

Irish Human Rights and Equality Commission Submission to the Second Universal Periodic Review Cycle for Ireland

September 2015

The Irish Human Rights and Equality Commission (“the Commission” or “IHREC”) is the National Human Rights Institution for Ireland, established under the Irish Human Rights and Equality Commission Act 2014 (“2014 Act”). The Commission has the following statutory remit:

- to protect and promote human rights and equality in Ireland;
- to promote a culture of respect for human rights, equality and intercultural understanding;
- to promote understanding and awareness of the importance of human rights and equality; and
- to work towards the elimination of human rights abuses and discrimination.

In accordance with section 10(2)(h) of the 2014 Act, the Commission is mandated to consult with international bodies or agencies with a knowledge or expertise in human rights or equality.

The 2014 Act established a new Commission, merging the remits of the former Irish Human Rights Commission and Equality Authority. The new Commission enjoys increased institutional accountability to the Houses of Parliament. Section 9(2) of the 2014 Act provides, “the Commission shall ... be independent in the performance of its functions” and the legislative framework establishing the Commission was drafted to ensure that it meets the requirements of the *UN Paris Principles*. Further information relating to the work of the Commission is available at www.ihrec.ie



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**

Irish Human Rights and Equality Commission

Irish Human Rights and Equality Commission Submission to the Second Cycle of Universal Periodic Review

1. Consultations and Methodology: In this submission the Commission draws on its diverse work to measure the Irish Government's progress in advancing the recommendations accepted by Government during UPR in 2011. The Commission also identifies a number of emerging issues of concern.¹ In order to inform this submission, the Commission partnered with the Irish Council for Civil Liberties (ICCL) to engage in public consultations with civil society organisations and members of the public.²

NORMATIVE AND INSTITUTIONAL FRAMEWORK

2. International Obligations³: Since the previous UPR, Ireland has not ratified the CRPD or OPCRPD⁴, OPCAT⁵, OP-ICESCR⁶, Second OP-CRC⁷, CED⁸ and the CoE Istanbul Convention.⁹ Also, Ireland has not ratified CRMW and ECHR Protocol 12, although it has not accepted UPR recommendations in relation to the ratification of treaties.¹⁰ In addition to its failure to ratify the relevant Conventions outlined, the State has not designated an independent national preventive mechanism under OPCAT or national mechanisms under the CRPD.¹¹ The Commission notes and welcomes the establishment of an Inter-Departmental Committee on Human Rights to "assist progress towards ratification by Ireland of key international human rights treaties and reporting to United Nations and Council of Europe human rights monitoring bodies".¹² The Commission further notes the Law Reform Commission ("LRC") is undertaking an examination of the application of international obligations in domestic law in light of Ireland's dualist system and awaits the LRC's recommendations.¹³

Recommendations: (1) progress ratification of outstanding international treaties as a matter of priority; (2) legislative reforms necessary to advance the designation of a National Preventive Mechanism under OPCAT and national mechanisms under the CRPD should be prioritised using participatory methods of engagement.

3. Constitutional Reform¹⁴: Since the previous UPR, Ireland has held two referenda: one on children's rights,¹⁵ and the second extending access to civil marriage on an equal basis regardless of sex.¹⁶ The Commission is concerned that Article 41.2 of the Constitution continues to perpetuate stereotypical attitudes towards women in Irish society.¹⁷ In its previous UPR Submission, the Commission expressed concern that there are inadequacies in the Constitutional equality guarantee.¹⁸ The Commission has expressed concern that Article 40.6.1 of the Constitution which provides for the offence of blasphemy in Irish law, and its statutory counterpart, may not be a proportionate interference with the right of freedom of expression.¹⁹ The Commission notes that the Convention on the Constitution, a participative forum established by Government to consider reform of the Constitution, recommended amending the Constitution to strengthen the protection of economic, social and cultural rights.²⁰

Recommendations: (1) establish a specified timeframe for the replacement of Article 41.2 with gender-inclusive language as a matter of priority; (2) a referendum should be held to amend Article 40.1 of the Constitution to guarantee equality to all and to proscribe discrimination (direct or indirect) in any area of law on non-exhaustive grounds²¹; (3) any proposed amendment in relation to Article 40.6.1 should include a critical examination of the purpose and efficacy of both section 36 of the Defamation Act 2009 and the Prohibition of Incitement to Hatred Act, 1989.²²

4. Human Rights and Equality Framework²³: Progress has been made in strengthening and resourcing Ireland's national human rights institution. The 2014 Act established a new Paris Principle compliant Commission, which enjoys increased institutional independence and accountability to Parliament. The establishment of a Parliamentary Sub-Committee on Human Rights relative to Justice and Equality matters is a welcome development and the Commission notes the considerable efforts by this committee in relation to its oversight of human rights in the State. However, the Commission notes the remit of the Sub-Committee is limited to matters concerning the Department of Justice and Equality and the Department of Defence.²⁴ **Recommendations: (1) continuous**

support should be provided to the Commission through the allocation of a sufficient annual budget; (2) consideration should be given to designating the Commission as an element of the national mechanisms under CRPD and OPCAT, with a matched allocation of resources; (3) a dedicated overarching Parliamentary Committee on Human Rights and Equality should be established with a remit to consider the full range of human rights and equality issues across all government departments.

