

***Comments on Ireland's
16th National Report on
the implementation of the
European Social Charter***

May 2019



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

Contents

| | |
|---|-----------|
| Introduction | 1 |
| Article 7, para 4: The development needs of adolescents | 2 |
| Article 7, para 10 & Article 17, para 1(b): The special protection of children against abuse and exploitation | 2 |
| Legal and policy framework | 2 |
| Availability of comprehensive data | 3 |
| Availability of specialised systems and services | 4 |
| Online abuse and exploitation | 5 |
| Trafficking | 5 |
| Unaccompanied minors | 8 |
| Measures taken to prevent the abuse and exploitation of children in institutional settings and by members of religious bodies | 10 |
| Article 8, para 1: The provision of maternity benefits and leave | 11 |
| Article 8, para 3: Breastfeeding supports | 12 |
| Article 16: The right of the family to social, legal and economic protection | 12 |
| Provision of family housing | 12 |
| <i>Access to adequate housing</i> | 13 |
| <i>Family homelessness</i> | 14 |
| Provision of accommodation to Traveller and Roma families | 17 |
| Domestic violence | 18 |
| Availability of childcare | 20 |
| Economic protection of families | 21 |
| Article 17, para 1: The provision of care and assistance to children | 23 |
| Children in conflict with the law | 23 |
| <i>The age of criminal responsibility</i> | 23 |
| <i>Referrals to diversion</i> | 23 |
| <i>Children involved in court proceedings</i> | 25 |
| <i>Children in detention</i> | 26 |
| Children's access to mental health services | 27 |
| Children's access to disability services | 29 |
| <i>Coordinated services</i> | 29 |
| <i>Assessment of need process</i> | 29 |

| | |
|---|-----------|
| Children in public care | 30 |
| Article 17, para 2: Children's right to education | 31 |
| Access to and participation in education | 31 |
| <i>Socio-economic gradient in education</i> | 31 |
| <i>Traveller and Roma children</i> | 32 |
| <i>Diversity in education</i> | 34 |
| <i>Children living in Direct Provision and homeless accommodation</i> | 35 |
| <i>Children with disabilities</i> | 36 |
| Reduced timetables | 37 |
| The cost of education | 37 |
| <i>Primary and secondary education</i> | 37 |
| <i>Further and third-level education</i> | 38 |
| Article 19, para 1: Integration of migrants | 39 |
| Article 19, para 4: Equal treatment of migrants | 41 |
| Access to the labour market | 41 |
| Accommodation | 43 |
| Article 19, para 6: Family reunification | 44 |
| Article 19, para 7: Access to legal proceedings for migrants | 45 |
| Article 27, para 3: Discrimination on the grounds of family status | 46 |

Introduction

The Irish Human Rights and Equality Commission (“the Commission”) is Ireland’s “A” Status National Human Rights Institution and the National Equality Body. In its *Strategy Statement 2019–2021*, the Commission has committed to prioritising the following thematic areas:

- Promoting access to justice;
- Socio-economic rights and the social protection of all families and individuals, including in the areas of housing, health and decent work;
- Combatting racism and promoting intercultural understanding; and
- Disability.¹

On 30 October 2018, the Government of Ireland submitted its 16th National Report to the European Committee of Social Rights (“the Committee”) on the implementation of the European Social Charter (“the Charter”) from January 2014 to December 2017.² This National Report is focused on the accepted provisions in thematic Group 4, ‘*Children, Families and Migrants*’. The purpose of this submission is to respond to the National Report and provide additional information with regard to the protection of human rights and equality in Ireland during the reporting period.³

The Commission notes that Ireland has not accepted the following provisions of the Charter:

- Article 8(3) on the right of employed mothers who are nursing their infants to be entitled to sufficient time off for this purpose;
- Article 21 on the right of workers to be provided with information and consulted by their employer, including about decisions which could have an important impact on their employment situation;
- Article 27(1)(c) on the responsibility of States to develop or promote public or private services, in particular child day-care services and other childcare arrangements; and
- Article 31(1-3) on the right to housing, including the responsibility of States to promote access to housing of an adequate standard.

The State was invited to provide written information in June 2010 and May 2015 on these provisions but failed to fulfil its obligations in this regard. The next examination of the non-accepted provisions will take place in 2020.⁴ The Commission calls on the State to provide

¹ Irish Human Rights and Equality Commission, [Strategy Statement 2019-2021](#) at p. 8.

² Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019).

³ The Commission has previously commented on Ireland’s 14th and 15th National Reports on the implementation of the European Social Charter. See Irish Human Rights and Equality Commission, [Comments on Ireland’s 14th National Report on the implementation of the European Social Charter](#) (2017) and Irish Human Rights and Equality Commission, [Comments on Ireland’s 15th National Report on the implementation of the European Social Charter](#) (May 2018).

⁴ Council of Europe, [Third Report on Non-Accepted Provisions of the European Social Charter: Ireland](#) (May 2016).

the Committee with written information as part of this process and to fully review the possibility of accepting all provisions under the Charter.

