, *Exploitation in Ireland's Restaurant Industry*, December 2008, at p. 17.

²²⁷ *Ibid.*, at p. 17.

²²⁸ *Ibid.*, at p. 19.

²²⁹ Mushroom Workers Support Group, MRCI, *Harvesting Justice: Mushroom Workers Call for Change*, 2006, at pp. 11 to 13.

²³⁰ *Ibid.*, at pp. 14-16. Some workers are reportedly asked to enter tunnels soon after chemicals have been sprayed that are supposed to be off limits for several days.

pregnant women) and dangerous physical conditions.²³¹ Other concerns include workers being dismissed for complaints to their employer.²³²

The IHRC is concerned at the vulnerable situation of migrant workers and in particular those working in the hospitality industry, rural workers, especially those working in agriculture and women migrant workers, particularly those working in domestic households.

d. Family Reunification for Migrant Workers

82. The entitlement of migrant workers to have their family members join them in the jurisdiction varies between different categories of migrant worker depending on their country of citizenship and their immigration status. Under Irish law family reunification is generally regulated on a non-statutory administrative basis, except in the case of people who are declared refugees and EU citizens.²³³ The 2010 Immigration, Residence and Protection Bill provides that family reunification will be provided for in statutory instrument.²³⁴

83. There is no automatic right of residency for the spouses or partners of Irish citizens who come from non-EEA countries.²³⁵ Non-EEA family members of EU citizens resident in Ireland can be granted residency based on statutory instruments, introduced following an EU directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.²³⁶

²³¹ *Ibid.*, at p. 15.

²³² *Ibid.*, at p. 15-17. In one instance, it is reported that a pregnant woman was dismissed for requesting health and safety leave from her employer. *Ibid.*, at p. 15.

²³³ European Communities (Free Movement of Persons No. 2) Regulations 2006. See IHRC, *Observations on the Immigration, Residence and Protection Bill 2008*, at pp. 17, 88.

²³⁴ See <http://www.inis.gov.ie/en/INIS/IRP%20Bill%202010.pdf/Files/IRP%20Bill%202010.pdf> p.173. In the Agreed Programme for Government, the Government made a commitment to further develop the scheme for family reunification for family members of non-EEA (All countries outside of the EU Member States, Iceland, Liechtenstein and Norway) national workers in the State. *Agreed Programme for Government 2007-2012*, at p. 57.

²³⁵ See website of the Irish Naturalisation and Immigration Service at <http://www.inis.gov.ie/en/INIS/Pages/WP07000024>, last accessed on 16 November 2010. There is no primary legislation outlining issues relating to their residency or access to employment. The application process, the criteria applied and the reasons for refusal are on an administrative basis only. The applicant must demonstrate that their relationship with the Irish citizen has existed for at least two years, evidence must be provided as to the history of the relationship, its durability and demonstrate that the applicant's partner is in a position to support the applicant financially. The time period for the processing of applications can be up to 12 months. There is an internal Departmental appeal available where the application is refused, which is carried out within the Department of Justice. See website of the Irish Naturalisation and Immigration Service at <http://www.inis.gov.ie/en/INIS/Pages/Appeals%20Procedure>.

²³⁶ EU Directive 2004/38/EC. The directive was originally transposed by European Communities (Free Movement of Persons) Regulations 2006, S.I. 226 of 2006, and then European Communities (Free Movement of Persons)(No. 2) Regulations 2006 of 2006. This was altered by the Immigration Act 2004 (Registration Certificate Fee) Regulations 2008, SI 336 of 2008. The EU Directive outlines conditions governing the exercise of the right of free movement and residence, including permanent residence within the EU by EU citizens and their family members. In the case of *Metock & Ors v. Minister for Justice, Equality and Law Reform (Metock & Ors -v- MJELR, [2008] IEHC 77 (2008))* the European Court of Justice found that EEA family permits for family members of EU citizens who are accompanying or joining an EU citizen in the host state may not be made subject to a condition that the family member has been resident in another

84. Non-EEA nationals who wish to be accompanied by, or reunified with, their spouse or dependant unmarried children under 18 must hold a work permit or green card or qualify as a scientific researcher.²³⁷ There is no primary legislation outlining issues relating to their residency or access to employment. The application process, the criteria applied and the reasons for refusal are on an administrative basis only. The Non-EEA national must show sufficient funds to support any dependent family members. A refusal of family reunification may be appealed and the appeal process is assessed internally within the Department of Justice.²³⁸ In May 2010, guidance in the form of a scheme was issued by the Department of Enterprise Trade and Employment to allow spouses and dependents of certain categories of employment permit holders to apply for an employment permit to work in the State where they have been admitted to the State as family members.²³⁹

85. The IHRC considers that the basic principles governing family reunification for different categories of migrant workers should be elaborated in primary legislation taking full consideration of the requirements of Article 8 of the European Convention on Human Rights.²⁴⁰ The IHRC also considers that family reunification should be dealt with in a positive, humane and expeditious manner, and that the “best interests of child assessment” should form an integral part of the family reunification determination where applicable.²⁴¹

Member State. The right to family reunification in the host State did not depend on where or when family life was established. *Metock and Ors v. Minister for Justice, Equality and Law Reform*, Case C-127/08 (Reference for a preliminary ruling from the High Court (Ireland)), at para. 99. Irish law to the contrary was accordingly amended. European Communities (Free Movement of Persons)(Amendment) Regulations 2008, SI 310 of 2008.

²³⁷ See website of the Irish Naturalisation and Immigration Service at <http://www.inis.gov.ie/en/INIS/Pages/WP07000160>.