5. National Action Plan on Human Rights and Equality²⁵: The continued lack of progress in the development of a national action plan on human rights and equality is regrettable. The Commission notes that the 2014 Act introduces an important positive duty on public bodies in this respect. Section 42(1) of the 2014 Act provides that a public body shall, in the performance of its functions, have regard to the need to eliminate discrimination, promote equality of opportunity and treatment of its staff and the person to whom it provides services, and protect the human rights of its members, staff and the persons to whom it provides a service.²⁶ **Recommendation: a national action plan on human rights and equality should be advanced.**

PROTECTION AND PROMOTION OF HUMAN RIGHTS AND EQUALITY

6. Rights of Persons with Disabilities²⁷: Progress has been slow in advancing the rights of persons with disabilities. Part II of the Disability Act 2005 has only been partially commenced.²⁸ As it currently stands, only children born after 1 June 2002 are entitled to apply for an assessment of needs under the 2005 Act (regardless of their age at time of application).²⁹ Relevant sections of the Education for Persons with Special Educational Needs (EPSEN) Act 2004 have also not been commenced. Notably a 2011 Programme of Government commitment to publish an implementation plan for the EPSEN Act has not been advanced.³⁰ The *Comprehensive Employment Strategy for People with a Disability* has not been published and the unemployment rate for people with disabilities increased from 8 per cent in 2004 to 22 per cent in 2010.³¹ The level at which disability-related payments is set fails to take account of the distinctive and additional costs of living with a disability.

Recommendations: (1) key elements of the existing legislative framework for people with disabilities should be commenced as a matter of priority; (2) the Comprehensive Employment Strategy for People with a Disability should be published without further delay; (3) the State should ensure that the cost of living with a disability is taken into consideration when reviewing rates for disability-related social welfare payments. ³²

7. Prison Conditions and Complaints³³: Overcrowding in prisons continues³⁴ and while progress has been made to reduce “slopping out” the practice has not been fully ended.³⁵ The Commission welcomes the publication of the General Scheme of the Criminal Justice (Community Sanctions) Bill which proposes to increase the use of non-custodial community sanctions and urges that this important law reform initiative should be prioritised to reduce overcrowding.³⁶ The Commission notes and welcomes improvements in the prisoner complaints system on foot of recommendations by the Inspector of Prisons.³⁷ The Commission reiterates its concern about the lack of an adequate and independent prison ombudsman for the independent investigation of complaints from prisoners.³⁸ The Commission also reiterates its concerns regarding the State’s failure to separate remand and sentenced prisoners and those detained for immigration related reasons. The Commission is concerned at the State’s failure to put in place a timeframe for the achievement of the total separation of both remand and sentenced prisoners, juvenile³⁹ and adult prisoners and detained immigrants and sentenced prisoners, respectively.

Recommendations: (1) the reduction of overcrowding and the elimination of the practice of “slopping out” should continue to be prioritised; (2) to accelerate a reduction in overcrowding and improvements in prison conditions, legislative reform to increase non-custodial sanctions should be prioritised; (3) an independent Ombudsman to deal with complaints in the prison system should be established; (4) a specific timeframe should be established for the separation of remand and convicted prisoners; (5) in the limited circumstances in which individuals seeking asylum are detained, they should not be detained in prisons or police stations.⁴⁰

8. Protection Against Racial Discrimination⁴¹: The failure by the State to renew the National Action Plan Against Racism which lapsed in 2008 continues. The Office for the Promotion of Migrant Integration (OPMI) monitors racially motivated incidents and supports measures to combat racism; however, without a clear strategy to underpin its activities it is unclear how OPMI statistics will inform State policy.⁴² The Office for the Promotion of Migrant Integration (OPMI) monitors racially motivated incidents and supports measures to combat racism; however, without a clear strategy to underpin its activities it is unclear how the OPMI uses the collated statistics to inform State policy.⁴³ The operation of the Prohibition on Incitement to Hatred Act 1989 (1989 Act) has not been reviewed.⁴⁴ The provisions of the 1989 Act are largely unused with the apparent lack of prosecutions calling into question the effectiveness of this legal framework.⁴⁵ **Recommendations: (1) a robust mechanism to monitor incidents of racism should be put in place and a commitment made to renew the National Action Plan Against Racism; (2) a revision of the existing legal framework on racially motivated crime should be undertaken to ensure an effective law capable of deterring and prosecuting racially motivated offences.**

9. Protection Against Domestic Violence⁴⁶: The Commission welcomes important progress that has been made by the State in this area. Specifically the General Scheme of the Reformed and Consolidated Domestic Violence Bill proposes to consolidate Ireland's legislation in this area, provide for interim barring orders, provide additional supports for victims, including child victims of domestic violence, and will move Ireland closer to its ratification of the Council of Europe's Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention").⁴⁷ The Garda Inspectorate report 2014 found that domestic violence is not always correctly recorded and that there were a 'high number of calls to domestic incidents with low volume of arrests recorded'.⁴⁸ During the recession, refuges reported a lack of space despite an increase for demand.⁴⁹ **Recommendations: (1) reforms to the legislative framework in Ireland that will allow the Government to ratify the Istanbul Convention should be prioritised and advanced; (2) adequate funding**

should be provided to refugees to comply with the Council of Europe recommendation.

10. Traveller Community⁵⁰: Members of the Traveller Community continue to experience multiple barriers to the enjoyment of the right to adequate and culturally appropriate housing⁵¹, education⁵² and healthcare⁵³. In the context of the right to housing, for example, there persists a lack of culturally appropriate housing for the Traveller community and Travellers continue to experience difficulties with eviction and criminalisation in relation to accommodation. While there has been some progress in advancing the dialogue on Traveller ethnicity, the State has not formally recognised Travellers as an ethnic minority.⁵⁴ **Recommendations: (1) priority should be afforded to reducing the barriers preventing members of the Traveller community enjoying equal access to adequate housing, education and health; (2) the State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family; (3) as a matter of priority, Travellers should be recognised as an ethnic minority.**

