



**Irish Human Rights Commission**

**Submission to the UN Committee on the Rights of the Child**

**On Ireland's second periodic report under the  
UN Convention on the Rights of the Child**

**May 2006**



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## **Introduction**

The Irish Human Rights Commission (IHRC) identified the human rights of children as one of its key areas of work in its Strategic Plan 2003-2006. In that Plan the IHRC expressed its intention to focus on Ireland's compliance with the UN Convention on the Rights of the Child (CRC) and stated "The Commission strives to ensure that children's rights are not regarded as second-class rights in the absence of direct pressure for their protection."

In the period since the IHRC Strategic Plan was published, the establishment of the Office of the Ombudsman for Children as an independent statutory body with competence for the promotion and protection of the rights of children has marked a significant step forward for children's rights in Ireland. The IHRC is committed to working closely with the Ombudsman and to supporting the valuable work of her office. With this in mind, in this submission the IHRC addresses a number of issues pertaining to children's rights which it believes are complementary to the issues being raised by the Ombudsman for Children in her submission to the UN Committee.

In the first and most substantial part of this submission, the IHRC will focus on overriding concerns about the legal status of the CRC in Irish law, referring to previous submissions made by the IHRC to other treaty-monitoring bodies on this question and also addressing the question of expressing children's rights in the Irish Constitution.

In relation to discrete areas of law and practice, the IHRC focuses in this submission on areas of work that it has carried out in recent years relating to children's human rights. In section 2, we look at the existing system of juvenile justice and the issues it raises in the context of present proposals to amend the Children Act 2001. In section 3 we look at the continuing high rate of child poverty in Ireland, particularly in the context of the dramatic economic growth that has taken place in Ireland since 1998. In section 4 we address another area of law in which the IHRC has carried out research, namely the law and practice in relation to family reunification. Finally, in section 5 we highlight some of the key inequalities and problems facing children from vulnerable and disadvantaged groups.

In preparing this submission the IHRC is grateful for the assistance and information provided by the Ombudsman for Children, the Combat Poverty Agency and a number of NGOs, most particularly the Children's Rights Alliance (CRA). The IHRC looks forward to an open and productive dialogue with the Committee during the forthcoming pre-sessional meeting of the Committee in June 2006 and hopes that it can be of assistance to the Committee at all stages of its examination of Ireland's second national report.

## Executive summary and recommendations

### 1. *Children's rights in Irish law*

- It is a fundamental Irish constitutional value that every right should have an effective remedy. This applies with particular force in relation to rights contained in international treaties to which Ireland is a party. In this regard, the IHRC believes that the rights set out in the CRC should be made enforceable in the Irish courts by their inclusion in domestic Irish law.
- The IHRC believes that there has been no comprehensive analysis of the legal issues surrounding the status of international human rights treaties in Irish law and the present report does not set out any position in relation to the possibility of incorporating the Convention on the Rights of the Child into domestic law.
- The IHRC believes that the Government should consider giving legal effect to the Convention in domestic law, both at the constitutional and legislative levels, particularly in relation to those areas where Irish law fails to adequately reflect the rights set out in the Convention.
- At the constitutional level, the IHRC supports the recommendations of the Ombudsman for Children that there should be express recognition in the Constitution of the principle of the best interests of the child, as set out in Article 3 of the CRC. Any proposal to incorporate the principle of the best interests of the child into the Constitution should also incorporate the principles set out in Article 12 and Article 2 of the CRC.
- The IHRC believes that the recommendations of the Constitution Review Group should be implemented in relation to the rights of the child to be registered immediately after birth, to know his or her parents, to be cared for by his or her parents and to be reared with due regard to his or her welfare. The IHRC also notes that the existing provisions relating to the right to education is inadequate.
- The IHRC believes that the Constitution should include an express equality provision relating to children guaranteeing the equal rights of all children irrespective of any form of human difference.
- The IHRC recommends that the Government clarify its position in relation to giving direct effect to the human rights treaties through primary legislation. The IHRC believes that, in addition to giving constitutional expression to the CRC, there are many areas of legislation which could also usefully incorporate Articles of the CRC.
- While the IHRC sees potential benefits in indirect forms of incorporating the CRC into Irish law by imposing obligations of compliance on administrative bodies or by imposing interpretative obligations on courts,

neither of these models should be seen as substitutes for, or as being mutually exclusive from, direct forms of giving legal effect to the CRC.

- While there has been an increasing trend of reference to the CRC in Irish case-law in recent years, the level of penetration of the Convention into Irish law remains very low. Apart from the question of giving legal effect to the CRC, the IHRC believes measures should be taken to raise awareness of the CRC among the judiciary and the legal professions.
- In relation to the Optional Protocol on the sale of children, child prostitution and child pornography, the IHRC believes that the Irish Government should consider ratifying the Protocol as a matter of urgency.
- In relation to the Optional Protocol on the involvement of children in armed conflict and Ireland's Declaration under that Protocol, the IHRC recommends that the Irish Government consider introducing a constitutional amendment which would clearly prohibit conscription of children into the armed forces.

## *2. Juvenile Justice*

- The issue of Ireland's age of criminal responsibility has been raised by the Ombudsman for Children in her submission and the IHRC supports her stated view that present proposals for change to the Children Act 2001 in this respect run counter to international human rights standards.
- The Children Act 2001 would have significantly improved the present situation in relation to detention of children if implemented. However, the Criminal Justice Bill contains a number of regressive measures relating to the detention of children under the age of 16 and the continuing detention of children in St. Patrick's Institution on a statutory basis. The IHRC regards the continuing use of an institution that also serves as an adult prison for this purpose to be unacceptable and consider the failure to make a firm commitment to address this issue within a reasonable timeframe is particularly regrettable.
- The IHRC recommends that strong guarantees be included in legislation to ensure that: (i) every child has effective and appropriate support and representation when in garda custody; and (ii) children identified as being vulnerable and in need of care receive that care at the earliest opportunity. The continuing exemption of the inspection of garda stations from the remit of the Ombudsman for Children is regrettable and the IHRC calls for this exemption to be lifted.
- The IHRC has broad concerns about the absence of any substantial provision for adapting court procedures for the criminal trial of children, particularly as it appears that children as young as 10 may now be tried in the Central Criminal Court in relation to serious offences.

- The IHRC has deep misgivings about the proposals to introduce a system of anti-social behaviour orders in Ireland and recommends that careful consideration is given to ensuring that any system of anti-social behaviour orders are not resorted to where a warning or other non-criminal measure is more appropriate. The IHRC also recommends that consideration is given to regular monitoring of Garda practice in relation to anti-social behaviour orders to ensure that these orders are not used to circumvent the procedural requirements of the ordinary criminal law.

### 3. *Child Poverty*

- At the EU level, Ireland has one of the highest rates of relative child poverty. At an international level, Ireland has one of the highest rates of poverty among developed countries, ranking sixteenth out of the eighteen OECD countries
- There are a number of specific groups of children who are particularly at risk of living in consistent poverty and relative income poverty. These include:
  - Children living in lone parent households
  - Children in families of more than three children
  - Children in households where the head of the household is ill or disabled
  - Children in households where the head of the household is unemployed
  - Children from the Traveller community
  - Children from migrant and refugee families
  - Children from asylum-seeking families
  - Children who leave the youth justice system or health board care
  - Homeless children and children living in inadequate accommodation
- The Combat Poverty Agency has found that Ireland places far greater emphasis on *income support* (both universal and targeted measures) for families with children than most European countries, but it invests far less in *subsidised quality services* for children. The Combat Poverty Agency recommends that the universal child benefit should be supplemented with a revised *targeted* intervention to assist the poorest children in Ireland and that improvements in social expenditure be targeted at services for vulnerable families.

### 4. *Family reunification*

- In relation to non-EU migrant workers, the IHRC recommends that a statutory scheme should be put in place in relation to family reunification applications by legally resident immigrants in Ireland, which would reflect the standards of international human rights law and be transparent, accessible and timely.



- In relation to students, the IHRC recommends that the statutory scheme for family reunification applications for legally resident immigrants should be extended to include provision for students.
- With respect to Irish citizens, the IHRC believes there should be a *statutory right* to family reunification with non-national family members. Moreover, the IHRC is of the view that naturalisation should remain an important aspect of Irish immigration and residency policy and that naturalisation should never lead to a diminution of legal rights.
- The existing statutory scheme relating to family reunification for refugees and their families should be retained and that consideration should be given to broadening the definition of “family” under section 18 of the Refugee Act 1996.

#### 5. *Vulnerable categories of children*

- Travellers have historically been subject to systematic discrimination within Irish society and continue to suffer disadvantage in many areas. Travellers also face particularly acute violations of the rights to health, adequate accommodation and education. The question of the status of Travellers as an ethnic minority also raises issues under Article 30 of the CRC.
- In an Irish context, children with disabilities are particularly disadvantaged in terms of participation in education. There have been important developments regarding equality provision in legislation and provision of education and personal social services for people with disabilities. However, there remain some significant outstanding issues across the areas of education, health, housing and social welfare provision for children with disabilities.
- In general, it can be observed that the growing multi-denominational and multi-cultural nature of Irish society is not adequately reflected in the Irish education sector. The UN Committee on the Elimination of Racial Discrimination has expressed concern about the continuing control of education by religious organisation and has recommended that no discrimination on the basis of religion should take place as far as the admission of pupils to schools is concerned.
- While it is difficult to assess the level of trafficking in women and children that currently takes place in Ireland there is a clear legislative gap in relation to Irish law combating various forms of trafficking in human beings.