Article 7, para 4: The development needs of adolescents

A 2016 report from the Economic and Social Research Institute (“ESRI”) highlighted that a third of all 17 and 18 year olds who were still in school had part-time jobs. It found that the average time spent working during term in a part-time job was 9 hours per week, with an average weekly income of €72.⁵ Recent statistics from the Department of Employment Affairs and Social Protection have highlighted that the number of 16 and 17 year olds in paid employment has increased from just under 25,000 in 2015 to 30,650 in 2017, an increase of more than 20%. According to these statistics, 93 young people under the age of 18 earned €20,000 or more and 1,054 earned between €10,000 and €20,000 in 2017.⁶ As identified by the Committee⁷ and confirmed in the National Report,⁸ comprehensive data is not available on children working for close relatives. **The Commission recognises that the introduction of decent and age-appropriate work can play an important developmental role in the lives of adolescents. However, it notes that the significant rise in the number of adolescents in employment may have an impact on their rights to education and to rest, leisure, play, recreational activities, cultural life and the arts.**⁹

Article 7, para 10 & Article 17, para 1(b): The special protection of children against abuse and exploitation

Legal and policy framework

The Commission notes that the *2030 Agenda for Sustainable Development* contains a specific target (SDG 16.2) to ‘end abuse, exploitation, trafficking and all forms of violence against and torture of children’.¹⁰ As highlighted in the National Report,¹¹ there have been important legislative developments in recent years focused on combatting the sexual abuse and exploitation of children, including the *Criminal Law (Sexual Offences) Act 2017* and the *Children First Act 2015*. However, it has been repeatedly highlighted to the State, including by the Commission, that these advancements are hindered by the lack of a dedicated and integrated strategy to respond to all forms of violence against children.¹² Furthermore,

⁵ Economic and Social Research Institute, [Growing Up in Ireland: Education and Early Work Experiences](#) (November 2016).

⁶ Dáil Éireann Debate, [Social Insurance Data](#) (15 January 2019).

⁷ European Committee of Social Rights, [Conclusions 2011: Ireland - Article 7-4](#).

⁸ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 21-22.

⁹ Committee on the Rights of the Child, [General Comment No. 20 on the implementation of the rights of the child during adolescence](#) (6 December 2016) at p. 22.

¹⁰ UN General Assembly, [Resolution adopted by the General Assembly on 25 September 2015 – Transforming our world: the 2030 Agenda for Sustainable Development](#) (2015) UN Doc. A/RES/70/1.

¹¹ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 31-32.

¹² See Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland’s Combined Third and Fourth Periodic Reports](#)

Ireland continues to be the only European Union (“EU”) Member State which has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.¹³ Ireland also signed the Budapest Convention in 2011 and the Lanzarote Convention in 2007 but has yet to ratify either of these instruments.¹⁴ **The Commission is concerned about ongoing delays in ensuring that the necessary policy and human rights framework is in place to combat the abuse and exploitation of children.**

Availability of comprehensive data

The UN Special Rapporteur on the sale and sexual exploitation of children has raised concerns about the ‘absence of regularly gathered, comprehensive data on the scope and different forms of sexual abuse and exploitation of children in Ireland’. She considers it probable that the lack of reporting on sexual offences against children obscures the scope of the problem. In particular, there is an absence of disaggregated data which enables the specific vulnerabilities of certain groups of children to be identified, including children with disabilities, children in care, children from the Traveller and Roma communities and children in the Direct Provision system.¹⁵

According to ECPAT, official and reliable data on the exploitation of children in prostitution is difficult to find in Ireland, but the presence of children in brothels has been reported with victims being predominantly Irish or EU citizens.¹⁶ A recent review by the Garda Inspectorate in Ireland also documented numerous issues with how crimes against children are being recorded by An Garda Síochána,¹⁷ making it difficult to identify whether a crime involves sexual abuse, exploitation or trafficking or whether it was committed via the internet. The review also found long delays in the recording of crimes.¹⁸ The Commission notes that the Inspectorate’s recommendation for these recording practices to be improved has only been accepted by the Government ‘subject to operational feasibility’.¹⁹ **The**

(December 2015) at p. 17; Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at pp. 13-14; and Garda Inspectorate, [Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate](#) (December 2017) at pp. 9-10.

¹³ The Minister for Children and Youth Affairs recommended ratification of this Optional Protocol in January 2019 as Ireland now meets ‘all legal requirements’. See Department of Children and Youth Affairs, [Ireland joining international stand against sale of children, child pornography and child prostitution](#) (2 January 2019).

¹⁴ The Minister for Justice and Equality recently noted that additional legislative measures and stakeholder work are still required before these Conventions will be ratified. See Dáil Éireann Debate, [Topical Issue Debate](#) (16 January 2019).

¹⁵ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at pp. 6, 9, 13.

¹⁶ ECPAT, [Country Overview: Ireland – A report on the scale, scope and context of the sexual exploitation of children](#) (November 2018) at pp. 3, 7.

¹⁷ An Garda Síochána is the national police service, and the Garda Inspectorate is an independent statutory body focused on ensuring that the resources available to An Garda Síochána are used to maintain and achieve the highest levels of effectiveness and efficiency in its operation and administration, as measured against best international practice.

¹⁸ See Garda Inspectorate, [Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate](#) (December 2017) at pp. 17, 122-124.

¹⁹ [First Progress Report of the Inter-Agency Implementation Group](#) (11 October 2018) at p. 27.

Commission is of the view that limitations with the data collection and recording systems need to be addressed as a matter of priority, to ensure that reliable and disaggregated information is available on the scale and different forms of abuse and exploitation of children in Ireland.