EMERGING DEVELOPMENTS IN HUMAN RIGHTS AND EQUALITY

11. Direct Provision⁵⁵ and the Rights of Asylum Seekers: procedural elements of rules governing the system of Direct Provision have been found by the High Court to be in violation of the right to family and private life.⁵⁶ Also, the system has been critiqued by numerous domestic⁵⁷, regional⁵⁸ and international⁵⁹ actors due to long delays in the determination of a protection claim, poor living conditions in direct provision centres, adverse impacts on health and well-being and the prohibition on asylum seekers working. A Working Group Report to Government on Improvements to the Protection Process, including direct provision and supports to Asylum Seekers recently issued a series of important and welcome recommendations that need to be prioritised for implementation.⁶⁰ In addition, legislative reform to introduce a single protection procedure that will reduce significant delays in international protection determination should be prioritised.⁶¹ The Commission remains

concerned that potential victims of trafficking continue to be accommodated in direct provision centres for asylum seekers.⁶² The legislative framework, which was found to be inadequate under EU law by the High Court for the identification of all potential victims of trafficking.⁶³ **Recommendations: (1) the implementation of the recommendations of the Working Group on Direct Provision should be advanced as a matter of priority; (2) the advancement of legislative reform to introduce a single protection procedure should be prioritised; (3) the practice of accommodating potential victims of trafficking in direct provision centres should be reconsidered; and (4) the legislative framework, in particular in relation to the identification of potential victims of trafficking should be strengthened.**⁶⁴

12. Right to Reproductive Health⁶⁵: Since the previous UPR, the Protection of Life During Pregnancy Act 2013 (2013 Act) has been enacted.⁶⁶ The 2013 Act was enacted to respond to the finding of the European Court of Human Rights in the case of *A, B and C v. Ireland*.⁶⁷ The Commission notes that the State is constrained in its approach to the *A, B and C* judgment and indeed calls from other international treaty bodies, in the absence of a constitutional amendment on this issue in light of the constitutional recognition of the right to life of the unborn under Article 40.3.3 of the Constitution. This Act allows for terminations in limited circumstances where there is a real and substantial risk to the life of the mother, including in circumstances where the mother is suicidal. The Commission remains concerned that the current legal position in relation to abortion puts in place barriers which impede a woman's right to bodily autonomy, and have a disproportionate negative impact on women from lower socio-economic backgrounds and women who are seeking asylum or migrant women where their immigration status prevents them from travelling.⁶⁸

Recommendation: the Commission⁶⁹ endorses recommendations by various UN Treaty Monitoring Committees that the State take all necessary measures to revise its legal framework on abortion to ensure that it is in line with international human rights law.

13. Right to the Highest Attainable Standard of Mental Health⁷⁰: the Commission welcomes the considerable reduction in the number of adults admitted to psychiatric hospitals.⁷¹ The Commission notes that the level of community mental health services continues to fall short of targets set in the 2006 *Vision for Change Strategy*.⁷² The underpinning legislation for mental health care in Ireland, the Mental Health Act 2001, is in need of reform.⁷³ The Commission welcomes the recommendation, by the Expert Group to review the 2001 Act, that community-based services should be brought within the remit of the Mental Health Commission to provide adequate oversight of these important services.⁷⁴ The Commission recognises that improvements have been made in relation to children and young people admitted to adult psychiatric wards, but remains concerned that despite a target set by the Mental Health Commission that no individual under 18 years should be treated in an adult facility the practice persists.⁷⁵ **Recommendations: (1) prioritisation should be given to the further advancement of the availability of community-based mental health services; (2) the Mental Health Act 2001 should be amended to ensure adequate oversight of community-based services by the Mental Health Commission; (3) all individuals under the age of 18 years should be placed in age-appropriate facilities.**

14. Inequality and Socio-Economic Rights: the Commission notes that the impacts of austerity and cuts in public spending as a result of the financial crisis have had a disproportionate impact on already disadvantaged groups in Irish society.⁷⁶ The Commission has expressed concerns in relation to the adequacy of the right to social security for groups experiencing multiple discrimination including persons with disabilities⁷⁷, lone parents⁷⁸, older people and the increased conditionality on various groups in qualifying for payment.⁷⁹ The ongoing application of the Habitual Residence Condition (HRC) that may have negative impacts on disadvantaged populations including migrants, asylum seekers, victims of domestic violence and Travellers and Roma continues.⁸⁰ The Commission has expressed concern in relation to the rise in homelessness, in particular family homelessness and the lack of availability of adequate social housing. **Recommendations: (1) the adequacy of social welfare payments to**

groups experiencing multiple discrimination and particular disadvantage should be reviewed on an ongoing basis to ensure adequacy and that specific additional costs, such as living with a disability, are taken into consideration⁸¹; (2) the State should review its guidelines implementing the ‘right to reside’ clause of the HRC and adequate training should be provided to decision makers to prevent indirect discrimination in its application⁸²; (3) the application of the HRC to asylum seekers should be reviewed⁸³; (4) the State should take measures to ensure that affordable housing is available and of sufficient quality; (5) the State should consider the introduction of rent limits to reduce the financial pressure on low income individuals and families⁸⁴; (5) the State should consider increasing rent supplement limits.⁸⁵

¹ For the Commission’s engagement with the first UPR process in 2011 see IHRC, [Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland](#), March 2011 [IHRC UPR 2011]; IHRC, [Submission to the UN Universal Periodic Review Mid-Term Report](#), February 2014 [IHRC UPR 2014].

² The ICCL is a non-governmental organisation that advocates on issues relating to human rights in Ireland, see further www.iccl.ie. In partnership with the ICCL, the Commission participated, along with the Department of Justice and Equality, in three consultation meetings with civil society organisations and members of the public in relation to the UPR process in Cork, Galway and Dublin. The Commission hosted the Dublin consultation in its new premises. During the consultations, the Commission outlined its roles within UPR as Ireland’s NHRI, it highlighted some of the thematic areas raised by the Commission in the context of the UPR process in the first round, in particular in areas where insufficient progress has been made by Government, and it opened the floor for input from those who attended the consultation in order to gain a sense of emerging priority issues. The Commission collated this information and used it to inform the present submission. For further information see www.rightsnow.ie

³ UPR Recommendations 106.1-106.6.