## 1. Children’s rights in Irish law

### 1.1 Legal status of the CRC under the Irish Constitution

Article 29.6 of the Irish Constitution states, “No international agreement shall be part of the domestic law save as may be determined by the Oireachtas”.<sup>1</sup> Read with Article 15.2.1 of the Constitution, which states that the “sole and exclusive power of making laws for the State is hereby vested in the Oireachtas...”, in effect Article 29.6 establishes the dualist nature of the Irish legal order. In the present State report, the Government states;

“85. Similar to other common law countries, Ireland has a ‘dualist’ system under which international agreements, to which Ireland becomes a party, are not automatically incorporated into domestic law.

- Article 29.3 of the Constitution of Ireland states: ‘Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States.’
- Article 29.6 of the Constitution of Ireland provides: ‘No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas.’

86. These Constitutional provisions have been interpreted as precluding the Irish courts from giving effect to an international agreement if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law. Consequently, whereas Ireland has ratified the UNCRC, the Convention did not thereby automatically become part of Irish law.”

### 1.2 The question of giving domestic legal effect to international treaties

It is a fundamental Irish constitutional value that every right should have an effective remedy. This applies with particular force in relation to rights contained in international treaties to which Ireland is a party. Article 26 of the Vienna Convention on the Law of Treaties states “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”, giving expression to the basic legal principle *pacta sunt servanda*. Article 27 of the Vienna Convention also states, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

In the view of the IHRC there has been no comprehensive analysis of the wider question of the status of international treaties in Irish law. On the general point of whether human rights treaties should be incorporated into Irish law in any form, the Irish Government has claimed in a number of previous reports to the various UN

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<sup>1</sup> Article 29.5 of the Irish Constitution states that every international agreement to which the State becomes a party, other than purely technical agreements, “shall be laid before Dáil Eireann (the lower house of the Irish Parliament). There is no requirement that the Dáil must approve the terms of the treaty unless it involves a charge on the finances of the State. The Oireachtas (pronounced *ɛrˠəxt̪əs*) refers to the Irish Parliament, consisting of two Houses (the Dáil and the Seanad) and the President.

treaty-monitoring bodies that the dualist nature of the Irish legal system constitutes an obstacle to incorporation. The main reason offered by the Irish Government is that Article 29.6 prohibits incorporation where domestic law is not already compliant with the treaty in question.<sup>2</sup> In the view of the IHRC, the Government's position on the question of incorporation of human rights treaties into domestic law as stated in its reports to UN treaty monitoring bodies is unsustainable. However, it is not clear whether its position has since changed, particularly with reference to the fact that the ECHR has recently been given legal effect in Irish law and the IHRC believes the examination of Ireland's report under the CRC offers an important opportunity to clarify the Irish Government's position on this important question.

In its concluding observations in relation to Ireland's first report under the CRC the UN Committee on the Rights of the Child recommended that Ireland "take further steps to ensure that the Convention is fully incorporated as part of the domestic law, taking due account of its general principles as defined in article 2, article 3, article 6 and article 12." However, the choice of the most appropriate means of giving legal effect to these rights remains an open and complex question. In sections 1.3-1.8 below we examine the various forms of incorporation. The IHRC has already examined the question of the most appropriate means of giving legal effect to a human rights treaty in its submission on the incorporation of the European Convention of Human Rights and Fundamental Freedoms (ECHR) into Irish law<sup>3</sup> and in its submissions to the relevant treaty-monitoring bodies in relation to Ireland's reports under the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>4</sup> In each of those cases the IHRC concluded that there are many benefits in giving direct legal effect to human rights treaties in domestic law through incorporation; not only in allowing individuals vindicate their rights through domestic courts, but also in increasing awareness of Ireland's international human rights obligations among the public and among key decision makers. However, we also examine the various forms of giving indirect legal effect to the CRC.

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<sup>2</sup> In its second national report under the International Covenant on Civil and Political Rights (ICCPR), the Irish Government outlined this argument in detail (UN Document CCPR/C/IRL/98/2) at paragraphs 13-17. A similar description of the limitations imposed by dualism is also set out in the Core Document submitted by Ireland to the UN Human Rights Committee in July 1998 (UN Document HRI/CORE/1/Add.15/Rev.1) and in Ireland's second report under the International Covenant on Economic, Social and Cultural Rights (UN Document E/1990/6/Add.29). Interestingly no such statement is included in the Ireland's first national report under the CRC or in the present State report or in Ireland's reports under the Convention on the Elimination of All Forms of Discrimination Against Women. These arguments are assessed in sections 1.3 and 1.4 below.

<sup>3</sup> *Submission on the European Convention on Human Rights Bill 2001 to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights*, June 2002, available at [www.ihrc.ie](http://www.ihrc.ie).

<sup>4</sup> *CERD Submission*, December 2004; *CEDAW Submission*, January 2005; both available at [www.ihrc.ie](http://www.ihrc.ie).

### **1.3 Constitutional incorporation of the CRC**

In the IHRC submission on the European Convention of Human Rights Bill, the IHRC makes clear that it regards incorporation at the constitutional level as the highest and most effective form of incorporation. In its ICCPR report, the Government argues that where the Constitution already covers a particular area, it would be inappropriate to insert a second parallel provision which might be superfluous or might lead to confusion or even conflict.<sup>5</sup> In the first instance, this argument fails to address the possibility that an amended text could reconcile existing constitutional provisions with the provisions of an international treaty such as the CRC. Also, in the case of many provisions of international treaties there will be no corresponding constitutional text and therefore no such question of conflict.

The Government report under the ICCPR also states that differences might arise between how the Irish Courts interpreted any such provisions and how they are interpreted by the relevant human rights treaty-monitoring body. While this may be true, where the text of the Irish Constitution is consistent with international treaty standards there must be at least a much stronger likelihood of judicial interpretation consistent with developing international standards. Of course, if the Constitution reflected the text of international treaty obligations, such as those contained in the CRC, then no such issue would arise and there would be a clear mandate for the courts to apply the jurisprudence of the international treaty monitoring bodies. Furthermore, the approach indicated by the Government in this regard denies the possibility of productive comparisons between parallel constitutional and international rights provisions which would lead to an enriching of both systems of law. However, it should be emphasised that the great value of constitutional incorporation of the rights contained in the CRC is that constitutional incorporation will underpin and guarantee any legislative or policy provisions to respect and protect children's rights.

### **1.4 Gaps in the Irish Constitution where amendments would be valuable**

The IHRC recognises that given the structure and form of the Irish Constitution, there is little realistic possibility of the text of the CRC itself being incorporated into the Irish Constitution. Therefore, the key question that arises in relation to constitutional protection of rights is whether elements of the CRC could be introduced into the text of the Constitution to replace or supplement the existing fundamental rights provisions of the Constitution.

#### ***Recommendations of the Constitution Review Group***

The IHRC notes that in its concluding observations on Ireland's initial report, the UN Committee on the Rights of the Child recommended the State party take all appropriate measures to accelerate the implementation of the recommendations of the Constitution Review Group (CRG) with respect to Articles 41 and 42 of the Constitution. While it concluded that children hold all of the natural rights which adults hold under Article 40 of the Constitution, the CRG had recommended that there should also be explicit constitutional recognition of the rights of the child. The recommendations above have not been acted on, but they would go some way to bringing Irish law in compliance with Articles 3, 7 and 9 of the CRC. They include:

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<sup>5</sup> At para. 16-17.

- “(a) the right of the child to be registered immediately after birth and to have from birth a name;
- (b) the right of every child, as far as is practicable, to know his or her parents; subject to the proviso that such rights should be subject to regulation by law in the interests of the child;
- (c) the right of every child, as far as is practicable, to be cared for by his or her parents; and
- (d) the right of every child to be reared with due regard to his or her welfare”<sup>6</sup>

***The need to secure respect for the best interests of the child***

In addition to the rights set out above, the CRG recommended that Article 41 of the Constitution should include an express requirement that all decisions affecting children should have as their paramount consideration the welfare of the child. An All-Party Oireachtas (Parliamentary) Committee on the Constitution, established to further the recommendations of the CRG, recommended that the following clause be inserted into the Constitution:

“All children, irrespective of birth, gender, race or religion, are equal before the law. In all cases where the welfare of the child so requires, regard shall be had to the best interests of that child.”<sup>7</sup>

This formulation is a diluted form of what was recommended by the CRG, in that it only relates to “cases where the welfare of the child so requires”. The IHRC notes that the Ombudsman for Children has recommended that express Constitutional protection be given to the “best interests” principle and the IHRC strongly endorses this recommendation. In her recent submission to the All-Party Oireachtas Committee, the Ombudsman also referenced the right to representation of children in proceedings affecting them in line with Article 12 of the CRC.<sup>8</sup> The IHRC supports this view and recommends that any proposal to incorporate the principle of the best interests of the child into the Constitution should also incorporate the principles set out in Article 12 and Article 2 of the CRC.

***The need for appropriate respect for children’s rights within the family***

The question of how any express rights for children might be balanced with the constitutional protection of the rights of families has proved controversial. One view is that the present constitutional scheme allows for the courts to effectively balance the rights of the child with the rights of the parents and that Article 40.3 (and the unenumerated rights therein) already contains the right of a child to have his or her welfare considered as a paramount concern.<sup>9</sup> An alternative view is that “the silence of Article 41 in relation to children means that the rights of the family are effectively exercised by the parents and the rights of children may not be given due weight within

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<sup>6</sup> *Report of the Constitution Review Group* at pp336-337.

<sup>7</sup> *10<sup>th</sup> Progress Report: the Family* of the All-Party Oireachtas Committee on the Constitution at p 124.

<sup>8</sup> See submission of the Ombudsman for Children to the All-Party Oireachtas Committee on the Constitution at Appendix 1 of the 10<sup>th</sup> Progress Report.