²³⁸ *Ibid.*

²³⁹ Department of Enterprise, Trade and Employment, *Employment Permit Arrangements Guide to Work Permits for Spouses and Dependents of Employment Permit Holders*, May 2010.

²⁴⁰ See IHRC Observations on the Immigration, Residence and Protection Bill 2008, March 2008 at pp. 19-20.

²⁴¹ *Ibid.*

IX. SECURITY PROCEDURES AND PRACTICES ON ENTRY TO THE STATE

CERD Concluding Observations 2005

"The Committee encourages the State party to review its security procedures and practices at entry points with a view to ensuring that they are carried out in a non-discriminatory manner."

The State Report indicates that a one-day training course was developed for all Gardaí (police) dealing full-time with immigration issues and held from 2006-2007.²⁴²

a. IHRC Enquiry into the Treatment of a Visitor Refused Leave to Land in the State

86. In January 2009, the IHRC published its report of an enquiry into the treatment of a visitor who was refused leave to land, imprisoned and forcibly removed from the State. The complainant was refused leave to land despite having obtained a visitor's visa because an immigration officer was satisfied that he had, with intent to deceive, sought to enter the State for a purpose other than that expressed by him.²⁴³ The Immigration Officer, in making this decision, did not have access to the information provided by the complainant in applying for the visitor visa and so based his decision only on a brief interview in Dublin Airport.²⁴⁴

Safeguards Concerning Refusals of Permission to Enter the State

87. In its enquiry report the IHRC made a number of findings in relation to the law and practice in the State concerning immigration control at the State's ports. The Irish police indicated that in practice, Immigration Officers base many of their decisions on their experience and practice rather than on precise legal criteria.²⁴⁵ The IHRC recommended that there should be clearer grounds for such decisions. In particular, the vague criteria applied in cases of refusal of leave to land should be removed from the statute book.²⁴⁶ The IHRC further recommended that to ensure the integrity of the system, there should be an initial review of an Immigration Officer's decision to refuse leave to land in a case by another officer and further oversight by an independent body with the authority to investigate complaints or to undertake own-motion investigations into all immigration-related practices.²⁴⁷ In addition, the IHRC advised that the State introduce tighter safeguards to immigration law and practice including a review of the provisions of the 2008 Immigration, Residence and Protection Bill.²⁴⁸

88. Another practice identified by the IHRC in cases where permission to enter the State is refused is that of "marking" passports. The IHRC noted that the legal basis for this is unclear and negative consequences may arise where the

²⁴² 2009 State Report, pp.33-34, para 97.

²⁴³ This was one of the grounds for refusal of leave to land under Article 5(m) of the Aliens Order 1946 SI No. 395 of 1946 (as amended), which preceded the Immigration Act 2004.

²⁴⁴ IHRC Report on Enquiry into the Treatment of a Visitor Refused Leave to Land (January 2009) ("IHRC Enquiry 2009"), at p. 112.

²⁴⁵ IHRC Enquiry 2009, at p. 101.

²⁴⁶ *Ibid.* at p. 115.

²⁴⁷ *Ibid.* at p. 116.

²⁴⁸ *Ibid.* at pp. 114-116.

person is being forcibly returned to his or her country through third States and may wish to travel abroad again.²⁴⁹

Communication Protocols

89. The enquiry revealed a lack of established practice of communication of information relating to visa application decisions between Irish officials granting visas and Irish Immigration Officers refusing foreign visitors leave to land at Dublin airport. It appears this situation may be remedied through the future introduction of an Automated Visa Application and Tracking System (AVATS), which is not yet fully operational.²⁵⁰ The IHRC recommended that communication protocols ensure the immigration officer has appropriate information on the visa application and that AVATS be made fully operational as soon as possible, incorporating relevant human rights protections, including data protection standards.²⁵¹

Data on Refusals of Entry to the State

90. On the basis of the statistical data available to it, the IHRC did not find any evidence that direct or indirect national or racial discrimination had occurred in the complainant's case.²⁵² However, the IHRC found that in light of the case-law under the ECHR and ICCPR, there must be some doubt as to whether the State could disprove allegations of racial or national discrimination in cases where a rebuttable presumption that discrimination occurred arises and the State does not have available to it sufficient data collection and data disaggregation information to shield it from such claims. The vague criteria used in decision-making and the lack of safeguards against arbitrary decision-making might also be taken into account.²⁵³ The Department of Justice indicated that the new AVATS web-based information system, which is not yet fully operational, will resolve concerns in relation to insufficient data collection.²⁵⁴

b. Production of Identity Documents

91. Under Irish law a foreign national is required to produce on demand a valid passport or equivalent document and registration certificate when requested by, *inter alia*, an immigration officer or member of the Garda Síochána (police), unless he or she can provide a satisfactory explanation of the circumstances preventing him or her from doing so.²⁵⁵ Failure to produce these documents will result in a fine not exceeding €3,000 or a term of imprisonment not exceeding 12 months or both. This does not apply to persons under 16 years.²⁵⁶ A member of

²⁴⁹ *Ibid.* at p. 115.

²⁵⁰ *Ibid.* at p. 97.

²⁵¹ In the absence of such protocols, the IHRC recommended that persons presenting at the State's ports seeking to visit the country should be advised in advance that they should bring a copy of relevant documentation with them to ensure that the absence of specific information does not result in them being mistakenly refused leave to land in the State. *Ibid.* at p. 115.