⁴ UN Convention on the Rights of Persons Disabilities and the Optional Protocol to the CRPD. Ireland signed CRPD in March 2007, but has not ratified it. It is currently in the process of a programme of legislative reform to be in a position to the ratify CRPD. The Irish Government has indicated that it will publish a roadmap outlining the timeframe within which ratification will be progressed.

⁵ Optional Protocol to the UN Convention against Torture. The Irish Government signed OPCAT in 2007, but has not yet ratified it. The Government has not provided a timeframe for the ratification of OPCAT or for the types of legislative and policy measures to advance progress on ratification. The Government has not provided any information in relation to what type of national preventive mechanism or mechanisms it is likely to designate in accordance with the requirements of OPCAT.

⁶ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Ireland signed OP-ICESCR in March 2012. In its [Report to the UN Committee on Economic, Social and Cultural Rights](#), May 2015 [IHREC ICESCR 2015], the Commission recommended that the Government complete its ratification at the earliest opportunity to ensure that a mechanism is available to remedy potential violations of economic, social and cultural rights where domestic remedies have been exhausted, at section 2.2.

⁷ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Ireland signed the Second OP-CRC in 2000. The Commission notes that Ireland continues to be the only EU Member State which has not yet ratified or acceded to this Optional Protocol.

⁸ Convention for the Protection of all Persons from Enforced Disappearances.

⁹ Council of Europe Convention on preventing and combatting violence against women and domestic violence (“Istanbul Convention”). To date, Ireland has not signed or ratified the Istanbul Convention.

¹⁰ Convention relating to the Rights of All Migrant Workers and Members of their Families; Council of Europe Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on non-discrimination. Ireland signed Protocol No. 12 ECHR in 2000 but has not yet ratified the Protocol.

¹¹ In relation to OPCAT specifically, in an oral Statement to the UN Committee against Torture in March 2011 during Ireland’s first periodic examination, a representative of the Department of Justice and Equality stated that “Ireland is committed to the ratification of the Optional Protocol to the Convention against Torture. Legislation will, however, be required prior to the ratification in order for the National Preventive Mechanism required by the Optional Protocol to be designated.... I am pleased to announce today that the Irish Government approved the preparation of legislation to ratify the Optional Protocol on Tuesday last (18th of May 2011). And while it is not possible, at this present time, to provide an indicative date for the enactment of the legislation every effort will be made to progress the passage of the legislation as quickly as possible”. Following Ireland’s examination, the Committee against Torture in its [Concluding Observations](#) recommended that the Irish Government “expedite the ratification of the OPCAT and the establishment of a national preventive mechanism”, see CAT/C/IRL/CO/1, 17 June 2011. The Government’s Spring/Summer Legislative Programme 2015 identifies the Inspection of Places of Detention Bill as one of the Bills in respect of which Heads have yet to be agreed by Government.

¹² The Inter-Departmental Committee is Chaired by Minister for State for Development, Trade Promotion and North South Cooperation, Seán Sherlock TD.

¹³ In light of Ireland’s dualist legal system the Law Reform Commission is examining the application of international treaties in Ireland’s domestic legal framework. Notably, Ireland has incorporated international treaties into its domestic law through legislative and constitutional means, however, a large number of international human rights treaties have not been incorporated domestically, see further IHREC ICESCR 2015 supra note 6, at section 2.1.

¹⁴ UPR Recommendation 106.9. See further IHRC, *Submission for the Twelfth Session of the Working Group on the Universal Periodic Review: Ireland*, March 2011 [IHRC UPR 2011] at p. 5, para. 11. The Convention on the Constitution was established by Government in 2012 to consider eight key constitutional issues as determined by the Oireachtas. It comprised 100 members, 33 legislators, 66 citizens randomly selected from the electoral register and an independent Chairperson. Among other measures, the Convention on the Constitution recommended amending the Constitution to strengthen economic, social and cultural rights; the removal of the specific offence of blasphemy under the Constitution; and the amendment of Article 41.2 in relation to the role of women in the home. For further information see www.constitution.ie.

¹⁵ Article 42A of the Irish Constitution provides among other matters that the State “recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its law protect and vindicate those rights”. See further IHRC, *Observations on the Proposed 31st Amendment of the Constitution (Children) Bill 2012*, Sept. 2012.

¹⁶ Article 41.4 of the Irish Constitution provides that “Marriage may be contracted in accordance with law by two persons without distinction as to their sex”. See further IHREC, *Policy Statement on Access to Civil Marriage*, February 2015.

¹⁷ Article 41.2 of the Irish Constitution provides “the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State

shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home”.

¹⁸ IHRC UPR 2011 supra note 1.

¹⁹ In the IHRC, [Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic Report under the International Covenant on Civil and Political Rights](#), June 2014 [IHRC ICCPR 2014] at pp. 82-84. Specifically, the Commission has expressed the view that it is uncertain whether the Constitutional offence of blasphemy and its statutory counterpart, the Defamation Act 2009, restricts the right to freedom of expression in a manner that is capable of amounting to a proportionate restriction of this right within the terms of the jurisprudence of the European Court of Human Rights, notwithstanding the doctrine of the margin of appreciation.

²⁰ See further IHREC ICESCR 2015, at section 2.1.

²¹ See IHRC UPR 2011 supra note 1.

²² See IHRC ICCPR 2014 at pp. 82-84.

²³ UPR Recommendation 106.7-106.8, 106.12, 106.13.