<sup>9</sup> See 10<sup>th</sup> Report at pp90-91.

the family.”<sup>10</sup> However, there can be little doubt that the silence of the Constitution in relation to children has had considerable impact on law-making, on government policy and on the practice of social work and other caring professions in this regard.<sup>11</sup> In this respect, there is a pressing need for express constitutional recognition of children’s rights to break this constitutional silence with respect to children.

### ***The need to guarantee equality between all children***

The non-discrimination formulation proposed by the All-Party Oireachtas Committee referred to above refers to four grounds of discrimination – birth, gender, race or religion. However, Irish statute law currently sets out nine grounds of discrimination<sup>12</sup> and Article 2 of the CRC sets out eleven grounds in a non-exclusive list. On this basis, the IHRC believes that an equality provision relating to children should clearly guarantee the equal rights of all children irrespective of any form of human difference. The IHRC has already recommended that a referendum should be held to amend Article 40.1 of the Constitution to provide that it prohibit “direct and indirect discrimination on the basis of gender, race, colour, age, disability, sexual orientation, religious belief, membership of the Travelling community, language, political opinion, property, birth or other status” and that a new Article 40.1 should also prohibit discrimination by private actors and should require the State to take the appropriate measures to protect persons against such discrimination.<sup>13</sup>

### ***The need to strengthen the constitutional right to education***

As highlighted in the IHRC Discussion Document on Economic, Social and Cultural Rights, the existing right to education in the Irish Constitution has proved to be of limited use to children asserting their right to education, leisure and cultural activities, and in particular has fallen significantly short of adequate protection of the rights set out in Article 28 of the CRC. The formulation of the right to free primary education contained in Article 42.4 of the Constitution is more limited than might first appear and the interpretation which the Courts have given this right has ensured that it has not become a strong tool for vindicating children’s rights. In particular the rights of disabled children have received insufficient protection.

## **1.5 Direct legislative incorporation**

A further possible means of giving legal effect to the CRC in domestic law below the levels of constitutional incorporation is direct legislative incorporation. The Government’s report under the ICCPR argues that, as a large number of rights are already recognised in the Constitution and by the Irish courts, to make provision for fundamental rights by way of legislation would lead to a two-tier system of rights. That Government report also argues that where a provision in ordinary law differs from a constitutional norm legislative incorporation would be ineffective and where it is the same legislative incorporation would be superfluous.<sup>14</sup>

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<sup>10</sup> Ibid. at p88.

<sup>11</sup> Ibid. at p94 per Prof. William Duncan.

<sup>12</sup> There are nine grounds of discrimination in the Employment Equality Act 1998 and the Equality Act 2000 and the Government recently commissioned a report on the possible extension of this legislation to cover four additional grounds.

<sup>13</sup> IHRC submission on Ireland’s 4<sup>th</sup> and 4<sup>th</sup> reports under CEDAW.

<sup>14</sup> Ireland’s second report under the ICCPR at para. 15.

Each of these points should be challenged. First, it is clear that many other dualist legal systems have formally incorporated international human rights treaties such as the CRC into domestic legislation. Indeed Ireland itself has given direct legal effect to a number of international treaties.<sup>15</sup> Secondly, it is difficult to see how Article 29.6 of the Irish Constitution could be seen as an obstacle to strengthening the protection of rights under Irish law as, in most cases, the rights set out in these treaties will be supplementary to domestic law and no conflict will arise. Thirdly, the argument that any conflict between existing Irish law and an international treaty such as the CRC prohibits incorporation ignores the fact that incorporating legislation can easily repeal earlier legislation which conflicts with the treaty in question.

It also seems to the IHRC that possible differences between Irish law and the provisions of a treaty that Ireland has ratified cannot justify a refusal to give domestic effect to the treaty. The ratification of international treaties can be seen as acting as a spur to promote compliance of domestic law with treaty law; therefore ratification can be the first stage in a process leading towards incorporation. The view put forward by the Government denies to international law the proper role it should have in promoting and informing law reform and acting as a positive engine for improving domestic protection of rights. It must also be recognised that many human rights obligations can be characterised as obligations of conduct; i.e. the nature of the obligation imposed on the State is of a programmatic nature, and it is not envisaged by the drafters of the treaty in question that the obligation can be exhausted by a State in the short to medium term (e.g. Article 4 of the CRC with respect to economic, social and cultural rights falls into this category).

The IHRC recommends, therefore, that the Government clarify its position in relation to giving direct effect to the human rights treaties through primary legislation. In addition to giving constitutional expression to the CRC, there are many areas of legislation which could also usefully incorporate Articles of the CRC. In this regard, the IHRC notes that the Government has already taken some steps to give legal effect to aspects of the CRC through legislation in particular areas of policy (e.g. the Child Care Act 1991).

#### **1.6 Potential role of the CRC in governing administrative action**

The model chosen to give legal effect to the ECHR in Irish law, the European Convention on Human Rights Act 2003, requires public bodies to carry out their activities in a manner compatible with the provisions of the Convention and obliges courts to interpret Irish legislation to be compatible with the ECHR “insofar as is possible”. This form of legislative incorporation falls short of direct incorporation and the formulation adopted in section 3 of the Act was criticised at the time by the IHRC as being too limited in that: (i) the definition of “organs of the State” was unduly restricted; and (ii) the remedies available where a public body acted in a non-compliant manner were too weak.<sup>16</sup> At this point, it is too early to fully assess the

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<sup>15</sup> Examples of where this has happened include the Vienna Conventions on Diplomatic and Consular Immunities; the Hague Convention on the Civil Aspects of International Child Abduction; and the European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration.

<sup>16</sup> See IHRC submission on the European Convention on Human Rights Bill 2001, June 2002.

effectiveness of this provision in promoting compliance of public bodies with the ECHR.

Should a similar model of incorporation be applied in relation to giving effect to the CRC, the obligation in Article 12 of the CRC to involve children in decision-making processes could potentially make a significant impact. The IHRC notes that the National Children Strategy sets out as one of its three goals that “children will have a voice in matters which affect them, and their views will be given due weight in accordance with their age and maturity.” At present this Strategy does not enjoy any legislative status and the IHRC is concerned that there appear to be several areas of Irish law and administrative practice where there is no provision for effective advocacy on behalf of children in proceedings concerning them.

One example is the current system of *guardian ad litem* (GAL). A review of the existing system carried out for the National Children Office in 2004 concluded that the system suffers from the absence of a tight legal framework which defines clearly and unambiguously the role and duties of the GAL.<sup>17</sup> This seems to have led to a situation where the level and quality of involvement by GAL is uneven as is the practice of appointing GALs. This area of law is an example of the significance of the failure to provide express constitutional recognition of the principles set out in Articles 3 and 12 of the CRC. In a broader sense the non-implementation of the Children Act 1997 contributes to the situation whereby there is a worrying absence of any effective representation for children in many categories of private law proceedings. The IHRC emphasises that, while there may be benefits in this form of indirect incorporation, it should not be seen as a substitute for, or as being mutually exclusive to, the more direct forms of incorporation identified in the preceding sections.

### **1.7 Interpretative incorporation**

While Ireland maintains a dualist position with respect to international law, it is established at Irish law that ratification of international treaties can give rise to a presumption that Irish domestic legislation is compatible with those treaties.<sup>18</sup> A further form of giving legal effect to a treaty below direct legal incorporation would be to explicitly oblige the courts to interpret domestic law “insofar as is possible” in a manner compatible with a treaty such as the CRC. This model of incorporation was also adopted in relation to the ECHR.<sup>19</sup> If adopted in relation to the CRC it would greatly increase the penetration of the CRC into the domestic legal system and could also allow courts to give proper consideration to the concluding observations and general comments of the Committee on the Rights of the Child. However, this form

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<sup>17</sup> Nuffield/Capita study para. 6.4, p62

<sup>18</sup> See Hogan and Whyte, *J.M. Kelly: The Irish Constitution*, (4<sup>th</sup> ed.) at 5.3.126.

<sup>19</sup> Section 2 of the European Convention on Human Rights Act 2003 requires courts “In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State’s obligations under the Convention provisions”. Section 4 of that Act also requires courts to have reference to the jurisprudence of the European Court of Human Rights in interpreting the ECHR. See also the IHRC submission on the European Convention on Human Rights Bill 2001, June 2002



of incorporation has its limitations and, while it is too early to assess fully the effectiveness of this form of incorporation in relation to the ECHR, there is some evidence to suggest that State authorities have opposed an expansive exercise of the Court's interpretative role in relation to international treaties in a number of cases.<sup>20</sup> Again, the IHRC emphasises that, while there may be benefits in this form of indirect incorporation, it should not be seen as a substitute for, or as being mutually exclusive to, more direct forms of incorporation.

### 1.8 The CRC before the Irish courts

Domestic courts have a primary function in vindicating the protection of human rights and even in countries with a dualist system of law, courts have demonstrated that significant progress can be made in advancing the protection and awareness of human rights by relying on international treaty obligations. Historically, with the exception of the ECHR,<sup>21</sup> the Irish courts have generally chosen not to look to international human rights treaties either as sources of law or as interpretative authorities and the general practice before the Irish courts appears to indicate that the judiciary tends towards conservatism in this regard. The reasons for the low level of reference to international law are not clear but they may lie partly in a low level of awareness of human rights law among the legal professions and the judiciary, an issue raised by the UN Committee at para.11 of its Concluding Observations in relation to Ireland's first report under the CRC. The failure to incorporate the CRC into domestic law has meant that the Convention is rarely raised in pleadings before Irish courts; however there have been a number of cases in recent years where the Irish Courts have referred to the CRC in their judgments. These cases address a range of issues including the asylum process;<sup>22</sup> the rights of disabled children;<sup>23</sup> and issues around adoption and custody of children<sup>24</sup>.