Availability of specialised systems and services

In its 2016 Concluding Observations on Ireland, the Committee on the Rights of the Child (“CRC Committee”) recommended that the State ensure the allocation of adequate resources to the Child and Family Agency to enable it to respond to child protection referrals and address the needs of children at risk in a timely manner.²⁰ In December 2017, 4,892 cases referred to the Child and Family Agency were awaiting the allocation of a social worker, of which 818 were deemed to be ‘high priority’. Three hundred and forty-six of these high priority cases had been awaiting the allocation of a social worker for more than 3 months.²¹

The Commission is also concerned about reported issues with the response to child sexual abuse cases within the criminal justice system, including the involvement of ‘inexperienced and untrained’ Gardaí at all stages of the investigation; inconsistencies and difficulties in obtaining evidence due to delays; and barriers to structured joint-agency working, resulting in the multiple interviewing of children.²² Obtaining timely and robust assessments for child victims of sexual abuse has been described as a ‘geographical lottery’, with some parts of the country having no access to specialist services and relying on the assessment of social workers with inadequate training.²³

The Special Rapporteur on the sale and sexual exploitation of children has highlighted that there is no national therapeutic service for child victims of abuse, meaning that they are not guaranteed counselling that is appropriately specialised. Delays in court proceedings can also impede timely decisions on the provision of care and recovery services to a child victim.²⁴ Where services do exist, waiting lists can act as a barrier to access. For example, one specialised therapy service for child victims of sexual abuse had a waiting list of 96 children in December 2016.²⁵ Requiring children to wait and to travel long distances for assessments and treatments can ‘compound the harm’ and compromise the collection of forensic evidence.²⁶ **The Commission is concerned that, in the absence of specialised**

²⁰ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at para 38.

²¹ Child and Family Agency, [National Performance and Activity Dashboard](#) (December 2017).

²² Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 7; Garda Inspectorate, [Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate](#) (December 2017) at pp. 9-11, 19, 91-92, 153-154, 190 and Child Care Law Reporting Project, [An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court](#) (March 2018) at pp. 50-51.

²³ Child Care Law Reporting Project, [An Examination of Lengthy, Contested and Complex Child Protection Cases in the District Court](#) (March 2018) at pp. 100-101.

²⁴ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at pp. 13-14.

²⁵ CARI, [Child Victims of CSA continue to wait for services and justice](#).

²⁶ Children’s Rights Alliance, [Report Card 2019](#) (February 2019) at p. 88.

procedures and services, child victims of abuse and exploitation may not be protected from revictimisation and secondary trauma.

Online abuse and exploitation

There have been recent developments in the area of online safety of note, including the publication of an *Action Plan for Online Safety*²⁷ and legislative proposals for the establishment of an Online Safety Commissioner.²⁸ These measures are welcome as investigations by Europol have highlighted that persons responsible for child sexual exploitation in Ireland are becoming increasingly ‘forensic aware’.²⁹ Five hundred and twenty-four of the 5,789 reports received by the national reporting mechanism for child sexual abuse materials in 2017 identified sources which constituted child sexual abuse under Irish law, representing a 44% increase on the number of these materials identified in 2016.³⁰ 79% of these sources featured children appearing to be aged 0 to 12, while 6% featured children aged 0 to 3.³¹ Furthermore, the number of children referred to the Garda Youth Diversion Programme for possession of child sexual abuse materials almost trebled from 21 in 2016 to 59 in 2017.³²

The Commission notes that the 2017 report by the Garda Inspectorate highlighted serious failings in the process of receiving, investigating and tracking online referrals of child sexual abuse materials by An Garda Síochána. In particular, it found that the Online Child Sexual Exploitation Unit was not sufficiently resourced and that there were unacceptable delays in conducting forensic examinations of devices.³³ **The Commission is concerned that, in responding to the Garda Inspectorate’s recommendations to combat the dissemination of child sexual abuse materials, the Government has not put a concrete implementation plan in place but has referred to them as ‘somewhat aspirational’, ‘resource-intensive’, and ‘particularly difficult to put into effect’.**³⁴

Trafficking

Ireland ratified the *International Labour Organisation Forced Labour Protocol, 2014* on 4 February 2019.³⁵ The Commission also notes the ongoing Human Trafficking and Exploitation Project which is focused on the collection and analysis of data on victims of trafficking across Ireland. This ‘all-island’ project involves engagement and information-

²⁷ Merrion Street, [Taoiseach launches Government’s Action Plan for Online Safety](#) (11 July 2018).

²⁸ Merrion Street, [Minister Bruton Proposes New Law to Protect Children Online](#) (4 March 2019).

²⁹ ECPAT, [Country Overview: Ireland – A report on the scale, scope and context of the sexual exploitation of children](#) (November 2018) at p. 8.

³⁰ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 7.

³¹ Internet Service Providers Association of Ireland, [79% of child sexual abuse imagery found to feature children aged 0 to 12](#) (4 October 2018).

³² Children’s Rights Alliance, [Report Card 2019](#) (February 2019) at p. 84.

³³ Garda Inspectorate, [Responding to Child Sexual Abuse: A follow up Review from the Garda Inspectorate](#) (December 2017) at pp. 226-227, 235.

³⁴ [First Progress Report of the Inter-Agency Implementation Group](#) (11 October 2018).