²⁴ The [Oireachtas Sub-Committee on Human Rights relative to Justice and Equality Issues](#) was established in 2015 to examine how issues, themes and proposals take account of human rights provisions. However, the Sub-Committee is limited to considering issues that come within the remit of the Oireachtas Committee on Justice, Defence and Equality. The Commission has recommended the establishment of a dedicated Oireachtas Committee on Human Rights and Equality, see Emily Logan, [“Call the State to Account on Direct Provision”](#), December 2014.

²⁵ UPR Recommendations No. 107.25, 107.26.

²⁶ In relation to a national action plan, see further IHRC UPR 2011 supra note 1 at p. 4; IHRC UPR 2014 supra note 1 at p. 4.

Section 42 of the 2014 Act outlines that the Commission is tasked with assisting public bodies to perform their functions in a manner consistent with the section 42 obligation by providing guidance and encouraging public bodies in developing policies and by operating good practice and operational standards in this regard.

²⁷ UPR Recommendations No. 106.1, 106.15, 106.16.

²⁸ See IHREC ICESCR 2015, at section 4.4. See Inclusion Ireland (2013) *Implementing a Disability Strategy: Inclusion Ireland Position Paper*, Dublin: Inclusion Ireland.

²⁹ Ibid.

³⁰ Ibid.

³¹ See D. Watson, G. Kingston and F. McGinnity (2013) [Disability in the Irish Labour Market: Evidence from the QNHS Equality Module 2010](#), Dublin: Equality Authority and ESRI, p. 19. The authors in this study conclude that the differences between people with a disability and people without a disability in the participation rate, the employment rate, the part-time working rate and the unemployment rate are statistically significant in both 2004 and 2010. See also IHREC ICESCR 2015 supra note 6, at section 6.2.2.

³² See further IHREC ICESCR 2015 supra note 6, at section 7.2.1.

³³ UPR Recommendations No. 106.36-106.48.

³⁴ See for example [Report of the Joint Oireachtas Committee on Justice, Defence and Equality on Penal Reform](#), March 2013 which notes that “overcrowding is a pernicious issue which seriously impacts in the ability of the Irish Prison Service to provide safe and secure custody together with structured regime activity for the prison population in its care” at p. 5. In the IHRC ICCPR 2014, the Commission noted that the problems of overcrowding and the poor physical conditions in the State’s prisons are ongoing for in excess of 20 years. For example, in its reply to the UN Human Rights Committee List of Issues in 2014 the State’s statistics point to the fact that of the 15 prisons identified, 8 prisons had more prisoners in custody than there were beds to provide for these prisoners. Improvements have been made by the State in the interim period, see for example [Follow-up material to the Concluding Observations of the UN Human Rights Committee on the Fourth Periodic Review of Ireland](#), July 2015 at pp. 11-12. The Government in this submission notes that “[s]ignificant progress has been made in addressing overcrowding in our prisons in recent years...the number in custody reached a peak of 4621 on 23rd February 2011. Today, 12 June 2015, there are 839 fewer prisoners in custody than there were at the peak level in February 2011, which represents a decrease of 18%”. The Commission notes the publication in September 2014 of the *Strategic Review of Penal Policy* which contains 43 recommendations, a number of which if implemented would contribute to reducing overcrowding.

The Commission welcomes indications by the Minister for Justice and Equality in July 2014 that the Government has agreed in principle to proceed immediately with the implementation of a number of recommendations and urges the Government to ensure implementation of the recommendations of relevance to issues of overcrowding.

³⁵ In the Concluding Observations of the UN Human Rights Committee on Ireland's Fourth Periodic Report the Committee recommended that "[t]he State party should step up its efforts to improve the living conditions and treatment of detainees and address overcrowding and the practice of "slopping out" as a matter of urgency in line with the Standard Minimum Rules for the Treatment of Prisoners", CCPR/C/IRL/CO/01, para. 15. In the Programme for Government, the Government committed to ending the practice of slopping out in the prison system.

³⁶ The General Scheme of the Criminal Justice (Community Sanctions) Bill has been subject to pre-legislative scrutiny by the Oireachtas Committee on Justice, Equality and Defence, see [Report on hearings in relation to the Scheme of the Criminal Justice \(Community Sanctions\) Bill](#), June 2014. The Government's Spring/Summer Legislative Programme 2015 indicates that the Criminal Justice (Community Sanctions) Bill is expected to be published in late 2015.

³⁷ Following a report by the Inspector of Prisons to the Minister for Justice and Equality in March 2012, a new complaints model has been introduced in Irish prisons. The new model provides for four different categories of complaints. The most serious level complaints (assault, or use of excessive force against a prisoner or ill-treatment, racial abuse, discrimination, intimidation, threats or other conduct against a prisoner of a nature and gravity likely to bring discredit on the Irish Prison Service) are subject to investigation by external investigators on behalf of the Prison Governor. At present, there is no appeals mechanism for the most serious level of complaints, with the matter subject to discussions between the Inspector of Prisons and State authorities, and secondary legislation is currently in the process of being drafted, see Office of the Inspector of Prisons 2013-2014, [Annual Report](#), at p. 10. Currently, less serious forms of complaints are not subject to investigation by the Prison Governor in the prison, but there is an internal appeals mechanism in respect of these complaints. In addition to the lack of an appeals mechanism for serious complaints, the system in place does not meet all the recommendations of the Inspector of Prisons. While the Inspector of Prisons does retain a general oversight of all categories of complaint, the Inspector has not been given the power to direct further enquiries; initiate a new investigation; take further evidence; or reverse the finding of the Governor without further inquiry as he has originally recommended, see Inspector of Prisons (2012), *Suggested Prisoner Complaints Model for Irish Prisons*. While welcoming the improvements in the prisoner complaint model, the Commission notes that it does not provide a fully independent system with a robust appeals mechanism for serious complaints. The Commission has recommended on a number of occasions the establishment of an independent Prison Ombudsman as a preferable mechanism for prisoner complaints, see IHRC, *Submission to the UN Human Rights Committee on the Examination of Ireland's 4th Periodic Report under the International Covenant on Civil and Political Rights*, June 2014 [IHRC ICCPR 2014] at p. 42.