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<sup>20</sup> See for example the judgment of the Supreme Court in the case of *Kavanagh v. Governor of Mountjoy Prison*, Judgment of March 1<sup>st</sup> 2002, where the Irish Supreme Court refused to apply a decision of the UN Human Rights Committee Against Ireland in relation to a violation of the applicant's right to a fair trial on the basis that the ICCPR had no legal force in Ireland and could not prevail over the provisions of the legislation in question in that case of a conviction under that legislation.

<sup>21</sup> See J. Kelly *The Irish Constitution*, (4<sup>th</sup> ed.), ed. G.Hogan & G. White, (Butterworths, Dublin, 2003).

<sup>22</sup> See the judgment of Fennelly J in the case of *L. & O. v. Minister for Justice, Equality and Law Reform*. See also *Nwole and others v The Minister for Justice, Equality and Law Reform and another*, [2004] IEHC 433 and *Dongo v Refugee Applications Commissioner and another*, [2004] IEHC 366

<sup>23</sup> *O'Donoghue (a Minor) suing by his mother and next friend O'Donoghue v The Minister for Health, The Minister for Education, Ireland and the Attorney General*, High Court, 27<sup>th</sup> May 1993; *Sinnott v The Minister for Education*, Supreme Court, 2001 2 IR 545, 12 July 2001.

<sup>24</sup> *The Area Health Board and W.H. and P.H. v An Bórd Uchtála*, 3<sup>rd</sup> May 2002; *C.M. v Delegacion Provincial de Malaga Consejeria de Trabajo y Asuntos Sociales Junta de Andalucia*, High Court 1999 2 IR 363, 24 March 1999

## 1.9 Optional Protocols to the CRC

### *Optional Protocol on the sale of children, child prostitution and child pornography*

Ireland signed this Protocol on September 7<sup>th</sup> 2000, but has not yet ratified the Protocol. As far as the IHRC is aware, there are no plans to ratify this Optional Protocol at present. The IHRC believes that the Irish Government should consider the question of ratifying the Protocol as a matter of urgency.

### *Optional Protocol on the involvement of children in armed conflict*

Ireland signed this Protocol on September 7<sup>th</sup> 2000 and ratified it on November 18<sup>th</sup> 2002. However, Ireland entered a declaration. The Declaration states:

“Pursuant to article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, Ireland declares:

In general, the minimum age for recruitment into the Irish armed forces is 17. An exception is made in the case of apprentices, who may be recruited at the age of 16. However, apprentices are not assigned to any military duties until they have completed up to four years apprenticeship trade training, by which time all would have attained the age of 18.

Ireland has adopted the following safeguards to ensure that recruitment of personnel under the age of 18 is not forced or coerced:

- All recruitment to the Irish armed forces is voluntary. Ireland does not practise conscription and recruitment campaigns are informational in nature.
- Applicants must fill in an application and are selected on the basis of suitability. Applicants who are offered a position are under no obligation to accept that position.
- All applicants are required to provide proof of age.
- All unmarried applicants who are under 18 must have the written consent of a parent or guardian. In Ireland a person attains full age or adulthood either on attaining the age of 18 or upon marriage if they marry before that age. Under Irish law a person who is under the age of 18 years may not enter into a valid marriage unless an exemption is granted by the Circuit or High Court.”

The IHRC understands that Ireland expects to submit its first report under this Protocol shortly. As typically reports under the Protocol are quite short, it is envisaged that subsequent reports may be integrated into periodic reports on the CRC. In relation to the Declaration above, the IHRC notes that it refers generally to current law and policy in relation to recruitment to the defence forces and not to any constitutional provisions prohibiting conscription of children into the armed forces.

## 2. Children and the criminal justice system

In the view of the IHRC, the system for dealing with children who come into contact with the criminal justice system fails to comply with the standards set out in the CRC and in other international human rights standards including the ECHR, the Beijing Rules<sup>25</sup> and the Riyadh Guidelines<sup>26</sup> in a number of important respects. Here we will set out the most important areas of concern, focussing in particular on the ongoing failure to commence sections of the Children Act 2001, a progressive piece of legislation that would have greatly improved Irish law in this area, and the current proposals, contained in the Criminal Justice Bill 2004 (currently before parliament), to introduce further regressive measures in the field of juvenile justice. These proposals were referred to both the IHRC and the Ombudsman for Children for our observations and the views of the IHRC are similar to those of the Ombudsman in relation to the potential impact of these proposals on children's rights.<sup>27</sup>

### 2.1 Age of criminal responsibility

The issue of Ireland's age of criminal responsibility has been raised by the Ombudsman for Children in her submission and the IHRC supports her stated view that present proposals for change to the Children Act 2001 in this respect run counter to international human rights standards. In its submission to the Minister for Justice, Equality and Law Reform on the Criminal Justice Bill 2004, the IHRC recalled that Article 40(3)(a) of the CRC requires that states establish a minimum age below which children shall be presumed not to have the capacity to infringe the criminal law. The IHRC also relied on Rule 4 of the Beijing Rules and noted that the UN Committee on the Rights of the Child has criticised countries which have ages of lower than 12 in this regard. With specific reference to Ireland, the IHRC also recalls that, during its examination of Ireland's first report under the CRC, the Committee criticised the Government's decision to raise the age to 10 saying it was 'insufficient' given the 'drastic consequences' that children may face when they come into contact with the criminal justice system.<sup>28</sup>

The Criminal Justice Bill 2004 makes a number of changes to the formulation for raising the age of responsibility contained in the 2001 Act, most significantly by allowing children over the age of 10 to be charged in relation to certain serious offences. While the Children Act would have prohibited anyone under the age of 12 from being charged with a criminal offence, it would effectively have created a rebuttable presumption that the age of responsibility is 14. The IHRC has seen no evidence or arguments to justify the decision to adopt what is still a very low age of responsibility. The proposals for exceptions to the general age of responsibility at 12 are particularly regrettable.

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<sup>25</sup> UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) adopted by General Assembly resolution 40/33 of 29 November 1985.

<sup>26</sup> UN Guidelines for the Prevention of Delinquency (Riyadh Guidelines) adopted by General Assembly resolution 45/112 of 14 December 1990.

<sup>27</sup> IHRC *Submissions on Additional Proposals for Amendments to the Criminal Justice Bill (Youth Justice)*, March 2006, available at [www.ihrc.ie](http://www.ihrc.ie).

<sup>28</sup> UN Doc CRC/SR437 Summary Record of the 437<sup>th</sup> Meeting of the Committee on the Rights of the Child: Ireland 03/02/98, para 8.

## **2.2 Detention of children in prisons**

The IHRC notes that Article 37 of the CRC prohibits the detention of children alongside adults. Rule 17 of the Beijing Rules provides that pre-trial detention shall be limited to exceptional circumstances and that children on remand be separated from convicted juveniles. Rule 13.4 of the Beijing Rules also requires that juveniles detained pending trial shall be kept separate from adults, either in a separate institution or in a separate part of an institution also holding adults. In its recommendations following its last visit to Ireland in 2002, the Council of Europe Committee for the Prevention of Torture (CPT) also stated that children deprived of their liberty ought to be held in detention centres designed specifically for persons of their age, offering regimes tailored to their needs and staffed by persons trained in dealing with young persons.<sup>29</sup>

Despite these clear international standards a significant number of children continue to be detained in such prisons. In reply to a parliamentary question of the 16<sup>th</sup> December 2004, the Minister for Justice, Equality and Law Reform stated that on the 10<sup>th</sup> December 2004 there were a total of 82 children detained in penal institutions. He stated that 15 year-old male offenders and 15 and 16 year-old female offenders continue to be committed to prison in exceptional circumstances. The Children Act 2001 would have significantly improved the present situation in relation to detention of children if implemented. However, the Criminal Justice Bill 2004 proposes to remove provisions for separate detention of children under the age of 16 and separate detention of children on remand from the 2001 Act.

The present Bill also contains proposals to place the continuing detention of children in St. Patrick's Institution (which also serves as an adult prison) on a statutory basis. The closure of St. Patrick's Institution as a place of detention for juveniles has been recommended by the Inspector of Prisons and Places of Detention.<sup>30</sup> The IHRC has been informed that it is currently anticipated that boys will continue to be detained in St. Patrick's until at least 2010. While the IHRC accepts that it may not be possible to put in place appropriate facilities for the detention of children immediately, it regards the continuing use of an institution that also serves as an adult prison for this purpose to be unacceptable. The failure to make a firm commitment to address this issue within a reasonable timeframe is particularly regrettable.

## **2.3 Treatment of children in garda stations**

The IHRC notes that the CPT has identified the detention of children in garda stations as an area where there is a particularly high risk of ill-treatment of children and has stressed that it is during the period immediately following deprivation of liberty that the risk of ill-treatment is greatest. In this regard the CPT has stated that it regards the right to notify a relative or another third party of the fact of detention as essential to

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<sup>29</sup> CPT Report 2002, paras. 107-108, referred to in the IHRC's *Observations on the 3<sup>rd</sup> CPT Report*, November 2004. Following publication of the CPT Report the Government decided not to go ahead with plans for a special wing in St. Patrick's Institution for 14 and 15 year olds.