²⁵² The IHRC received information on the nationalities of those refused leave to land in 2003, but the State was unable to disaggregate the data by place of detention, by duration of detention or by nationality *Ibid.* at pp. 56-57.

²⁵³ *Ibid.* at p. 114,

²⁵⁴ *Ibid.* at p. 115.

²⁵⁵ Section 12 of the Immigration Act 2004.

²⁵⁶ Sections 12 and 13 of the Immigration Act 2004. The 2010 Immigration Bill also contains this provision.

See <http://www.inis.gov.ie/en/INIS/IRP%20Bill%202010.pdf/Files/IRP%20Bill%202010.pdf>, Section 125, page 150.

the Garda Síochána may arrest without warrant a person who he or she reasonably suspects has committed this offence.

92. In the Irish context, Irish citizens are not required to carry identification cards and are not subject to being stopped and required to produce identification. **The IHRC has expressed its concern that this requirement for foreign nationals has the potential to lead to discriminatory treatment against persons on grounds such as colour, race or other distinguishing characteristics such as religious dress. This measure may also have an impact on Irish citizens from racial, ethnic and religious minorities.**²⁵⁷ Despite its expression of concern in 2008 and request for clarification from the Minister for Justice on how this power has operated in practice to date including statistical breakdowns on the profile of persons stopped and asked to provide identification, the same provision has been included in the 2010 Immigration, Residence and Protection Bill.²⁵⁸

²⁵⁷ See *IHRC Observations on the Immigration, Residence and Protection Bill 2008* (March 2008), at pp. 111-112. See also *Funke and others v. France*, Judgment of 25 February 1993, (1993) 16 EHRR 297; *Silver and others v. The United Kingdom*, Judgment of 25 March 1983, (1983) 5 EHRR 347. In July 2009, the IHRC was granted leave to appear as *amicus curiae* before the High Court in the case of *E.D. v. Director of Public Prosecution* which concerns a challenge to section 12 of the Immigration Act 2004. The proceedings in this case are ongoing. In its *amicus curiae* intervention the IHRC aims to direct the Courts attention to relevant constitutional and international human rights standard, including the standards contained in CERD, in order to inform the judgment of the Court.

²⁵⁸ See *IHRC Observations on the Immigration, Residence and Protection Bill 2008* (March 2008), at p. 112.

X. HUMAN TRAFFICKING – PREVENTION AND PROTECTION OF VICTIMS

a. Introduction

93. Irish law makes it a criminal offence to organise or knowingly facilitate trafficking.²⁵⁹ A number of welcome initiatives have been commenced by the Irish Government to prevent and combat human trafficking in recent years. An Anti-Human Trafficking Unit has been established in the Department of Justice to coordinate the State's response to trafficking.²⁶⁰ In addition, an Interdepartmental High Level Group has been set up to recommend measures to the Minister to combat trafficking.²⁶¹ As set out in the 2009 State Report the Anti-Human Trafficking Unit has published a National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012, which focuses on prevention, awareness raising, prosecution, protection and trafficking of children.²⁶² The Irish Government ratified the Council of Europe Convention on Trafficking in Human Beings in July 2010.

b. Data on Human Trafficking in Ireland

94. In 2010, the Government published a *Summary Report of Trafficking in Human Beings in Ireland for 2009* which provides an overview of the extent of human trafficking in Ireland in 2009. This report reveals that in 2009, 68 incidents of human trafficking involving a total of 66 cases of potential and suspected trafficking in human beings came to the attention of the Garda Síochána.²⁶³ In relation to investigation and prosecution, the report reveals that at the end of 2009, 53 cases were the subject of ongoing investigation, while in 13 cases it was concluded that there was no evidence of trafficking.²⁶⁴ Of the 53 investigations ongoing, 11 people had been granted either a recovery and reflection period and/or a temporary residence permit. Six people were prosecuted for human trafficking offences in 2009.²⁶⁵

c. Provision for Victims of Trafficking

95. Temporary administrative immigration arrangements have been put in place to provide for presumed victims in advance of the enactment of the Immigration, Protection and Residence Bill.²⁶⁶ The current Administrative

²⁵⁹ Section 3 and 4 of the Child Trafficking and Pornography Act 1998; Section 2 to 4 of the Criminal Law (Human Trafficking) Act 2008.

²⁶⁰ The Anti-Human Trafficking Unit regularly engages in consultation with various Government Departments, the IHRC and other statutory agencies and NGOs through convening both a High Level Group on Human Trafficking and five interdisciplinary working groups on the themes of child trafficking, the development of a national referral mechanism, awareness raising and training, sexual exploitation issues and labour exploitation.

²⁶¹ See 'Administrative Arrangements' at <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/whatisbeingdone-administativearrangements-en>.

²⁶² See further 2009 State Report para. 37-39.

²⁶³ Anti Human Trafficking United of the Department of Justice, Equality and Law Reform, *Summary Report of Trafficking in Human Beings in Ireland for 2009*, May 2010 at p. 7. At the end of 2009, 40 potential and suspected victims were in the asylum process, 15 required immigration permission, 5 were minors in the care of the HSE, 4 were EU citizens who did not require permission to remain in the State and 2 voluntarily left the State. *Ibid.* p. 8.

²⁶⁴ *Ibid.* p. 9.