³⁸ See IHRC ICCPR 2014 at p. 42.

³⁹ The Commission welcomes the signing into law of the Children Act 2001 (Designation of Remand Centres)(Amendment) Order 2015 in March 2015 which provides that 17 year old boys will be remanded in Trinity House School and Oberstown Boys' School rather than in St. Patrick's Institution, which is a penal institution for adult offenders.

⁴⁰ See IHREC, [Recommendations on the General Scheme of the International Protection Bill](#), June 2015 at pp. 31-33.

⁴¹ UPR Recommendations No. 106.23-106.28.

⁴² The Office for the Promotion of Migrant Integration (OPMI) monitors racially motivated incidents and supports measures to combat racism; however, without a clear strategy to underpin its activities it is unclear how the OPMI uses the collated statistics to inform State policy. Under the 2014 Act, the Commission has a specific role to promote intercultural understanding, and to encourage good practice in intercultural relations, to promote tolerance and acceptance of diversity in the State and respect for the freedom and dignity of each person, see section 10(1)(c) and (d) of the 2014 Act. See further IHREC ICESCR 2015, at section 4.3.

⁴³ Under the 2014 Act, the Commission also has a role to promote intercultural understanding in the State. See Section 10(1) of the 2014 Act.

⁴⁴ The Prohibition of Incitement to Hatred Act. The word “hatred” is defined as “hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation”.

⁴⁵ The Commission welcomes indication by the Minister for Justice and Equality that there is a willingness to review gaps in Ireland’s legislative framework in this area as reported in the media, see Irish Times [“Fitzgerald open to reviewing hate crime legislation”](#), 23 July 2015. See further Jennifer Scheppe & Dr. Amanda Haynes, *Out of the Shadows: Legislating for Hate Crime in Ireland*.

⁴⁶ UPR Recommendations No. 106.49-106.54.

⁴⁷ A number of further positive developments include: during 2015, the Minister for Justice and Equality committed to finalise the second National Strategy for tackling domestic, sexual and gender-based violence and to transpose the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. Also, the Child and Family Agency Act 2014 provides that the functions of the agency shall include the provision of ‘care and protection to victims of domestic, sexual and gender-based violence, whether in the context of family or otherwise’. See further IHREC ICESCR 2015, at section 8.2.

⁴⁸ See Garda Inspectorate Report (2014) *Report of the Garda Síochána Inspectorate: Crime Investigation Report*, Dublin Garda Inspectorate, p. 17. See further IHREC ICESCR 2015, at section 8.2.

⁴⁹ Safe Ireland (2014) *Safety in a time of crisis: Priorities for protection of women and children impacted by domestic violence*, Athlone: Safe Ireland, p. 6. Demand for services in 2012 increased by 36 per cent since the onset of the recession in 2008 while State funding was reduced by 14 per cent overall. The Commission regrets that the number of spaces that are currently available in the State is less than one third of the number that the Council of Europe Taskforce to Combat Violence Against Women recommended be made available, see further Women Against Violence Europe (WAVE) (2014) [Country Report 2014: Ireland](#), Vienna: WAVE. In 2014 there were 21 women’s shelters and 141 family spaces/units in the State.

⁵⁰ UPR 2011 Recommendations 106.30-106.33.

⁵¹ In its reports to international treaty monitoring bodies, the Commission has expressed concern that not enough good quality or culturally appropriate accommodation is being provided to Travellers by local authorities notwithstanding their legislative obligations. The Commission has recommended that the State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family, see further IHREC ICESCR 2015, at section 9.3.

⁵² In the context of the recognised lower educational attainment within the Traveller community, the Commission welcomes the improvement in the retention numbers of Irish Travellers in the secondary schools. However, the Commission notes the removal of supports for Traveller specific education supports and the move towards ‘mainstreaming’ Traveller children into mainstream schools, see further IHREC ICESCR 2015, at section 11.2. In a recent Supreme Court judgment, *Christian Brothers High School Clonmel v. Mary Stokes (on behalf of John Stokes, a minor)*, the Court found that there was insufficient evidence to demonstrate that the child had suffered a ‘particular disadvantage’ as a result of the school’s policy to give preference to children whose parents or siblings attended the school. The outcome of this judgment demonstrates the needs for Government to progress legislative reform to ensure more equitable and transparent admissions policies for primary and second schools in the context of the upcoming Education (Admissions to Schools) Bill 2015. See further Emily Logan [Jan O’Sullivan must ensure schools admission policy allows equality of access](#), April 2015.

⁵³ The Commission has noted its concern in its submission to the UN Committee on Economic, Social and Cultural Rights that Travellers continue to experience poorer health conditions despite being identified as a priority group for investment in targeted health actions. The life expectancy gap between Irish Travellers and the general population has increased in recent years with Traveller men living on average 15 years fewer than the average Irish male. The Commission is particularly concerned at the high rate of suicide amongst the Traveller population and the high rate of infant mortality. The Commission has recommended that the State address the disparities between Traveller health and that of the general population and that specific programmes aimed at Traveller healthcare are adequately resourced and the outcomes monitored to ensure the most efficient and effective use of limited resources in this area.