<sup>30</sup> *Report of the Inspection of St. Patrick's Institution by the Inspector of Prisons and Places of Detention 2004-2005* at paragraph 9.3.

the protection of human rights.<sup>31</sup> The IHRC is also concerned about the treatment of children, and in particular vulnerable categories of children, in garda stations (police stations). In particular, the IHRC is concerned that the proposal in the Criminal Justice Bill to remove the obligation on the Garda Síochána (police service) to ensure that a social worker is present where a child identified as being in need of protection is detained, as it recognises that failure to provide appropriate support for such children may be detrimental to their interests. The IHRC is also aware that the existing provisions of the Children Act which require that an adult be present when a child is questioned are often applied in an unsatisfactory manner. While the formal requirement that an adult be present is generally complied with, the adult concerned may not know the child or have a proper understanding of the legal context of their presence. The IHRC recommends that strong guarantees be included in legislation to ensure that: (i) every child has effective and appropriate support and representation when in garda custody; and (ii) children identified as being vulnerable and in need of care receive that care at the earliest opportunity.

The IHRC is also concerned that there is no system in place for the effective independent inspection of garda stations where children are detained. In this regard the continuing exemption of the inspection of garda stations from the remit of the Ombudsman for Children is regrettable and the IHRC supports calls by the Ombudsman for Children for this exemption to be lifted. The role of the Garda Ombudsman Commission in inspecting garda stations may also be of relevance in this regard. The IHRC also recommends that the opportunity be taken in the present Bill to ensure that children are not subjected to extraordinary periods of detention such as those provided for in the Criminal Justice (Drug Trafficking) Act 1996.

#### **2.4 Children in court proceedings**

As indicated in section 2.1 above, the European Court of Human Rights has indicated that court procedures in criminal cases should be adapted to meet the particular needs of children, referring to the jurisprudence of the Beijing Rules and to Article 40(1) of the CRC.<sup>32</sup> The IHRC has broad concerns about the absence of any substantial provision for adapting court procedures for the criminal trial of children, particularly as it appears that children as young as 10 may now be tried in the Central Criminal Court in relation to serious offences (under the proposed changes to the age of criminal responsibility, children under the age of 12 charged with serious offences would be tried in the Central Criminal Court (High Court) rather than in the Children's Court, see section 2.1 above). It is difficult to see how the procedure of an adult court, particularly the Central Criminal Court, could be adapted sufficiently to ensure that children as young as ten would receive a fair trial in line with international human rights standards. The proposals appear to give little or no consideration to what is in the child's best interests. They also appear to be inconsistent with Article 40(1) of the CRC which provides for the right of every child charged with or convicted of infringing the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth.

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<sup>31</sup> *The CPT Standards*, Council of Europe document CPT/Inf/E (2002) 1 Rev. 2004 at p 63.

<sup>32</sup> *T. v. United Kingdom* at paras 79-89.

## **2.5 Anti-social behaviour orders**

The present Criminal Justice Bill also proposes to introduce a system of anti-social behaviour orders in Ireland. This system is modelled on the system currently operating in the United Kingdom, although it appears to differ somewhat from that system, particularly in relation to a number of due process safeguards and appeals against anti-social behaviour orders. Under the proposals, judges are to be afforded a wide discretion as to the type and content of orders to be made. The proposals create the danger that judges may significantly restrict the constitutional and human rights of children subject to anti-social behaviour orders in a manner disproportionate to the impugned behaviour.

While it is stated that anti-social behaviour orders are intended to be used only as a last resort, the IHRC believes that there may be a danger that they acquire an expanded use over time. Most importantly, there is the strong possibility that a system of anti-social behaviour orders will have the effect of drawing a wider group of children into contact with the criminal justice system. The IHRC recommends that careful consideration be given to ensuring that anti-social behaviour orders are not resorted to where a warning or other non-criminal measure is more appropriate. The IHRC also recommends that consideration is given to regular monitoring of Garda practice in relation to anti-social behaviour orders to ensure that these orders are not used to circumvent the procedural requirements of the ordinary criminal law.

### 3. Child poverty

In its concluding observations on Ireland's first report the Committee on the Rights of the Child stated that while it acknowledged the existence of the National Anti-Poverty Strategy, it was concerned about the incidence of child poverty and child homelessness in Ireland.<sup>33</sup> The Committee further recommended that Ireland should strengthen its efforts to ensure that children from vulnerable and disadvantaged groups benefit from positive measures aimed at facilitating access to education, housing and health services. In line with the rights and obligations set out in Articles 4, 6 and 27 as well as the specific rights to health, social security and education set out in Articles 24, 28 and 26 of the CRC, the IHRC wishes to highlight some of the more worrying aspects of the current level of child poverty in Ireland.

#### 3.1 Incidence of child poverty in Ireland

The most up to date statistics from the EU Survey of Income and Living Conditions 2004<sup>34</sup> demonstrate that 9.5% of children aged 0-14 live in consistent poverty.<sup>35</sup> Unfortunately, in this survey children from 15 to 17 are grouped in the age category 15-64 years, 6.5% of whom live in consistent poverty. The IHRC is grateful for the further analysis of these figures carried out by the Children's Rights Alliance (CRA) which indicates that the figure for all children under the age of 18 is 9.7%.

The percentage of children aged 0-14 who live in relative income poverty or who are "at risk" of poverty is 21.2% and for 15-64 year olds the rate is 17.6%.<sup>36</sup> Again the CRA has concluded that the adjusted figure for all children under 18 is 22.4%. At an EU level, Ireland has one of the highest rates of relative child poverty.<sup>37</sup> At an international level, Ireland has one of the highest rates of poverty among developed countries, ranking sixteenth out of the eighteen OECD countries included in the United Nations Human Development Index.<sup>38</sup>

There are a number of specific groups of children who are particularly at risk of living in consistent poverty and relative income poverty. These include:

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<sup>33</sup> Concluding Observations on Ireland's Initial Report, at para. 21

<sup>34</sup> EU Survey on Income and Living Conditions (EU-SILC), 2004, Central Statistics Office, 12<sup>th</sup> December 2005 <http://www.cso.ie/eusilc/default.htm>. In its report, the Government cites the Living in Ireland Survey 2001. The EU-SILC survey has now replaced the Living in Ireland Survey as the EU template for the measurement of poverty and can therefore be regarded as a more accurate measurement of the incidence of poverty. It should be noted that the EU-SILC survey sources its data from private households therefore children living in care, in prison, in hostels, on the streets and Traveller children are not fully represented, see further Fitzgerald E., *Counting Our Children, An analysis of official data sources on children and childhood in Ireland*, Children's Research Centre TCD, 2004.

<sup>35</sup> Ibid. table 8.

<sup>36</sup> Ibid. table 5.

<sup>37</sup> Combat Poverty Agency, *Ending Child Poverty*, 2005, p 45. The Combat Poverty Agency is the state advisory body responsible for developing and promoting evidence-based proposals and measures to combat poverty in Ireland.

<sup>38</sup> UNDP, Human Development Report 2004, <http://hdr.undp.org>

### ***Children living in lone parent households***

Children in lone parent households have a high risk of living in poverty with 31.1% of lone parents living in consistent poverty and 48% of lone parents at risk of living in poverty.<sup>39</sup> This is significantly above the EU-15 average income poverty rate for lone parents (38%).

### ***Children in families of more than three children***

Children in households of more than three children in Ireland have a consistent poverty rate of 9.6%, and 23.1% are at risk of living in poverty.<sup>40</sup>

### ***Children in households where the head of the household is ill or disabled***

Data presented in a Combat Poverty Agency study in 2000 indicates that in 1997 66.8% of children in households where the head of the household is ill or disabled fall below the 50% relative income threshold and that this has risen from 57.1% in 1987.<sup>41</sup> In 2004 47.3% of ill/disabled persons were at risk of poverty and 21.7% lived in consistent poverty. The IHRC understands that the Combat Poverty Agency will shortly be publishing updated figures in this regard.

### ***Children in households where the head of the household is unemployed***

Data presented in a Combat Poverty Agency study in 2000 indicates that in 1997 75.9% of children in households where the head of the household is unemployed fell below the 50% relative income poverty threshold and that this had risen from a rate of 69.7% in 1987.<sup>42</sup>

### ***Children from the Traveller community***

There is a serious data deficit in relation to the experience of poverty amongst the Traveller community; however, there is no doubt that Travellers are a “uniquely disadvantaged group”.<sup>43</sup> A health survey carried out in 1987 reveals that the infant mortality rate amongst the Traveller community is 18.1 per 1000 live births compared with a national figure of 7.4 and the stillbirth rate is 20 per 1000 live births compared to a national figure of 5.4.<sup>44</sup> For more detailed information on the situation of Traveller children see further section 5.1 below.

### ***Children from migrant and refugee families***

Children of non-EU migrants who arrived in the country after May 1<sup>st</sup> 2004 are no longer entitled to receive Child Benefit until they have been habitually resident in the State for 2 years.

### ***Children from asylum-seeking families***

Under the system of direct provision asylum-seekers are accommodated with full board and are entitled to €19.10 per week for adults and €9.60 for each child. In

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<sup>39</sup> Combat Poverty at p. 3.

<sup>40</sup> EU-SILC at table 8.

<sup>41</sup> Nolan B., *Child Poverty in Ireland*, Combat Poverty Agency and Oak Tree Press: Dublin, 2000.

<sup>42</sup> Ibid.

<sup>43</sup> ESRI, July 1986, Paper 131.