³⁵ Merrion Street, [Ireland agrees to ratify the ILO Forced Labour Protocol](#) (28 January 2019).

sharing between An Garda Síochána, the Health Service Executive, the Department of Justice and Equality in Ireland, the Police Service of Northern Ireland and the Department of Justice in Northern Ireland, as well as academics working in the field of human trafficking.³⁶

As reported by a number of monitoring bodies, Ireland is both a destination and source country for child victims of sex trafficking and forced labour.³⁷ According to the Anti-Human Trafficking Unit in the Department of Justice and Equality, the authorities identified 20 child victims of trafficking from 2013-2017 (out of a total 283 victims). There were 3 reports of child trafficking in 2017, with victims originating in Ireland, Europe and Africa. No prosecutions relating to child trafficking cases were initiated in 2017.³⁸

The Commission appeared as *amicus curiae* in the case of *P. v. The Chief Superintendent of the Garda National Immigration Bureau & Ors* in 2015, wherein the High Court found that the State's administrative scheme for the protection of victims of human trafficking is inadequate under EU law aimed at combatting trafficking in human beings.³⁹ The Council of Europe Group of Experts on Action against Trafficking in Human Beings ("GRETA") has also urged the State to review the victim identification procedure and decision-making process as a matter of priority and to place protection and assistance measures for victims of trafficking on a statutory basis.⁴⁰ Furthermore, GRETA called on the Irish authorities to set up a specific identification mechanism that takes into account the special circumstances and best interests of children and involves child specialists.⁴¹ As highlighted to the Committee in 2018,⁴² the Government made a commitment to carry out a fundamental review of the formal identification process for victims of trafficking in its *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* (2016). Furthermore, it committed to 'addressing the possibility' of establishing a specific identification mechanism for child victims of trafficking, informed by a review of the data collection systems in place.⁴³ The Commission has criticised the use of such prospective and exploratory language, regarding it

³⁶ A. Jacques, [Limerick to lead human trafficking and exploitation project](#) (13 June 2018 – Limerick Post).

³⁷ ECPAT, [Country Overview: Ireland – A report on the scale, scope and context of the sexual exploitation of children](#) (November 2018) and US Department of State, [2018 Trafficking in Persons Report](#) (June 2018) at p. 237.

³⁸ Trafficking for the purposes of labour exploitation, sexual exploitation and forced criminality constituted one case each. See Department of Justice and Equality, [Trafficking in Human Beings in Ireland: Annual Report 2017](#) (August 2018).

³⁹ Irish Human Rights and Equality Commission, [IHREC calls for immediate action to protect victims of human trafficking following High Court judgment](#) (2015). The State system of recognition of suspected victims of trafficking, as found in this judgment and highlighted in the Commission's submissions as *amicus curiae*, is too adversarial and places too heavy a burden of proof on the alleged victim.

⁴⁰ GRETA, [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#) (September 2017) at pp. 12, 14, 33-34, 38.

⁴¹ GRETA, [Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round](#) (September 2017) at p. 41.

⁴² Irish Human Rights and Equality Commission, [Comments on Ireland's 15th National Report on the implementation of the European Social Charter](#) (2018) at p. 20.

⁴³ Department of Justice and Equality, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#) (2016) at p. 72.

as representing a weak commitment on the part of the State to implement GRETA's recommendation.⁴⁴

The Commission remains concerned about the State's continued reliance on an inadequate administrative scheme for the recognition and protection of victims of trafficking. The US State Department downgraded Ireland to Tier 2 status in its *Trafficking in Persons Report 2018*, due to what it termed 'chronic deficiencies' in the victim identification process.⁴⁵ The State indicated in its follow-up report to GRETA in October 2018 that work continued on the review of this process in 2017 and 2018, but that 'the review is not complete'.⁴⁶ Officials in the Department of Justice and Equality have also indicated to the Commission that there are currently no plans to introduce primary legislation regarding the provision of assistance to victims.⁴⁷ **The Commission is concerned that the 'fundamental review' of the victim identification process does not seem to be subject to concrete timelines or clear outcomes, including with regard to the establishment of a specific identification mechanism for child victims of trafficking. The current administrative arrangements for the identification and protection of victims also need to be placed on a statutory basis, with special provision for children in this regard.**

The Commission has welcomed the State's commitment in the *Second National Action Plan* to ensure best practice in age assessment procedures.⁴⁸ However, the *International Protection Act 2015* provides for medical examinations to determine the age of an applicant,⁴⁹ despite international and EU law stating that such a medical model should only be used as a last resort.⁵⁰ The Commission has also previously raised its concerns that the legislation does not provide a definition of what medical techniques may be used as part of the assessment process.⁵¹ **The Commission is concerned that Irish law is not in line with international best practice on age assessments.**

The *Second National Action Plan* also commits the State to considering the establishment of 'further independent monitoring mechanisms for oversight of anti-trafficking, including the

⁴⁴ Irish Human Rights and Equality Commission, [IHREC submission to GRETA in advance of its Second Evaluation Round of Ireland](#) (September 2016) at p. 18.

⁴⁵ US Department of State, [Trafficking in Persons Report](#) (June 2018) at p. 235.

⁴⁶ Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, [Report submitted by the Irish authorities on measures taken to comply with the Committee of the Parties Recommendation CP\(2017\)29 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: Second evaluation round](#) (October 2018) at p. 3. According to the [2017 Annual Report](#) of the AHTU, 'efforts continued in relation to maintaining and improving identification procedures in Ireland. This included engagement with An Garda Síochána, State agencies and NGOs'. This report does not indicate a clear timeline for the conclusion of the work.