²⁶⁵ *Ibid.*

²⁶⁶ These arrangements may be amended from time to time. They apply only to suspected victims of trafficking from outside the European Economic Area, but those from the European Economic

Arrangements provide presumed victims of trafficking with a recovery and reflection period of 60 days and for a temporary residence permit for 6 months. Their residence permit may be renewed to facilitate them to assist the police in their investigation of the alleged trafficking offence. The temporary residence permit can be revoked where, among other grounds, the victim no longer wishes to assist the Garda Síochána, or the Minister is satisfied that it is in the interests of public security, public policy or public order to do so.²⁶⁷ The administrative arrangements also state that the Minister for Justice will make arrangements to facilitate voluntary repatriation of suspected victims of trafficking.²⁶⁸ The 2010 Immigration, Residence and Protection Bill proposes to allow 60 days of “recovery and reflection” in the State to persons whom the Garda Síochána have reasonable grounds for suspecting are victims of trafficking.²⁶⁹

Identification and Referral of Presumed Victims of Trafficking

96. The National Action Plan to Prevent and Combat Human Trafficking 2009-2012, states that the Garda Síochána take account of all information available to them when considering whether a person is a suspected victim of trafficking.²⁷⁰ To be regarded as a suspected victim of trafficking there must be reasonable grounds for suspecting the person to be a victim of trafficking. In making this assessment, the Garda Síochána state that they use the indicators published by the United Nations Global Initiative to Fight Human Trafficking.²⁷¹

97. The IHRC notes that of the 53 investigations ongoing in relation to trafficking only 11 people were granted the recovery and reflection period in 2009 on the basis that they were suspected victims of trafficking. Within the consultation mechanisms established by the Anti-Human Trafficking Unit a number of NGOs have expressed the view that in their experience working with people who they suspect to be victims of trafficking, in some instances the Garda Síochána require potential victims to provide detailed information before the recovery and reflection period is being granted. It has been stressed by NGOs that the assessment of reasonable grounds must be seen as the start of the process and must be distinguished from the process where it is decided whether somebody is or is not a victim of trafficking. **The IHRC is concerned that in approaching the recovery and reflection period the Garda Síochána in conjunction with the Anti-Human Trafficking Unit should ensure that the correct standard of proof is applied in a consistent manner and correct manner.**

Requirement for Suspected Victims to Co-operate with Police Investigations

Area will be treated no less favourably. See INIS, *Administrative Arrangements for the Protection of Victims of Human Trafficking*, 13 November 2008, at paras 2 and 4.

²⁶⁷ *Ibid.*, at paras 5, 11-16.

²⁶⁸ *Ibid.*, at para. 17.

²⁶⁹ Sections 139(11) of the 2010 Immigration, Residence and Protection Bill. The Administrative Arrangements for the Protection of Victims of Human Trafficking state that a person identified by a member of the Garda Síochána, not below the rank of Superintendent, as a suspected victim of trafficking will be granted permission to remain lawfully in the State for a period of 60 days.

²⁷⁰ Anti-Human Trafficking Unit, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland, 2009-2012* at p. 134.

²⁷¹ *Ibid.* at p. 135.

98. Under the Administrative Scheme a six month period of temporary residence may be granted after the recovery and reflection period if the suspected victim has severed all ties with the alleged traffickers and is willing to assist in an investigation or prosecution arising in relation to trafficking. This proposal is also contained in the provisions on victims of trafficking in the 2010 Immigration, Residence and Protection Bill. In its Observations on the 2008 Immigration, Residence and Protection Bill, which contained the same provision, the IHRC expressed the view that the issuance of a six month temporary permission to remain in the State should not be conditional on the victim's co-operation in the criminal prosecution of alleged traffickers. **The IHRC considers that permission to remain should also be allowed for humanitarian reasons having regard to the personal situation of the victim, in accordance with Article 14 of the Council of Europe Convention on Trafficking. Special consideration should be given to providing leave to remain for child victims of trafficking.**

Housing for Presumed Victims of Trafficking

99. In accordance with the National Action Plan, potential or suspected victims of trafficking are provided with the same accommodation and ancillary services as those provided to newly arrived asylum seekers in direct provision hostel accommodation.²⁷² Direct provision hostels were envisaged for asylum seekers and tend to provide little private space in practice. In addition, they are known to the public and therefore victims of trafficking staying in them can be easily traced by former exploiters, who can then monitor their movements to and from the hostels. Ruhama, a NGO which works on a national level with women affected by prostitution, including victims of trafficking, has also been advised by its clients, by hostel managers and by other service providers that the hostels have become targets for those seeking to exploit poor and vulnerable women through prostitution.²⁷³

Access to information, legal advice and redress

100. Access to adequate information in relation to their legal situation should be provided to suspected victims of trafficking, an issue that has been raised by the Ombudsman for Children. Victims should be informed, through the medium of a translator where required, of their options for remaining in the State. Provision should also be made for free legal advice to be provided to victims. In this regard, the Minister for Justice announced in July 2010 that legal aid and legal advice will be provided to potential and suspected victims of trafficking in both civil and criminal cases by the States Legal Aid Board.²⁷⁴ This is particularly important in the context particularly for the purpose of seeking compensation and legal

²⁷² Anti-Human Trafficking Unit, *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland, 2009-2012* at p. 13.

²⁷³ Ruhama, *Proposal on Safe Accommodation for Trafficked Women (Suggestions for interim period until support structures envisaged under the Immigration Bill 2007 are in place)*, June 2008, at 3. See also statement by Denis Naughten TD, Fine Gael Spokesman on Immigration and Integration, '70% of human trafficking victims are within asylum system – Naughten', 14 July 2009.

²⁷⁴ Department of Justice and Law Reform Press Release *Ahern announces Anti Trafficking Measure*, 15 July 2010.