<sup>44</sup> Barry & Ors., *The Travellers Health Status Survey*, commissioned by the Health Research Board, 1987.



addition, asylum-seekers are entitled to the same right to primary and secondary education and basic health care as Irish citizens. The direct provision payment must provide for all personal items. Asylum-seekers are not allowed to undertake paid employment regardless of how long they have been in the State. Though the processing of asylum claims has been speeded up, many asylum-seekers still spend several years in Ireland before their claims and any subsequent applications for leave to remain on humanitarian grounds are finally determined. Asylum seekers are no longer entitled to claim Child Benefit as a result of the Habitual Residence Condition, which is particularly concerning given the extremely low subsistence they receive. In its concluding observations on Ireland's first report, the UN Committee on the Elimination of Racial Discrimination (the CERD Committee) has previously expressed concern about the implications of the direct provision system on asylum-seekers.<sup>45</sup>

### ***Children who leave the youth justice system or health board care***

A recent report carried out on behalf of the probation and welfare services found a strong link between referrals to child detention schools and subsequent homelessness. In particular, the study found that while almost two-thirds (62%) of young people surveyed came into detention school from home, over 80% had a current or previous history of care or detention.<sup>46</sup> A study carried out in 2000 found that one-third of the young people leaving health board care and over half of those released from detention schools experienced homelessness or periods in a detention centre during the six months after leaving the institution.<sup>47</sup>

### ***Homeless children and children living in inadequate accommodation***

In 2002 there were 1405 children in families which are homeless. In Dublin there were 640 homeless families in 2002 which included 1140 children.<sup>48</sup> The majority of homeless children in Dublin are under the age of 12 years and over half are under the age of five years. 89% of homeless families are in bed and breakfast emergency accommodation. Research carried out for Focus Ireland in 1999 demonstrates that children of homeless families have histories of incomplete vaccinations, poor nutrition, retarded weight and height growth and that they suffered emotional and mental distress.<sup>49</sup> In addition there are 48,413 households on the housing waiting list, almost 70% of which include children. The vast majority of children on the waiting list are in one parent families. A review of the implementation of action plans to

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<sup>45</sup> Concluding Observations of the CERD Committee, CERD/C/IRL/CO/2, the Committee stated, "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."

<sup>46</sup> Seymour and Costello, *The Study of the Number, Profile and Progression Routes of Homeless Persons Before the Court and in Custody*, 2005.

<sup>47</sup> Ibid. p. 48.

<sup>48</sup> Department of Environment, Heritage and Local Government, *Assessment of Housing Need*, 2002.

<sup>49</sup> Focus Ireland, *The mental and physical health and well-being of homeless families in Dublin*, 1999.

combat youth homelessness under the Youth Homelessness Strategy 2001 is currently being carried out by the Health Service Executive.

### **3.2 National Poverty Strategy (NAPS)**

Under the NAPS the Government has pledged to reduce consistent poverty amongst children to less than 2% by 2007 or to end it completely. In light of the fact that the current rate of consistent poverty amongst children is greater than 9.5%, this target is far from being fulfilled. Recent research carried out by the Combat Poverty Agency found that while child poverty has fallen significantly over the past decade, the number of families with children in relative income poverty (or at risk of poverty) has remained relatively static over time.<sup>50</sup>

### **3.3 Child income support package**

In particular, the Combat Poverty Agency study found that Ireland places far greater emphasis on *income support* (both universal and targeted measures) for families with children than most European countries, but it invests far less in *subsidised quality services* for children. A key finding of this report is that the child support package in Ireland declines by 62% once the net costs of children's services including education, healthcare, housing and childcare are included in the calculation.<sup>51</sup> A key recommendation of the Combat Poverty Agency is that the universal child benefit should be supplemented with a revised *targeted* intervention to assist the poorest children in Ireland. In particular, the Combat Poverty Agency recommends that the Child Dependent Allowance and Family Income Support should be combined into one measure. This should be set against adequacy benchmarks and should be increased in line with inflation.

A number of features of present system merit particular attention:

- Child Benefit (which amounted to 65% of social welfare expenditure on families with children in 2002) this was previously a universal payment but is now subject to the Habitual Residence Condition.
- Child Dependent Allowance (a targeted additional payment to social welfare households who have dependent children) has been frozen since 1994 and the real value of this payment has fallen by 32.4% over that period.<sup>52</sup>
- Family Income Support (a means-tested support paid to low-income working families with children as a top-up income support measure) is generally regarded as particularly useful for low-income working families as many as one third of children in poverty live in working households. However take-up remains low due to poor awareness.
- As of April 2006 parents will now receive €250 per quarter for every child under 6 years of age under the Early Childcare Supplement scheme.

### **3.4 Government subsidisation of essential social services for children**

Ireland is a country that is characterised by relatively low levels of social expenditure in a European context. Total social security contributions in Ireland amounted to just 14.6% of GDP in 2001, compared with an EU mean of 27.5%. As previously stated, the Combat Poverty Agency research found that within the European context the Irish

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<sup>50</sup> Combat Poverty Agency, *Ending Child Poverty*, at p. 84.

<sup>51</sup> *Ibid.* p. 78.

<sup>52</sup> *Ibid.* p. 56.

Government invests relatively low levels in subsidised social services for families with children. In Ireland the net cost of children's education ranges from €17 to €33 per month. Net childcare costs in Ireland are the highest in Europe with a typical monthly outlay of €570 for a variety of different family types. Within the EU Ireland has the second highest net healthcare cost for families with children. Finally, net housing costs were shown to be disproportionately burdensome for low-income families with large numbers of children. Thus, while Ireland provides a generous income support envelope for families with children, it spends comparatively less on assisting families with children to meet the costs of childcare, education, healthcare and housing. As a result, the Combat Poverty Agency study concludes that, when the costs of social services for families and their children are taken into consideration, Ireland's net contribution to child support actually ranks below the EU average.

The Combat Poverty Agency recommends that improvements in social expenditure targeted at services for vulnerable families with children will most likely yield a very positive impact on child poverty. A report by the National Economic and Social Forum<sup>53</sup> sets out a comprehensive policy framework for the expansion of early childhood care and education. The IHRC notes that Combat Poverty supports the recommendations in this report. In addition, early-years programmes should offer a multi-dimensional approach to children and their families, while the valuable contribution of community playgroups should be recognized.<sup>54</sup>

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<sup>53</sup> NESF (2005), *Early Childhood Care and Education*, NESF Report 31

<sup>54</sup> Katherine Howard Foundation (2005). *Valuing Community Playgroups: Lessons from Practice and Policy*, Katherine Howard Foundation and the Health Services Executive: Dublin.

## **4. Family reunification**

Article 10 of the CRC requires the States Parties to deal with applications for family reunification by a child and his or her parents to enter or leave a State Party for the purpose of family reunification in a *positive, humane and expeditious manner*. The Government's second report sets out the situation in relation to refugee children and their families, which is governed by section 18 of the Refugee Act 1996, in some detail.<sup>55</sup> The Government's report goes on to state that "[f]or migrants not covered by the Refugee Act there are administrative procedures in place. The overall objective is to facilitate family reunification where appropriate". The IHRC has submitted a detailed position paper to the Department of Justice, Equality and Law Reform identifying a number of problems with the current operation of the family reunification process for various categories of migrants and making recommendations for law reform in this regard, which we summarise here.<sup>56</sup>

### **4.1 Family reunification for non-EU migrant workers**

As the Government has stated an administrative system is in place to deal with applications for family reunification from immigrant workers employed under the work permit or working visa systems. From the IHRC's examination of this scheme, there appear to be substantial difficulties in relation to accessing transparent and accurate information on the existing procedures. Applications are considered through the application channels for (i) general visa categories in the case of persons from countries requiring a visa to enter Ireland i.e. for temporary or long-stay visas, or (ii) for residency, in respect of persons with visas or who do not require visas to enter the State. However there does not appear to be any facility for making available information on what visa a family member can apply for.

The IHRC has recommended that a statutory scheme should be put in place in relation to family reunification applications by legally resident immigrants in Ireland, which would reflect the standards of international human rights law and be transparent, accessible and timely.<sup>57</sup> With reference to Article 10 of the ECHR, read with Article 3 of the CRC, where such applications involve children, the best interests of the child should be a primary consideration and factors such as the age of the child, their situation in their country of origin and their degree of dependence on their parents should be taken into account.

### **4.2 Family reunification for students**

In general, persons resident in Ireland on student visas enjoy no statutory rights to family reunification and can apply for visas or residency for non-national family members through the same administrative channels as immigrant workers. Some students spend extended periods of time in Ireland and, in the view of the IHRC, should be able to avail of a transparent family reunification process. The IHRC has recommended that the statutory scheme for family reunification applications for legally resident immigrants should include provision for students, and should reflect

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<sup>55</sup> Government's second report to the Committee on the Rights of the Child, p. 97.

<sup>56</sup> IHRC *Submission on Family Reunification*, October 2005 at [www.ihrc.ie](http://www.ihrc.ie).

<sup>57</sup> The main human rights standards referred to in the IHRC Submission are Article 20 of the CRC and Articles 8 and 14 of the ECHR.

the standards of international human rights law including the best interests of the child principle.

### **4.3 Family reunification for Irish citizens**

There does not appear to be any particular system whereby Irish citizens can apply for family reunification of family members living abroad. Rather, the administrative arrangement operating for migrant workers also applies for applications by Irish citizens for family reunification. In practice, there are three main categories of Irish citizens who may be significantly affected by the absence of a specific scheme for processing family reunification requests of citizens: (a) naturalised Irish citizens who have non-national family members; (b) Irish citizens who have formed family units with non-EU nationals; and (c) Irish citizen children born on the island of Ireland who have non-national family members.

#### ***Naturalised Irish citizens***

At present naturalised Irish citizens may have an uncontested family relationship with the persons with whom they seek to be reunited, yet they must still rely on a *discretionary* administrative process whereby other factors may be used to refuse an application for a visa or residency.

#### ***Irish citizens who form family units with non-EU nationals***

In relation to Irish citizens who form family units with non-EU nationals, particular difficulties may arise where the Irish citizen marries a non-EU national with non-EU citizen children. The Irish citizen is again reliant on an administrative discretionary process to determine the validity of his or her family relationship and the rights that may accrue to the members of that family. In such a case, even where the Irish citizen's spouse may enjoy limited rights to reside in Ireland, unless the Irish citizen adopts the children of his or her spouse, their applications for entry and residency may also be rejected on the discretionary grounds available under the existing administrative system.