⁴⁷ The Commission highlighted this in a letter sent to GRETA in November 2018, as part of its one-year follow-up procedure.

⁴⁸ Irish Human Rights and Equality Commission, [IHREC submission to GRETA in advance of its Second Evaluation Round of Ireland](#) (September 2016) at p. 19.

⁴⁹ See Section 24.

⁵⁰ Immigrant Council of Ireland, [Child Migration Matters: Children and Young People's Experiences of Migration](#) (2016) at pp. 178-183 and Committee on the Rights of the Child, [General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin](#) (September 2005) at para 31.

⁵¹ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at p. 39.

possibility of putting into place a National Rapporteur'.⁵² The Commission previously recommended to the Committee in 2018 that an independent, dedicated National Rapporteur be appointed to monitor developments in relation to trafficking, as well as to ensure that the State complies with its obligations under domestic and international human rights standards.⁵³

Unaccompanied minors

Children in migration and unaccompanied minors are at higher risk of trafficking and exploitation.⁵⁴ The lack of consistent and comprehensive data on unaccompanied minors has also been identified as a challenge to the development of appropriate policy responses.⁵⁵ The information that is available demonstrates that 175 unaccompanied minors were referred to the Child and Family Agency in 2017, up from 97 in 2014. Of these 175 unaccompanied minors, 111 were taken into care.⁵⁶ The Child and Family Agency has responsibility for making applications for international protection on behalf of unaccompanied minors,⁵⁷ but the practice of such applications being delayed by social workers on a discretionary basis has been reported.⁵⁸ According to an ESRI report, most unaccompanied minors seeking international protection do not have an application submitted on their behalf until they are approaching the age of 18.⁵⁹ **The Commission is concerned that delays in the submission of international protection applications may impact on children's right to access family reunification, employment, education and other services and supports.**⁶⁰

The 'Equity of Care' policy was introduced by the Child and Family Agency in 2010, requiring that the same standard of care is provided to unaccompanied minors as to other children in State care.⁶¹ The Public Sector Equality and Human Rights Duty under Section 42 of the *Irish*

⁵² Department of Justice and Equality, [Second National Action Plan to Prevent and Combat Human Trafficking in Ireland](#) (2016) at p. 82.

⁵³ Irish Human Rights and Equality Commission, [Comments on Ireland's 15th National Report on the implementation of the European Social Charter](#) (2018) at p. 20.

⁵⁴ Europol, [Criminal Networks Involved in the Trafficking and Exploitation of Underage Victims in the European Union](#) (October 2018).

⁵⁵ ESRI and Office for the Promotion of Migrant Integration, [Data for Monitoring Integration: Gaps, challenges and opportunities](#) (March 2019) at pp. 29-30.

⁵⁶ S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83) at p. 22.

⁵⁷ 'Where it appears on the basis of information, including legal advice, available to it, that an application for international protection should be made on [the child's behalf]'. See Section 15(4) of the [International Protection Act 2015](#).

⁵⁸ S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83) at p. 36.

⁵⁹ S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83) at p. 35.

⁶⁰ For research findings in this regard, see S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83). See also, Immigrant Council of Ireland, [Child Migration Matters: Children and Young People's Experiences of Migration](#) (2016).

⁶¹ This followed the publication of the 2009 report by the Ombudsman for Children's Office, [Separated children living in Ireland](#). See also, Joint Committee on Health and Children, [Implementation of Child Protection Measures: Discussion with HSE](#) (18 November 2010).

Human Rights and Equality Commission Act 2014 also places a statutory obligation on public bodies to actively promote equality, protect human rights and eliminate discrimination in the performance of their functions.⁶² While the introduction of these obligations has represented progress, they have not been fully implemented in the area of aftercare.⁶³ Children leaving State care at the age of 18 are entitled to an aftercare service based on their assessed needs.⁶⁴ However, unaccompanied minors who do not have a decision on their international protection application prior to turning 18 years of age are transferred from care to Direct Provision centres.⁶⁵ The Commission previously highlighted this issue to the CRC Committee in 2016.⁶⁶

It has been documented that moving from foster or residential care to Direct Provision accommodation can be a daunting experience for young people and can act as a barrier to accessing aftercare workers and supports.⁶⁷ The Special Rapporteur on Child Protection has criticised the nature of such accommodation, including because of the loss of autonomy, the experiences of institutionalisation, and the accounts of harassment and sexual violence experienced by women living in the centres.⁶⁸ The Special Rapporteur on the sale and sexual exploitation of children has also raised concerns that the national monitoring agency for health and social services (“HIQA”) does not have authority to conduct inspections of Direct Provision centres.⁶⁹ **The Commission is concerned that the ‘Equity of Care’ principle is not applied to unaccompanied minors in respect of aftercare planning and supports, on the basis of their immigration status.**

The Commission has previously expressed serious concerns in relation to the human rights implications of lengthy stays in Direct Provision centres, including the particular impact on the best interests of children and on the right to family life. While the Committee has previously examined this area under Article 13,⁷⁰ the Commission wishes to refer the

⁶² Irish Human Rights and Equality Commission, [Implementing the Public Sector Equality and Human Rights Duty](#) (March 2019).