⁵⁴ The Minister for State at the Department of Justice and Equality with special responsibility for New Communities, Culture and Equality and Drugs Strategy, Aodhán Ó Ríordáin TD, recently held a

roundtable to advance the question of the recognition of Travellers as an ethnic minority. The [Report of the Joint Oireachtas Committee on Justice, Defence and Equality](#), April 2014, recommended such recognition through a statement by the Taoiseach (Prime Minister) or Minister for Justice and Equality in the Houses of Oireachtas (Parliament). See also IHRC, *Submission on the Recognition of the Traveller Community as an Ethnic Minority in the State*, 2013; Equality Authority, [Traveller Ethnicity: An Equality Authority Report](#), July 2006

⁵⁵ The system of 'Direct Provision' was established in the year 2000 to provide direct support to asylum seekers by way of accommodation, food and a weekly allowance while their applications for protection are processed. Once accommodated in a centre, residents are given, by a Community Welfare Officer, a Direct Provision allowance currently set at €19.10 per adult and €9.60 per child. . Direct provision applicants are also entitled to a medical card. Children have an entitlement to primary and secondary education. Asylum seekers are currently not allowed to enter employment, even where they have an independent right to work. In 2004, the introduction of the Habitual Residence Condition created a requirement that applicants should be habitually resident in the State at the time of applying for social welfare payments, limiting access to a number of social welfare payments in the majority of circumstances. Asylum seekers are currently not entitled to jobseeker's allowance, pension, widow or orphan's payment, child benefit or one-parent family payment, carer's benefit, carer's allowance, domiciliary care allowance, respite care grant, or disability allowance when they are not considered habitually resident in Ireland. A Community Welfare Officer may also authorise exceptional needs payments for items such as clothing, baby equipment, or school related needs.

⁵⁶ In the case of *C.A. and T.A. v The Minister for Justice* [2014] IEHC 532 unreported, Mac Eochaidh J. noted that the lack of oral evidence, and the fact that the applicants' evidence was disputed, meant that he could not rule as to whether in this particular case the applicants' constitutional and ECHR rights had been violated because of the conditions and or length of stay in Direct Provision. However, Mac Eochaidh J. found that both the complaints handling procedure and some of rules in the 'Reception & Integration Agency (RIA) House Rules' were unlawful. Mac Eochaidh J. held that, while the Reception and Integration Agency (RIA) is entitled to inspect rooms in Direct Provision centres, the unannounced nature of the inspections was not proportionate. Mac Eochaidh J. also found that requiring somebody to sign in to their home on a daily basis is disproportionate and RIA's need to ensure capacity management at Direct Provision centres could be achieved in a less restrictive manner. The outright ban on residents having guests in their home was also found to be a disproportionate interference with a person's constitutional rights and their rights under the European Convention on Human Rights. In its Policy Statement the Commission also observed that current complaints mechanism within the Direct Provision system lacks the independence to ensure that complaints are handled fairly and impartially, and is too limited in its scope to deal with alleged breaches of human rights that may arise. This is compounded by the fact that asylum seekers are largely excluded from the ambit of the Ombudsman and the Ombudsman for Children.

⁵⁷ IHREC, [Policy Statement on the System of Direct Provision in Ireland](#), December 2014.

⁵⁸ In 2013, the European Commission against Racism and Intolerance (ECRI) in its fourth report on Ireland states, "ECRI's also notes with concern that residents of the Direct Provision centres have little control over their everyday life (cooking, cleaning, celebrating important events), which in many cases impacts negatively on their family life. Moreover, very few activities are organised in the centres (although it has to be noted that the inhabitants, who have freedom of movement can participate in activities outside the centres). ECRI considers that, whereas the centres can serve a very useful role in providing necessary secure accommodation at a short notice, they are unsuitable for lengthy periods of stay; in particular they risk causing harm to the mental health of the residents. ECRI notes that it has been reported that 90% of asylum seekers suffer from depression after 6 months in the Direct Provision system and that they are 5 times more likely than an Irish citizen to be diagnosed with a psychiatric illness. Furthermore, contracts with service providers do not impose any obligations on them to organise activities or train staff so as to acquire necessary intercultural skills", ECRI Report on Ireland, ECRI(2013)1 at para. 115.

⁵⁹ In 2011, the UN Committee on the Elimination of all Forms of Racial Discrimination expressed its concern at '...the negative impact that the policy of 'Direct Provision' has had on the welfare of asylum seekers who, due to the inordinate delay in the processing of their applications, and the final outcomes of their appeals and reviews, as well as poor living conditions, can suffer health and

psychological problems that in certain cases lead to serious mental illness”, CERD/C/IRL/CO/3-4 at para. 20.

⁶⁰ See [Report of the Working Group to Report to Government on Improvements to the Protection Process including direct provision and supports to Asylum Seekers](#), June 2013.

⁶¹ See further IHREC, [Recommendations on the General Scheme of the International Protection Bill](#), June 2015. See also IHREC [Press Release](#), *Recommendations on International Protection Bill 2015 and Direct Provision*, 5 July 2015. The Commission recommended that the Government formally commit to implementing the recommendations of the Working Group on Direct Provision to ensure compliance with international human rights standards. Specifically the Chief Commissioner Emily Logan stated, “[t]he Working Group has delivered a practical report to Government which should now be acted upon without delay. As its next step, we recommend the Government establish an Implementation Group to give effect to the recommendations so that people seeking asylum in Ireland can live with a greater degree of respect and dignity”.

⁶² See IHREC, [Policy Statement on the System of Direct Provision in Ireland](#), December 2014 at p. 19.

⁶³ *P. v the Chief Superintendent of the Garda National Immigration Bureau, the Director of Public Prosecutions, Ireland and the Attorney General* [2013/795 JR].

⁶⁴ See further IHREC, [Recommendations on the General Scheme of the International Protection Bill](#), June 2015, at pp. 18-21.

⁶⁵ UPR Recommendation Nos. 108.4-108.9. The Commission notes the diverse number of recommendations concerning the right to reproductive health during Ireland’s first UPR in 2011 which were not accepted by the Irish Government.