#### ***Irish citizen children with non-national family members***

This category is made up of children born on the island of Ireland before the 1<sup>st</sup> January 2005 when Irish citizenship and nationality legislation was amended so that qualification for citizenship by birth on the island of Ireland was restricted to children with at least one Irish citizen parent, or children with a parent within certain specified categories of people who have been resident in Ireland for stated minimum periods. Previously Irish law had provided that all children born on the island of Ireland qualified for Irish citizenship.<sup>58</sup>

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<sup>58</sup> The IHRC made submissions to the Minister for Justice, Equality and Law Reform in relation to the Irish Nationality and Citizenship legislation which effected this change and in relation to the 27<sup>th</sup> Amendment to the Constitution which facilitated it *Observations on the Draft Irish Nationality and Citizenship Bill*, August 2004 and *Observations on the Proposed Referendum on Citizenship*, May 2004; both available at [www.ihrc.ie](http://www.ihrc.ie). In its submission on the 27<sup>th</sup> Amendment to the Constitution the IHRC referred to the CRC and expressed concern that the principle of the best interests of the child did not appear to have been given due regard in bringing forward the relevant proposals for constitutional change (at recommendation 5.6).

In relation to Irish children with non-national family members, following the decision of the Supreme Court in the case of *Lobe and Osayande v Minister for Justice, Equality & Law Reform and ors*,<sup>59</sup> an administrative scheme has been put in place to process applications for residency for the parents of Irish citizen children born in the State prior to January 2005. The IHRC understands that a large number of cases have now been processed through this system, with residency being granted in the majority of cases. However, this system does not deal with the question of the residency of other family members of the Irish citizen children, including their minor siblings. Furthermore, the system still retains a discretionary element and a proportion of Irish children continue to be denied basic rights of access to their parents.

Irish citizens (other than certain categories of those who have exercised freedom of movement rights within the EU) have no legal right to family reunification and in this regard they have a lower level of legal protection of their rights to respect for family life than refugees. This distinction on the basis of citizenship appears to the IHRC to be without objective justification and to be a disproportionate interference with the rights of Irish citizens. The IHRC has recommended that with respect to Irish citizens, there should be a *statutory right* to family reunification with non-national family members. Moreover, the IHRC is of the view that naturalisation should remain an important aspect of Irish immigration and residency policy and no substantial changes to residency or family reunification legislation should make it more difficult for long-term residents to acquire Irish citizenship. Furthermore, naturalisation should never lead to a diminution of legal rights.

#### **4.4 Family reunification for refugees<sup>60</sup>**

The IHRC is of the view that the existing statutory scheme relating to family reunification for refugees and their families should be retained and that consideration should be given to broadening the definition of “family” under section 18 of the Refugee Act 1996. This definition should reflect developing conceptions of the family under international human rights law to include non-marital partnerships, same sex partnerships and other relationships of dependence, including grandparents and dependent adults. At present there are Government proposals for reform of this entire area of law which have been set out in an *Immigration and Residence in Ireland Discussion Document*.<sup>61</sup> It is proposed to deal with the question of family reunification in secondary legislation. The IHRC has expressed the view that family reunification should be clearly set out as a statutory right in primary legislation, and that these provisions should be subject to the full rigour of parliamentary scrutiny rather than being provided for in secondary legislation or practice directions at the discretion of the Minister.

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<sup>59</sup> Judgment of 28<sup>th</sup> January 2003.

<sup>60</sup> On the question of reunification of unaccompanied minors seeking asylum in Ireland see section 5.4 below.

<sup>61</sup> See further IHRC Observations on the Immigration and Residence in Ireland Discussion Document, July 2005.

## 5. Vulnerable groups of children

In its concluding observations (para. 14) on Ireland's first report under the CRC, the UN Committee highlighted the issue of discrimination against certain groups of children in Irish society as an ongoing cause of concern. The IHRC shares this concern and has identified a number of groups of children as being particularly vulnerable to violations of the rights contained in the CRC. In this section we focus on four particular groups: Traveller children; children with disabilities; children from religious minorities or non-religious families; and children at risk of human trafficking. However, the IHRC is conscious of many additional groups of children that may be at risk of discrimination and human rights violations, including ethnic minority children, gay and lesbian children and children with mental illness.

### 5.1 Traveller children

Travellers have historically been subject to systematic discrimination within Irish society and continue to suffer disadvantage in many areas. Travellers also face particularly acute violations of the rights to health, adequate accommodation and education under Articles 24, 27(3) and 28 of the CRC. The question of the status of Travellers as an ethnic minority also raises issues under Article 30 of the CRC.

#### *The right to the highest attainable standard of health – Article 24*

In general, there is a lack of up to date and comprehensive data on the health status of the Travelling community, including on Traveller children. Since 1987 no national survey has been carried out the health status of the Travelling community, although a National Traveller Health Strategy 2002-2005 has been devised by the Department of Health and Children.<sup>62</sup> The National Traveller Health Strategy states that Travellers remain disadvantaged in access to health services generally.<sup>63</sup> There is no publicly available review of the extent to which the actions identified in the Strategy have actually been implemented in practice. However, it is clear that the urgent implementation of the various measures proposed in the Strategy is essential for an improvement in the health welfare of Traveller children. The 1987 study reveals that the infant mortality rate amongst the Traveller community was 18.1 per 1000 live births compared with a national figure of 7.4 and the stillbirth rate was 20 per 1000 live births compared to a national figure of 5.4.<sup>64</sup> The occurrence of Sudden Infant Death Syndrome amongst Traveller families in 1999 was 12 times the national figure.<sup>65</sup>

There are no specific targets set in the National Anti-Poverty Strategy (NAPS, see section 3.2 above) in relation to the health status of Traveller children. A Traveller

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<sup>62</sup> National Traveller Health Strategy 2002-2005, Department of Health and Children. This Strategy proposes a broad number of practical actions that aimed at improving the monitoring of Traveller health and improving the various health care responses to the needs of the Travelling community. Traveller Health Units have been established in various Health Service Executive Areas and these Units are required to liaise with the Traveller Health Advisory Committee in the formulation of national policy.

<sup>63</sup> Ibid. p. 24.

<sup>64</sup> Barry and Ors., *The Traveller Health Strategy*, commissioned by the Health Research Board, 1987.

<sup>65</sup> National Traveller Health Strategy 2002-2005 p. 26.

health status and needs assessment, which was due to have commenced in 2004, is still in the process of being commenced. The urgent completion of this study is essential to provide much needed accurate up-to-date data to assess the current status of Traveller health and to inform and influence the provision of health promotion programmes as they apply to Travellers. Furthermore, research carried out demonstrates that Traveller families are over-represented in State care.<sup>66</sup> In the Eastern region alone, about 6% of children in alternative care come from the Travelling community.<sup>67</sup> This research found that Traveller identity is not recognised in policy or planning for child welfare and protection services, and that until the accommodation situation of Travellers is addressed, which places Traveller children's health and well-being at severe risk, it is likely that Traveller children will be over-represented among the population of children receiving welfare and protection services.

### ***The right to adequate accommodation – Article 27(3)***

The Traveller Health Strategy states that the living conditions of Travellers are probably the single greatest influence on Traveller health status and concludes that it is clear that an immediate improvement to the living environment of Travellers is a prerequisite to the general improvement in health status. According to statistics from the Department of Environment, 788 Traveller families continued to live on the roadside in 2003 without access to water, sanitation and electricity. There are approximately 2000 Traveller children within these families living on the roadside. Many other Travellers live in official accommodation that is poorly serviced and maintained, and often situated in unhealthy and dangerous conditions. In addition, 323 Traveller families are living in shared accommodation while many others have had to live in temporary accommodation for extended periods of time.

In 1995 the Report of the Task Force on the Travelling Community recommended that 3100 new accommodation units were required by the year 2000 to provide proper accommodation for the Travelling community which should comprise of 2200 halting site bays and transient bays, and 900 units of standard and group housing. Statistics from 2002 demonstrate that the Government has not implemented this recommendation and has made extremely slow progress providing additional accommodation for Travellers. Only 251 extra families have been provided with halting site accommodation, 192 families with group housing and 665 with standard housing. The Housing (Traveller Accommodation) Act 1998 which requires each of the local authorities to adopt a five-year programme for the provision of accommodation for Travellers and to take "reasonable steps" to implement that programme has not been adequately implemented. There are no sanctions on local authorities who fail to provide suitable accommodation.

In 2002 the Government enacted the Housing (Miscellaneous Provisions) Act which makes trespass, which was previously a civil offence, a criminal offence. Camping on public or private land is now punishable by one month's imprisonment or a fine or by

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<sup>66</sup> Traveller Health Unit, Eastern Region, *Caring for Diversity, Report on a research project to identify the need and potential for culturally appropriate child welfare and protection services for Travellers*, 2003. A brief summary of this research report is available, however the entire research has not been made publicly available.

<sup>67</sup> Ibid. Nationally, Travellers are estimated to be approx. 1% of the total population.



the confiscation of property including caravans. This legislation criminalises the 788 Traveller families who are obliged to trespass on land because of the failure by local authorities to provide suitable accommodation in accordance with their statutory obligation under the Housing (Traveller Accommodation) Act 1998.