<http://www.justice.ie/en/JELR/Pages/Ahern%20announces%20Anti%20Trafficking%20Measure>

redress in respect of their ordeal.²⁷⁵ The Anti-Human Trafficking Unit has recently arranged the provision of legal representation to suspected victims of trafficking by the Refugee Legal Service of the Legal Aid Board.²⁷⁶ The IHRC welcomes this development. The IHRC has called for consideration to be given to the establishment of a central fund to compensate victims of trafficking. Civil proceedings in this sphere should be supported by a legal aid scheme for victims.²⁷⁷

d. Ratification of International Treaties

101. The UN Human Rights Committee has advised the Irish Government to consider ratifying the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime 2000.²⁷⁸ The IHRC has also called for its ratification and the ratification of the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.²⁷⁹

²⁷⁵ *Ibid*; Ombudsman for Children's Office, *Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006*, May 2007, at p. 21.

²⁷⁶ Address by Marion Walsh, Executive Director of the Anti-Human Trafficking Unit, Department of Justice, p. 8, at MRCL, Irish Congress of Trade Unions and Department of Justice Seminar on Strategies for Tackling Forced Labour, 1 October 2009.

²⁷⁷ IHRC, *Submission to the development of the National Action Plan on the Prevention and Combating of Human Trafficking*, January 2008, at p. 7.

²⁷⁸ Human Rights Committee Concluding Observations on Ireland 2008, at para. 16.

²⁷⁹ IHRC *Observations on the Immigration, Residence and Protection Bill 2008* (March 2008), at p. 22.

XI. UNACCOMPANIED MINORS/ SEPARATED CHILDREN

The 2009 State Report provides that the HSE “is devising a National Operational Policy for unaccompanied minors/separated children seeking asylum” which is in the process of being finalised.²⁸⁰ It is understood this policy will include the principle that all children in the care of the HSE should receive the same standard of care whether they are separated children seeking asylum or indigenous children in care.²⁸¹ The National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland states that this plan will be implemented from 2009- 2012.²⁸²

a. Introduction

102. In recent years a significant number of unaccompanied²⁸³ or separated²⁸⁴ children have entered the asylum process in Ireland. In 2008, 319 unaccompanied minors were referred to the HSE Social Work Team for Separated Children.²⁸⁵ The terms “unaccompanied minors” and “separated children” are not currently defined in Irish law. The proposed Immigration, Residence and Protection Bill 2010 does not provide any definition of either separated children or unaccompanied minors. The IHRC in its observations on the 2008 Immigration, Residence and Protection Bill, which also did not contain such definitions, recommended that the Bill should be amended to include a clear definition of these terms in line with the relevant UN soft law norms and best practice guidelines.²⁸⁶

b. Reception and Care of Unaccompanied Minors or Separated Children.

103. Section 8 (5) (a) of the Refugee Act 1996 (as amended) provides that children under the age of 18 years who arrive at the frontiers of the State or enter the State and are not in the custody of an adult shall be referred to the Health Service Executive and the provisions of the Child Care Act 1991 shall apply. Section 3 (1) of the Child Care Act 1991 stipulates that it is the role of the

²⁸⁰ 2009 State Report at pp. 105-106.

²⁸¹ *Ibid.*

²⁸² See Table of Key Actions, No. 132, at p.36.

²⁸³The Committee on the Rights of the Child define “Unaccompanied children” (also called unaccompanied minors) as children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so- General Comment No.6: Treatment of unaccompanied and separated children outside their country of origin, September 2005, CRC/GC/2005/6, at p.6.

²⁸⁴ The Committee on the Rights of the Child define “Separated children” as children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members- General Comment No.6: Treatment of unaccompanied and separated children outside their country of origin, September 2005, CRC/GC/2005/6, at p.6

²⁸⁵ The Economic and Social Research Institute Dublin (2009) Policies on Unaccompanied Minors in Ireland, at p. xi.

Available at: <http://www.esri.ie/UserFiles/publications/20090902092430/BKMNEXT145.pdf>
Reference is only made in Section 8 (5) (a) of the Refugee Act 1996 (as amended) which illustrates the procedure with regard to a “...child under the age of 18 years, who has arrived at the frontiers of the State or has entered and is not in the custody of any person...”. Refugee Act 1996, Section 8 (5) (a).

²⁸⁶ IHRC, *Observations on the Immigration, Residence and Protection Bill 2008*, at p. 15.

Health Service Executive (HSE) to “promote the welfare of children in its area who are not receiving adequate care and protection”.²⁸⁷

104. The IHRC is concerned by findings of a 2009 study undertaken by the Economic and Social Research Institute (ESRI) that demonstrate there is no consistent or standard approach to the provision of care for separated children across the country.²⁸⁸ According to the study there are significant disparities regionally with regard to availability of social work support. The main gaps lie in the provision of social services which are outside of office hours. The Crisis Intervention Service (CIS) offers an Out-of-Hours Social Work Team within Dublin. However, no service of this kind exists outside the greater Dublin area. This highlights the need for “a standard national approach, under-pinned by legislation, which would clarify the responsibility of the HSE for the care needs of the separated child and how these are to be met”.²⁸⁹

105. The IHRC considers that the Immigration, Residence and Protection Bill 2010, presents an important opportunity to amend the Child Care Acts 1991 (as amended), in order to outline specifically the legal obligations of the HSE towards unaccompanied minors and separated children who come into their care. **Irish legislation must reflect the minimum standards set out by UNHCR, Save the Children, and the Committee on the Rights of the Child on this issue.**

c. Residential Care and Hostel Accommodation

106. After the initial assessment, a care placement is determined for the child. The criteria used to determine care placements in the HSE Dublin Mid-Leinster area include “age, maturity, vulnerability, language and nationality, and any special or medical needs”.²⁹⁰ Children between the ages of 6-14 are generally placed in residential care, supportive lodgings or foster homes and those aged 15 and upwards are generally placed in self-catering privately contracted hostels.²⁹¹