⁶⁶ For a full analysis of the constitutional and legislative position in Ireland in relation to this question see IHREC ICESCR 2015, at section 10.8.1. See also, IHRC (2013), [Observations on the Protection of Life During Pregnancy Bill](#), Dublin: IHRC.

⁶⁷ *A, B and C v. Ireland* (2010), No. 25579/05.

⁶⁸ For full IHREC recommendations in this area see IHREC ICESCR 2015, at section 10.8.1. In this respect the Commission recalls the most recent Concluding Observations of the UN Committee on Economic, Social and Cultural Rights to the effect that “the State party take all necessary steps, including a referendum on abortion, to revise its legislation on abortions, including the Constitution and the Protection of Life During Pregnancy Act 2013, in line with international human right standards; adopt guidelines to clarify what constitutes a real substantive risk to the life of a pregnant woman”, C/C.12/IRL/CO/3 at para. 29. The Commission also recalls the Concluding Observations of the UN Human Rights Committee recommending that Ireland “[r]evise its legislation on abortion, including its Constitution, to provide for additional exceptions in cases of rape, incest, serious risk to health of the mother and fatal foetal abnormality”, CCPR/C/IRL/CO/4 at para. 9.

⁶⁹ Two members of the Commission did not support this recommendation.

⁷⁰ The Commission has prioritised this issue because issues relating to mental health were raised during a number of the public consultations in which the Commission participated with the ICCL.

⁷¹ Admissions fell by 17.4 per cent between 2004 and 2013, see Department of Health (2015) *Health in Ireland Key Trends 2013*, Dublin: Department of Health, p. 37. See further IHREC ICESCR 2015, at section 10.5.1.

⁷² Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health 2001*, Dublin: Department of Health p. 7.

⁷³ Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health 2001*, Dublin: Department of Health p. 7.

⁷⁴ *Ibid.* at p. 101.

⁷⁵ In 2013, the Inspectorate of Mental Health Services examined child admissions to adult wards and discovered that 83 young people were placed on adult wards on 91 occasions on the basis that there were no age-appropriate beds available in child friendly facilities. 60 per cent of these young patients remained in an adult facility for more than three days, while 21 per cent were there for more than 10 days. See Inspectorate of Mental Health Services (2013) *Child and Mental Health Services 2013: Admission of Children to Adult Units 2013*, Dublin: Mental Health Commission, p. 1. See further IHREC ICESCR 2015, at section 10.5.2.

⁷⁶ For an analysis of the impact of austerity on diverse economic, social and cultural rights see IHREC ICESCR 2015. The Commission notes that while the recession and austerity measures have had a detrimental impact on a range of societal groups who are traditionally recognised as being

disadvantaged, some groups have been hit harder than others in particular women, young people and migrants, see IHREC ICESCR 2015, at section 4.5. See further F. McGinnity, H. Russell, D. Watson, G. Kingston & E. Kelly (2014), *Winners and Losers? The Equality Impact of the Great Recession in Ireland*, Dublin: Equality Authority & Economic and Social Research Institute.

⁷⁷ The IHREC recognises the important role disability-related social security payments play in helping to alleviate poverty for people with disabilities given that over half of the household income of adults with a disability comes from social transfers (54%). These payments appear to have had less impact in relieving poverty between 2004 and 2011. The additional cost of living with a disability in 2010 was estimated to be 30 to 33 per cent of a person's average weekly income based on 2001 social security rates. The Commission is concerned that the level at which disability related payments is set is the same for unemployment assistance payments generally, thus failing to take account of the distinctive and additional costs of living with a disability – for example transport costs. See IHREC ICESCR 2015, at sections 7.2.1 and 4.5. See also J. Cullinan, B. Gannon and S. Lyons (2010) "Estimating the Extra Cost of Living for People with Disabilities", *Health Economics*, June 2010; D. Watson & B. Nolan (2011), *A Social Profile of People with Disabilities*, Dublin: ESRI and Department of Social Protection.

⁷⁸ In its submission to the UN Committee on Economic, Social and Cultural Rights, the Commission notes that a series of changes to the eligibility criteria for the One Parent Family Payment, which is designed to support single parents on low incomes, has significantly affected these parents, the majority of whom are women. In 2015, the Government ceased access to payment for lone parents whose youngest child is seven years or over. Lone parents with children whose youngest child is aged between seven and thirteen years will be placed on a Jobseekers Transition Allowance payment which is means-tested but will allow the applicant to seek part-time work. However, lone parents whose youngest child is fourteen or older will be required to seek and accept full-time work under the same conditions and rules that apply to single people with no children. Experts analysing these reforms have shown that these changes will impact negatively on thousands of working lone parents who will be financially worse off with some likely to give up part-time employment and with others experiencing loss of access to other care and education supports. See Dr. Mary Murphy, "Ireland's lone parents, social welfare and recession", *The Irish Community Development Law Journal* Vol. 2(2) 2014.

⁷⁹ In its submission to the UN Committee on Economic, Social and Cultural Rights the Commission notes the increase in social security controls since 2011 which have targeted unemployed job-seekers, lone parents and young people in particular. The Commission recommended that the State implement social security sanctions in a transparent and accountable manner and regularly review their use to ensure that they are not causing increased poverty and exclusion for vulnerable groups, see IHREC ICESCR 2015, at section 7.3.

⁸⁰ IHREC ICESCR 2015, at section 7.7.

⁸¹ *Ibid.*, at section 7.1.1–7.1.4.

⁸² *Ibid.*, at section 7.1.1.

⁸³ *Ibid.*, at section 7.1.2.

⁸⁴ *Ibid.*, at section 9.2.1.

⁸⁵ *Ibid.*, at section 9.2.1.