### ***The right to education – Article 28***

According to the Census 2002 primary school education is the highest level of education reached by 54% of the Traveller community who are aged over 15 years, (this contrasts to 18% of the general population). A significant proportion of Traveller children under the age of 15 years leave school early (63.2% compared to a national average of 15.4%). In the past, education policy promoted a segregated model of provision for Traveller children. While this practice has ended, organisations such as Pavee Point argue that a contributing factor to the low levels of attainment of Travellers in education is the lack of visibility of Traveller culture within the school system. They state that this may contribute to feelings of isolation experienced by Traveller children in education. In addition, it is often difficult for Travellers to see positive outcomes in staying on in mainstream education as many Travellers experience discrimination in accessing employment. Finally, the poor accommodation and living conditions, poor health and the experience of widespread prejudice and discrimination are factors that further combine to militate against many Travellers participating fully in education.<sup>68</sup>

A Traveller Education Strategy has been drafted by an Advisory Committee on Traveller Education and the Education Disadvantage Committee. This includes representation from Traveller Organisations, Teachers Unions and School Management Authorities. However, the Traveller Education Strategy has not yet been published. In the view of the IHRC, it is important that this strategy reflects the core principles contained in the CRC. In particular, Article 29(1)(c) of the CRC should be a key element in the Strategy, i.e. that the education of the child should be directed to “[t]he development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”.

### ***The right to respect for cultural identity and values – Article 30***

Article 30 of the CRC specifically protects the child’s right to the enjoyment of his or her culture, in community with the other members of his or her group. In its recent report to the UN CERD Committee, the Government has recently adopted the position that Travellers do not qualify as an ethnic minority without offering a sufficient justification for this position.<sup>69</sup> This policy decision is not in compliance with the principle of self-identification identified by the CERD Committee in its General Comment 8 as the relevant test in relation to identification with an ethnic group “where no justification exists to the contrary”<sup>70</sup> and is not in line with jurisprudence in

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<sup>68</sup> Pavee Point, *Travellers and Education*.

<sup>69</sup> First National Report by Ireland as required under Article 9 of CERD on the legislative, judicial, administrative or other measures adopted to give effect to the provisions of the Convention, prepared by the Department of Justice, Equality and Law Reform p. 90.

<sup>70</sup> CERD Committee, General Recommendation 8, A/45/18, 38<sup>th</sup> Session 1990.

the UK which has identified Travellers, including Irish Travellers, as an ethnic group with a long shared history and a distinctive culture.<sup>71</sup> Failure to recognise Travellers as an ethnic group may take Traveller children outside the ambit of Article 30 of the CRC. In its concluding comments on Ireland's first report the CERD Committee expressed concern at the Government's position with regard to the recognition of Travellers as an ethnic group and stated that the recognition of Travellers as an ethnic group has important implications under the Convention (particularly with reference to Articles 1 and 5).<sup>72</sup>

## 5.2 Children with disabilities

Article 23 of the CRC sets out a number of rights specific to children with disabilities. In an Irish context, children with disabilities are particularly disadvantaged in terms of participation in education. According to the Census 2002 primary school level is the highest level of education completed by 43% of disabled people (compared to 18% of the general population). Secondary school level is the highest level of education completed by 32% of disabled people and third level education is the highest level of education completed by 9% of disabled people (compared to a rate of 21% in the general population). One factor that has led to this situation has been the lack of accessible school premises with one study demonstrating that only 17% of second-level schools were estimated to be fully physically accessible.<sup>73</sup> Moreover, the lack of special needs assistants in schools, as well as resource teachers and other necessary supports are further factors that inhibit full access to education. A study carried out in 1997 found that only 23% of schools attended by children with a hearing impairment and only 15% of schools with vision impaired pupils had access to appropriately qualified visiting teachers.<sup>74</sup> This lack of provision is confirmed in the statistics provided by the Ombudsman for Children which states that 20% of complaints received by the Ombudsman's office relate to access to services for children with special needs or disabilities and that 59% of these complaints related to education.<sup>75</sup>

Both in the field of education and in relation to the rights of children with disability more generally the IHRC has made a number of recommendations to Government in recent years. The Education for Persons with Special Educational Needs Act 2004 is a positive step forward in that it sets down a legislative framework to regulate the rights of persons with special educational needs in the education system. However, the IHRC has raised a number of deficiencies in this legislation when it is examined with reference to Ireland's international human rights obligations, including under the CRC, and made a number of recommendations for reform.<sup>76</sup> In particular the IHRC submitted that the Act affords too wide a discretion to teachers and service providers

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<sup>71</sup> *O'Leary & Others v. Allied Domecq & Others*, Central London County Court, Unreported 29<sup>th</sup> August 2000

<sup>72</sup> CERD Committee, Concluding Observations, CERD/C/IRL/CO/2, para. 20.

<sup>73</sup> AHEAD, *Survey of Students with Learning Difficulties and/or Disabilities in Second-Level Schools in the Republic of Ireland*, 1998.

<sup>74</sup> *Ibid.*

<sup>75</sup> 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, p. 27.

<sup>76</sup> IHRC *Submission on the Education for Persons with Disabilities Bill 2003*, September 2003.

in meeting children's needs and expressed concern in relation to the review and appeal processes in the Bill.

The Disability Act 2005 is a second major piece of legislation that impacts upon the rights of children with disabilities. The IHRC has conducted a detailed review of this legislation with reference to Ireland's international human rights obligations including obligations under the CRC and focussed in particular on the standards around the progressive realisation of economic, social and cultural rights for persons with disabilities. The IHRC made a number of recommendations in relation to the legislation and the following issues continue to be matters of concern:

1. The Act fails to put in place a new mechanism to ensure that the basic levels of services for persons with disability will be provided.
2. The definition of disability used in the Act is narrower than that contained in the Equal Status Act 2000 and does not reflect international standards.
3. With reference to article 12 of the CRC, the "independent assessment officers" who are carrying out the assessment are not obliged to involve the applicant and his or her representative or advocate in the assessment process.
4. While the assessment itself is made without reference to resource constraints, in determining a complaint in relation to an assessment, the complaints officer will have regard to issues of resources or practicality. No appeal will lie in relation to the *content* of assessment.
5. In general, exclusion of court proceedings is a central aspect of the Bill and reduces justiciability of any of the determinations or decisions.

In the present report the Government states that there have been important developments regarding equality provision in legislation and provision of education and personal social services for people with disabilities.<sup>77</sup> However, having been centrally engaged in assessing the extent to which this new legislation complies with Ireland's international human rights obligations in the area of disability, the IHRC believes that there remain some significant outstanding issues across the areas of education, health, housing and social welfare provision.

### **5.3 Children from religious minorities or non-religious families**

The right to education for religious minorities and non-religious families is set out explicitly in articles 29(c) and 30 and of the CRC. In Ireland, the lack of multi-denominational and non-denominational education, particularly in the primary sector, is a key problem for children from religious minorities and non-religious families. In general, it can be observed that the growing multi-denominational and multi-cultural nature of Irish society is not adequately reflected in the Irish education sector. Almost all national primary schools are privately owned, largely by religious trustees, but are publicly funded (93% of schools are Catholic schools and 5.8% are Church of Ireland). In the secondary school sector, voluntary secondary schools which educate 61% of second level students are privately owned and managed, the majority are conducted by religious communities and some are run by diocesan authorities. The Committee on the Elimination of Racial Discrimination has expressed concern about this situation and made the following recommendation at its examination of Ireland's first report:

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<sup>77</sup> Government Report, p. 17.

“The Committee, recognizing 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.”

#### **5.4 Children at risk from human trafficking**

Article 35 of the CRC requires the State to take *all appropriate* national, bilateral and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form. Data on child smuggling or trafficking is not publicly available in Ireland, although such data is compiled under the Child Trafficking and Pornography Act 1998. A study completed by the International Organisation for Migration found that in the 17-month period from January 2002 to May 2003 23 cases of investigations or preparation of prosecutions for trafficking in children for labour or sexual exploitation were identified.<sup>78</sup> This figure does not include cases being investigated for which no information is in the public domain or suspected cases which social workers are still exploring. Of the 23 cases identified in the study, 11 involved girls and 5 involved boys, while in 7 cases the sex of the child was not known. Eleven of the cases identified involved children under 12 years, and 12 involved children aged between 13 and 17 years.

Recent reports in the media have stated that of the 3000 unaccompanied children seeking asylum who have come under the care of the State since 2000, 250 have “gone missing”.<sup>79</sup> These media reports cite the Eastern Coast Area Health Board as stating that it is suspected that some children who have gone missing from its care are being used for trafficking or prostitution and that evidence from other countries suggests that this can occur. Further media reports state that independent reviews carried out in relation to the family reunification process for unaccompanied children who enter the State reveal that the reunification is often inadequately validated, rushed and undeveloped.<sup>80</sup> Relying on an internal review of the reunification system, the article concluded that there is no follow-up procedure monitoring and supporting children reunited with family members and legal uncertainty surrounding the system means that it is seen as ineffective from a child protection stand-point.

There is a clear legislative gap in relation to Irish law combating various forms of trafficking in human beings. A recently published Department of Justice, Equality and Law Reform report on the issue of human trafficking recommended that draft legislation should be brought forward at the earliest possible date to give effect to the EU Framework Directive on Combating Trafficking in Human Beings and the EU Framework Directive on Combating the Sexual Exploitation of Children and Child Pornography.

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<sup>78</sup> Conroy P., *Trafficking in Unaccompanied Minors in Ireland*, International Organisation for Migration, August 2003.

<sup>79</sup> These media reports cite as their sources internal Health Service Executive Reports that have been accessed under Freedom of Information legislation that examine services for unaccompanied minors seeking asylum in the South Area Health Board and the East Coast Area Health Board. Emma Browne, *The Village*, 12<sup>th</sup> January 2006 and Carl O’Brien, *The Irish Times*, 27<sup>th</sup> March 2006.

<sup>80</sup> Carl O’Brien, *The Irish Times*, 27<sup>th</sup> March 2006.