107. The Ombudsman for Children has criticised the “inferior care” provided to separated children and unaccompanied minors as being in breach of Ireland's obligations under the Convention on the Rights of the Child and under the European Convention on Human Rights.²⁹² Furthermore, this level of care is not in

²⁸⁷ Child Care Act 1991, Section 3 (1) Section 4 (1) states that if a child is unlikely to receive care or protection that the HSE has a duty to take the child into its care. If the child appears to be lost, deserted or abandoned, or the parent who has custody of him is missing, the HSE shall “endeavour to reunite him with that parent where this appears to the board to be in his best interests. Child Care Act 1991, Section 4 (4). Section 36 provides that the HSE has a duty to provide accommodation and maintenance for the child and place the child in residential or foster care, or make other arrangements which it deems fit.

²⁸⁸ The HSE delegates responsibility for the children to one of the HSE Administrative Areas (HSE Administrative Areas: HSE South, HSE West, HSE Dublin Mid-Leinster and HSE Dublin North East) which separately determines which section of the Child Care Act 1991 to apply, based on which section best suits their local situation. The Economic and Social Research Institute Dublin (2009) Policies on Unaccompanied Minors in Ireland, at p.29.

²⁸⁹ Corbett, M. (2008) “Hidden Children: The Story of State Care for Separated Children”, *Working Notes, Jesuit Centre for Faith and Justice*, November 2008, at p.19.

²⁹⁰ Veale, A., Palaudaries, L. and Gibbons, C. (2003) *Separated Children in Ireland*, The Irish Refugee Council, at p. 35.

²⁹¹ *Ibid.*

²⁹² Report of the Ombudsman for Children to the UN Committee on the Rights of the child on the occasion of the examination of Ireland's Second Report to the Committee, April 2006, at p.36.

keeping with the Statement of Good Practice developed by Save the Children and the UNHCR which provides that “those working with separated children should receive appropriate training on the needs and rights of separated children”.²⁹³

d. Missing Children in the care of the HSE

108. Statistics show that from the period of 2000 to May 2009, 486 separated children have gone missing from State care, with only 61 being accounted for.²⁹⁴ Of particular concern is the possibility that some of these children could have been victims of trafficking.²⁹⁵ The Economic, Social and Research Institute of Ireland (ESRI) stated that it is reported that most children go missing when social work supports are limited, particularly at weekends.²⁹⁶ Their data showed that from January to the end of May 2009, the number of unaccompanied minors who have gone missing from care has increased.²⁹⁷ One of the reasons for so many disappearances has been cited as “insufficient quality of care placement and supervision...particularly [where] a minor was residing in a privately run, contracted hostel with no childcare professionals staffed on site”.²⁹⁸ They also noted that it was reported in several interviews which were undertaken for their study that “traffickers were aware of the locations of the unaccompanied minor hostels and whether they were staffed appropriately by qualified childcare workers”.²⁹⁹

109. The National Action Plan to Prevent and Combat Human Trafficking 2009-2012 notes some measures that are now being rolled out to combat and prevent trafficking in children.³⁰⁰ The main focus of the Plan is to place children in families and local communities throughout the State.³⁰¹ Section 26 of the Child Care Act 1991 does make some provision for the appointment of a *guardian ad litem* in

²⁹³ Separated Children in Europe Programme (2004) *Statement of Good Practice*, Save the Children and UNHCR, at p. 10.

²⁹⁴ Health Service Executive Response to parliamentary question on 10 December 2008, No.138, in: The Economic and Social Research Institute Dublin (2009) *Policies on Unaccompanied Minors in Ireland*, at p.36.

²⁹⁵ The UN Committee on the Rights of the Child has recognised the link between separated children and trafficking, stating that “that unaccompanied or separated children in a country outside their country of origin are particularly vulnerable to exploitation and abuse. Girls are at particular risk of being trafficked, including for purposes of sexual exploitation”.²⁹⁵ The 2004 EU Report of the Experts Group on Trafficking in Human Beings also states that particular attention should be paid to unaccompanied minors at border controls and that they should be afforded “particular protection and investigation measures”. European Commission, Directorate- General Justice, Freedom and Security (2004) *Report of the Experts Group on Trafficking in Human Beings*, at p.99.

²⁹⁶ The Economic and Social Research Institute Dublin (2009) *Policies on Unaccompanied Minors in Ireland*, at p.40.

²⁹⁷ The Economic and Social Research Institute Dublin (2009) *Policies on Unaccompanied Minors in Ireland*, at p. 37.

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ In particular, the HSE is developing a Plan to mainstream the services provided to separated children and the practice of accommodating children in hostels will be brought to an end as alternative arrangements become available. Department of Justice, Equality and Law Reform (2009) *National Action Plan to Prevent and Combat Human Trafficking 2009-2012*.