⁶³ See Ombudsman for Children’s Office, [Submission to Tusla on the Review of the National Leaving and Aftercare Policy 2011](#) (November 2016) at p. 8.

⁶⁴ Child and Family Agency, [National Aftercare Policy for Alternative Care](#) (2017) at p. 6.

⁶⁵ Dáil Éireann Debate, [Children and Family Services Provision](#) (1 May 2018). In 2015, 50 of the 82 young people who were in the protection process moved to Direct Provision. See [Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers](#) (June 2015) at pp. 229-230. More recent data on the number of unaccompanied minors who enter the Direct Provision system is not available. See European Migration Network, [Policies and Practices on Unaccompanied Minors in Ireland](#) at p. 10.

⁶⁶ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland’s Combined Third and Fourth Periodic Reports](#) (December 2015) at p. 38.

⁶⁷ S. Groarke and S. Arnold, [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (December 2018) (ESRI Research Series Number 83) at pp. 56-57 and Ombudsman for Children’s Office, [Submission to Tusla on the Review of the National Leaving and Aftercare Policy 2011](#) (November 2016) at p. 8.

⁶⁸ Professor Geoffrey Shannon, [Eleventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2018) at p. 46.

⁶⁹ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 9.

⁷⁰ European Committee of Social Rights, [Conclusions 2017: Ireland](#) at pp. 36-27.

Committee to its comments on the Direct Provision system in its 2017 submission so that they can also be considered in this reporting cycle.⁷¹

Measures taken to prevent the abuse and exploitation of children in institutional settings and by members of religious bodies

The Commission notes that the Committee stated in 2011 that it ‘wishes to be kept informed of the measures taken to prevent the abuse and exploitation of children in institutional settings and by members of religious bodies’.⁷²

The Child and Family Agency published an *Audit of Religious Orders, Congregations and Missionary Societies Safeguarding Arrangements and Management of Allegations of Child Sexual Abuse* in April 2017. The audit reviewed the management of 1,882 separate allegations of child sexual abuse made against 55 of the 135 Religious Orders included within its scope. It concluded that the safeguarding mechanisms in place varied from being excellent or satisfactory to extremely poor, with clear evidence that some Religious Orders were not implementing safeguarding policies and procedures in practice. High risk indicators identified by the audit team included delays in notifying the statutory authorities about allegations, lack of co-operation by members in complying with safety plans and inadequate supervision and monitoring arrangements.⁷³

The National Board of Safeguarding Children in the Catholic Church in Ireland recorded 104 allegations against priests and members of religious orders relating to child sexual abuse between April 2017 and March 2018. This is an increase on the previous year, when the number of new allegations relating to child sexual abuse amounted to 72.⁷⁴ The Special Rapporteur on the sale and sexual exploitation of children has raised concerns about the gaps in the recording practices and information shared between the National Board and An Garda Síochána. The Commission notes the Special Rapporteur’s view that the policies in place create a protection gap in which church communities may not be notified despite an incident of abuse being revealed and clerical offenders may benefit from impunity. Overall, the Special Rapporteur identified a culture of silence around issues of childhood sexual abuse and exploitation in Ireland and observed that assumptions that institutional and clerical abuse have been resolved deters reporting and prevents full accountability.⁷⁵

The Special Rapporteur on the sale and sexual exploitation of children also highlighted that certain groups of children, including children in social care and children with disabilities, have specific vulnerabilities and can be at heightened risk of abuse or exploitation in

⁷¹ Irish Human Rights and Equality Commission, [Comments on Ireland’s 14th National Report on the implementation of the European Social Charter](#) (April 2017) at p. 16.

⁷² European Committee of Social Rights, [Conclusions 2011 - Ireland - Article 7-10](#).

⁷³ Child and Family Agency, [Audit of Religious Orders, Congregations and Missionary Societies Safeguarding Arrangements and Management of Allegations of Child Sexual Abuse](#) (April 2017).

⁷⁴ The National Board for Safeguarding Children in the Catholic Church in Ireland, [Annual Report 2017](#) (2018) at p. 7.

⁷⁵ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at pp. 9, 16.

residential settings.⁷⁶ As highlighted to the Committee in 2017,⁷⁷ HIQA has responsibility for inspecting statutory children's residential centres in Ireland. The Child and Family Agency, as the procuring body, can conduct inspections and register voluntary and private children's residential centres, but such services are not subject to any independent scrutiny by HIQA. The Ombudsman for Children's Office ("OCO") published an investigation in 2015 which highlighted significant inconsistencies across the country in respect of the arrangements for the registration, inspection and monitoring of voluntary and private residential centres for children in the care of the State. This investigation identified that a clear gap in the approach to the inspection of residential centres has developed between HIQA and the Child and Family Agency.⁷⁸

It can be particularly challenging to ensure adequate accountability for the protection of economic, social and cultural rights when the State, as duty bearer, is subcontracting its functions to provide health and social services to private actors.⁷⁹ In its report to the CRC Committee in 2016, the Commission recommended that HIQA should be enabled to conduct independent inspections of all residential services for children, whether the service is provided directly by the State or through a non-State actor.⁸⁰ **The Commission is concerned that private and voluntary residential centres for children are still not subject to independent scrutiny by HIQA.**

Article 8, para 1: The provision of maternity benefits and leave

Article 8(1) requires States to guarantee that employed women can effectively exercise their right to protection of maternity. The Commission has previously highlighted litigation which demonstrates that Ireland's social security and equality legislation is not adequately equipped to ensure equality for those availing of surrogacy services.⁸¹ In *G v. The Department of Social Protection*,⁸² the High Court found that an Irish woman who had a child by means of a surrogacy arrangement in the United States of America had no redress in relation to her exclusion from entitlement to a payment equivalent to maternity benefit. In *Z v. A Government Department*,⁸³ the complainant was refused an application for leave

⁷⁶ Human Rights Council, [Visit to Ireland: Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material](#) (March 2019) at p. 9.

⁷⁷ Irish Human Rights and Equality Commission, [Comments on Ireland's 14th National Report on the implementation of the European Social Charter](#) (April 2017) at p. 21.

⁷⁸ Ombudsman for Children's Office, [Department of Children and Youth Affairs: Review of the Child Care Act 1991 – Submission by the Ombudsman for Children's Office](#) (23 February 2018) at pp. 27-28.

⁷⁹ Irish Human Rights and Equality Commission, [Oral Statement, Ms Emily Logan, to the UN Committee on Economic, Social and Cultural Rights](#) (8 June 2015).

⁸⁰ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at p. 11.

⁸¹ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at p. 94.

⁸² *G v. The Department of Social Protection* [2015] IEHC 419. See also, Irish Human Rights and Equality Commission, [IHREC recommends changes to Equal Status Acts following High Court decision on maternity benefit claim](#) (July 2015).

⁸³ *Z v. A Government Department* (2014) DEC-E2014-050.

equivalent to maternity or adoptive leave in circumstances where the child was born through a surrogacy arrangement.

The Commission is concerned that there is a gap between the maternity protections that should be in place and what is provided for by legislation. The Commission reiterates its view that the maternity benefit and leave schemes in Ireland need to be amended to ensure access for all mothers, including those who have children by means of surrogacy.⁸⁴

Article 8, para 3: Breastfeeding supports

As referenced in the introduction of this submission, the State has yet to accept Article 8(3) which requires provision for mothers who are nursing their infants to ensure that they are entitled to sufficient time off for this purpose. The Commission has previously raised its concerns that Ireland has one of the lowest breastfeeding rates in Europe.⁸⁵ The *National Strategy for Women and Girls 2017-2020* includes a commitment to increase the proportion of mothers who breastfeed, including by extending provision for breastfeeding breaks under the employment legislation (currently available to mothers of children under 6 months) and addressing cultural and other barriers to normalise breastfeeding.⁸⁶ **The Commission is concerned that, although these commitments are intended to be implemented through the proposed *Family Leave Bill*, there have been significant delays in progressing this legislation.**

Article 16: The right of the family to social, legal and economic protection

Provision of family housing

The Commission supports the strong statement of the Committee that as Ireland has not accepted Article 31, the State's responsibility to guarantee the right to adequate housing for families can be examined under Article 16.⁸⁷ The Commission has repeatedly raised its concerns about the slow progress in dealing with the current housing crisis in Ireland and the growing phenomenon of family homelessness.⁸⁸ The OCO has also highlighted that

⁸⁴ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at p. 94.

⁸⁵ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at p. 100.

⁸⁶ Department of Justice and Equality, [National Strategy for Women and Girls 2017-2020](#) (2017), Actions 2.17 and 2.18.

⁸⁷ European Committee of Social Rights, [Conclusions 2011 - Ireland - Article 16](#).

⁸⁸ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at pp. 26-27 and Irish Human Rights and Equality Commission, [Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review](#) (May 2015) at p. 67.

children are ‘invisible’ in housing policy and decision making, as they are seen as dependents rather than as individual rights holders.⁸⁹

Access to adequate housing

The Commission notes the decision of the Committee in 2017 that the State’s failure to take sufficient and timely measures to ensure the social housing provided to families is of an adequate standard is a violation of Article 16. In particular, the Committee found that the presence of sewage, contaminated water, dampness and persistent mould raised ‘serious concerns’ for habitability.⁹⁰ A recent study, published by the Commission and the ESRI, has demonstrated that lone parents are over-represented in social housing. Lone parents also experience greater housing deprivation and higher levels of discrimination in access to housing than other households.⁹¹

The Commission previously recommended reform of key aspects of housing law and policy, such as the supply of quality permanent social housing and security of tenure.⁹² However, it has been reported that the State’s Rapid Build Programme has delivered fewer than 350 homes out of a planned 1,500 in almost three years of operation.⁹³ The social housing support available has also been criticised for not reflecting the population characteristics of the waiting list, with a large proportion of single persons and families of different sizes.⁹⁴ The composition of social housing should reflect the different needs of homeless persons. In particular, there are concerns that accommodation is overcrowded, as there is a lack of housing for large families.⁹⁵ The Commission is also aware about the difficulties being faced by young parents in securing housing, which can result in overcrowding in the family home and relationship breakdowns.⁹⁶

The Government is increasingly relying on the Housing Assistance Payment (“HAP”) as part of its social housing strategy, with the aim for this support to replace Rent Supplement.⁹⁷ However, the Commission is increasingly supporting individuals who have been discriminated against in accessing private rental accommodation on the basis of being in receipt of HAP.⁹⁸ The Children’s Rights Alliance has also reported that many families in

⁸⁹ Ombudsman for Children’s Office, [OCO Annual Report 2017](#) (2018) at p. 35.