³⁰¹ *Ibid.* at p.20. 1. An additional step forward is the Joint Protocol on Children Missing from Care which was signed by An Garda Síochána and the HSE, with the aim to clarify the joint responsibilities and procedures of the HSE and the Gardaí with regard to this issue.

certain circumstances however this is not a routine appointment.³⁰² The National Children's Strategy 2000 states that "unaccompanied children seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and *guardian ad litem*".³⁰³ However, the 2009 ESRI report states that the Refugee Legal Service (RLS) has indicated that "in practice, a *guardian- ad- litem* is usually appointed for children who have been taken away from the care of family members rather than those taken into care voluntarily as most unaccompanied minors are."³⁰⁴

110. The IHRC considers that a guardian or advisor should be appointed to all unaccompanied or separated children, whether or not they have made a protection application. The guardian should be consulted and informed regarding all actions taken in relation to the child.

³⁰² The Economic and Social Research Institute Dublin (2009) Policies on Unaccompanied Minors in Ireland, at p.46.

³⁰³ National Children's Strategy 2000, at p. 71

³⁰⁴ The Economic and Social Research Institute Dublin (2009) Policies on Unaccompanied Minors in Ireland, at p.46-47.

APPENDIX 1 – SUMMARY OF IHRC CONCLUSIONS AND RECOMMENDATIONS

1. STRUCTURAL ISSUES RELATING TO THE PROTECTION OF RIGHTS UNDER CERD

Status of the CERD Convention under Domestic Law

- [T]here has been no progress in relation to this element of the Committee's 2005 Concluding Observations.

Reservation under Article 4 of CERD

- The IHRC reiterates its recommendation that the reservation under Article 4 should be withdrawn as soon as reasonably possible.

The Consultation Process for the State Report

- The IHRC does not consider that [the State's consultation process for the preparation of the State Report] was sufficient to comply with the recommendations of the CERD Committee.

The Immigration, Residence and Protection Bill (general note)

- The IHRC wishes to highlight that at time of submission, this Bill is under consideration and there is still no consolidated framework relating to immigration and asylum issues in place in Ireland.

Human Rights Education and Training

- The IHRC considers that there has been insufficient action by the State in raising awareness of CERD and other international human rights treaties and in ensuring that all Civil and Public Servants are trained in human rights.

2. GENERAL CONCERNS IN RELATION TO RACIAL DISCRIMINATION IN IRELAND

The Human Rights and Equality Infrastructure

- The IHRC's ability to continue operating as an effective NHRI is now seriously jeopardised [due to severe budget cuts].
- The National Action Plan Against Racism (NAPAR) finished in 2008 and has not been renewed or replaced by a similar programme.
- The IHRC considers that the significant and disproportionate cuts to the human rights and equality infrastructure will have a long-term negative impact on the elimination of racial discrimination in Ireland.

Prevalence of Racial Discrimination in Ireland

- The IHRC was concerned at the findings of a 2009 survey by the EU Fundamental Rights Agency (FRA) that indicated that there was a perception by some minority communities that there was a high level of racial discrimination and abuse in Ireland.
- The IHRC reiterates the call made by the EU Fundamental Rights Agency for States to tackle racist discrimination and abuse by promoting the reporting

and recording of discrimination and racist crimes, fully applying anti-discrimination laws, and better informing vulnerable minorities about their rights

Racially Motivated Crime

- To date it is unclear to what extent the recommendations in [a 2008 study on combating racism and xenophobia through the criminal law] have been implemented.

3. ASYLUM SEEKERS AND THE POLICY OF DIRECT PROVISION

- The IHRC is concerned at the low level of direct provision payments and the length of time which people remain in this system.
- The IHRC is concerned at the high incidence of mental health problems among persons in direct provision and the negative impact which the length of the asylum process, the prohibition on working and the resulting social isolation may be having on those in direct provision.
- The IHRC is concerned by the lack of provision for asylum seekers who may become homeless, and by the low degree of personal autonomy granted to asylum seekers.

4. NON-DENOMINATIONAL AND MULTIDENOMINATIONAL SCHOOLS

- Issues arise where the statutory option of withdrawing children from religious instruction classes is difficult to exercise in practice, for example where a) this is not an actual or reasonable option in a given school and there is no alternative school in a given catchment area or, b) while a child may be excused from a religious class, religious instruction may still occur throughout the school day, contrary to the right to freedom of thought, conscience and religion of the child/family concerned.
- The IHRC considers that parents and older children (in accordance with their level of maturity) should have adequate choice in the range of primary and post-primary schools available in keeping with the increased diversity and changing nature of Irish society, this would include how religion and the broader question of ethics is addressed in and beyond the classroom. Sustained progress is required in this area, particularly in the development of a new legal framework to facilitate the new model of patronage in the primary system and the roll out of the pilot scheme of multi-denominational schools. This should also provide an opportunity to embed human rights education within any new system.
- The IHRC considers that the situation pertaining to would-be teachers should be clarified to ensure persons of non-faith or minority religious backgrounds are not deterred from training as teachers and subsequently taking up employment as teachers in the State.

5. THE TRAVELLER COMMUNITY

Recognition of Travellers as an Ethnic Minority

- The IHRC has previously outlined its position that the refusal to recognise Travellers as an ethnic minority suggests a lack of understanding by the Government of the importance Travellers place on the recognition of their culture and identity. The lack of recognition may also place obstacles in the way of Travellers accessing protections under international human rights conventions.
- The IHRC has expressed the view that in accordance with the CERD Committee General Recommendation VIII on the principle of self-identification and the Concluding Observations of the Committee in respect of Ireland's First and Second Periodic Reports the Government should recognise the Traveller Community as an ethnic minority group.

The Right to Education

- The 2009 State Report does not provide any information on the progress achieved in the implementation of the recommendations contained in the 2006 National Traveller Education Strategy.
- The 2009 State Report does not provide any information on whether measures [outlined in the 2006 Strategy to conduct a further survey of Traveller education at the end of the 4th year] have been initiated.
- Information in relation to [Traveller educational programme] budget cuts is not outlined in the 2009 State Report.
- NGOs asserted that there is a lack of representation of Traveller organisations in monitoring the implementation of the Traveller Education Strategy. NGOs raised concerns that the Department of Education and Science has not actively engaged with Travellers in relation to the delivery of the goals set in the Traveller Education Strategy.

The Right to Work

- [Employment and training initiatives listed in the State Report] are welcome. However, it is not clear from the 2009 State Report what impact these measures are having on Traveller access to employment.

The Right to Health

- The HSE has noted that the population profile of Travellers is similar to that seen in developing countries, where high birth rates and high mortality rates at a younger age make a broad based population pyramid.
- The 2009 State Report does not provide any information in relation to the implementation of the National Traveller Health Strategy or whether an evaluation has been carried out of this Strategy.

The Right to Adequate Housing and Accommodation

- The data provided [in the 2009 State Report] does not adequately define the different types of housing and accommodation provided and does not break down what percentage of accommodation is provided by or with the assistance of the Local Authorities and what accommodation is privately owned by the Traveller Community.
- The IHRC is concerned that the so-called “indigenous” only policy employed by a number of Local Authorities in relation to accommodating Travellers is incompatible with respect for Travellers’ nomadic culture, since it only permits a Traveller to be provided with transient accommodation where he or she has resided on a permanent basis for at least three years in a particular area.
- The IHRC is concerned that [the] law on criminal trespass can lead to the eviction or removal of Traveller families and has exposed them to unjustified and disproportionate interference with their rights, particularly given the fact that the group targeted by this law is one of the most marginalized groups in Irish society. The IHRC is particularly concerned that this measure was introduced in the context of an ongoing failure on the part of public authorities to provide adequate Traveller accommodation.
- The IHRC is [further] concerned that this law criminalises trespass on public lands in circumstances where a public body has failed in its statutory obligation to house Travellers and that the law, though on its face neutral was, according to a Government press statement, aimed at dealing with “large scale encampments of Travellers”.
- The IHRC considers that [decisions relating to evictions from a traditional or unofficial halting site, confiscation of caravans or fining or imprisoning travellers, when a family is waiting to be accommodated] should be a matter of law and not merely of discretionary policy.

6. DETENTION OF ASYLUM SEEKERS AND IMMIGRANTS

- The IHRC considers that prisons and police stations are not suitable places for the detention for asylum applicants who have not been convicted of a criminal offence.
- The IHRC is concerned that there remains a lack of appropriate facilities for the detention of asylum seekers and other immigration detainees who are awaiting deportation. The Commission is also concerned about the provisions for the detention of minors contained in the proposed legislation.
- The IHRC considers that the 14 day time limit, within which an application for judicial review can be made combined with the proposed restriction of the grounds on which the High Court can extend the 14 day time limit, creates unnecessary difficulties for people seeking to challenge immigration decisions, and may prevent some people from making such applications.

7. THE RIGHTS OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

- The IHRC has recommended on a number of occasions that the Irish Government should move to ratify the Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families and should take a leadership role amongst its EU partners in that regard.
- The IHRC is concerned at the vulnerable situation of migrant workers and in particular those working in the hospitality industry, rural workers, especially those working in agriculture and women migrant workers, particularly those working in domestic households.
- The IHRC considers that the basic principles governing family reunification for different categories of migrant workers should be elaborated in primary legislation taking full consideration of the requirements of Article 8 of the European Convention on Human Rights. The IHRC also considers that family reunification should be dealt with in a positive, humane and expeditious manner, and that the “best interests of child assessment” should form an integral part of the family reunification determination where applicable.

8. SECURITY PROCEDURES AND PRACTICES ON ENTRY TO THE STATE

- The IHRC recommended that there should be clearer grounds for decisions made by Immigration Officers in relation to immigrants entry into the State. In particular, the vague criteria applied in cases of refusal of leave to land should be removed from the statute book.
- The IHRC has expressed its concern that the requirement for foreign nationals [to carry identification documents] has the potential to lead to discriminatory treatment against persons on grounds such as colour, race or other distinguishing characteristics such as religious dress. This measure may also have an impact on Irish citizens from racial, ethnic and religious minorities.

9. HUMAN TRAFFICKING – PREVENTION AND PROTECTION OF VICTIMS

- The IHRC is concerned that in approaching the recovery and reflection period the Garda Síochána in conjunction with the Anti-Human Trafficking Unit should ensure that the correct standard of proof is applied in a consistent manner and correct manner.
- The IHRC considers that permission to remain should also be allowed for humanitarian reasons having regard to the personal situation of the victim, in accordance with Article 14 of the Council of Europe Convention on Trafficking. Special consideration should be given to providing leave to remain for child victims of trafficking.
- The IHRC welcomes this development [to provide legal representation to suspected victims of trafficking]. The IHRC has called for consideration to be

given to the establishment of a central fund to compensate victims of trafficking. Civil proceedings in this sphere should be supported by a legal aid scheme for victims.

10.UNACCOMPANIED MINORS/ SEPARATED CHILDREN

- Irish legislation must reflect the minimum standards set out by UNHCR, Save the Children, and the Committee on the Rights of the Child on this issue.
- The IHRC considers that a guardian or advisor should be appointed to all unaccompanied or separated children, whether or not they have made a protection application. The guardian should be consulted and informed regarding all actions taken in relation to the child.