⁹⁰ European Committee of Social Rights, [International Federation for Human Rights \(FIDH\) v. Ireland](#) (23 October 2017). See also, Irish Human Rights and Equality Commission, [Human Rights and Equality Commission Responds to European Committee of Social Rights Finding Against Ireland on Social Housing](#) (October 2017).

⁹¹ Irish Human Rights and Equality Commission and ESRI, [Discrimination and Inequality in Housing in Ireland](#) (June 2018) at p. 56.

⁹² Irish Human Rights and Equality Commission, [Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland’s Third Periodic Review](#) (May 2015) at p. 83.

⁹³ Children’s Rights Alliance, [Report Card 2019](#) (February 2019) at p. 32.

⁹⁴ Threshold, [Examining Local Authority Housing Waiting Lists: A Submission to the Joint Oireachtas Committee on Housing, Planning and Local Government](#) (May 2018).

⁹⁵ A. Kenny, [Concern at level of overcrowding in Dublin social housing units](#) (RTÉ News, 25 January 2019).

⁹⁶ Focus Ireland, [Young families in the homeless crisis: challenges and solutions](#) (2018).

⁹⁷ Government of Ireland, [Rebuilding Ireland](#) (June 2016) at p. 48 and Irish Human Rights and Equality Commission and ESRI, [Discrimination and Inequality in Housing in Ireland](#) (June 2018) at p. 9. For more information on the HAP scheme see, www.hap.ie.

⁹⁸ Irish Human Rights and Equality Commission, [Annual Report 2017](#) (2018). In 2017, the Commission’s Your Rights Team responded to 125 queries on the housing assistance equality ground, and the Commission’s Legal

homeless services have expressed their reluctance to accept HAP due to difficulties in the private rented sector and their preference to wait for social housing with greater stability and security of tenure.⁹⁹

With regard to families living in Direct Provision, there are currently significant capacity issues in the accommodation centres.¹⁰⁰ These capacity issues are being exacerbated by the housing crisis, which has resulted in residents who have been granted refugee status being unable to access private rental accommodation. Recent reports indicate that there are approximately 700 people with refugee status still living in Direct Provision centres.¹⁰¹ The current lack of available spaces in Direct Provision has also led to a growing reliance on the use of emergency accommodation.¹⁰² In March 2019, 517 people seeking asylum were being accommodated in hotels or guesthouses, while awaiting relocation to more permanent centres.¹⁰³ In January 2019, the Department of Justice invited expressions of interest from hotels and guesthouses with regard to the provision of meals and accommodation for persons seeking international protection.¹⁰⁴ The Commission is concerned that all those awaiting permanent accommodation receive the assessments, services and supports that must be provided within a reasonable period under the Reception Conditions Directive (Directive 2013/33/EU).

Family homelessness

In 2017, the Commission provided the Committee with data and research findings of relevance to homeless services in Ireland.¹⁰⁵ Since then, the number of individuals and families experiencing homelessness has continued to increase. As of March 2019, there were 10,305 people accessing emergency homeless accommodation in Ireland.¹⁰⁶ Figures from the Department of Housing, Planning and Local Government demonstrate that:

- In December 2014, there were 407 families with 880 children and 2,310 persons without children in emergency homeless accommodation;¹⁰⁷

Team successfully brought a claim on behalf of an individual in receipt of housing assistance in the Workplace Relations Commission. The Commission is commissioning a scoping study on the adequacy and effectiveness of the housing assistance ground in equality legislation in Ireland which will be completed by Autumn 2019 and published on www.ihrec.ie.

⁹⁹ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 35.

¹⁰⁰ The Office of the Ombudsman, [The Ombudsman & Direct Provision: Update for 2018](#) (March 2019) at p. 7.

¹⁰¹ N. Henderson, [What are the alternatives to our broken direct provision system?](#) (Irish Times, 12 February 2019).

¹⁰² See Dáil Éireann Debate, [Direct Provision Data](#) (29 November 2018).

¹⁰³ C. Thomas, [Emergency accommodation: Over 500 asylum seekers now living in hotels and B and Bs across Ireland](#) (The Journal, 31 March 2019).

¹⁰⁴ Reception and Integration Agency and Department of Justice and Equality, [Expressions of Interest](#) (January 2019).

¹⁰⁵ Irish Human Rights and Equality Commission, [Comments on Ireland's 14th National Report on the implementation of the European Social Charter](#) (2017) at pp. 18-20. The Commission also published a policy paper in 2017 that provides information of relevance to the Committee's examination of Article 16. See Irish Human Rights and Equality Commission, [The provision of emergency accommodation to families experiencing homelessness](#) (July 2017).

¹⁰⁶ Department of Housing, Planning and Local Government, [Homelessness Report - March 2019](#).

¹⁰⁷ Department of Housing, Planning and Local Government, [Breakdown of homeless persons in emergency accommodation during the week 22 to 28 December 2014](#).

- In December 2017, there were 1,408 families with 3,079 children and 3,544 persons without children in emergency homeless accommodation;¹⁰⁸
- In December 2018, there were 1,617 families with 3,559 children and 3,915 persons without children in emergency homeless accommodation;¹⁰⁹ and
- In March 2019, there were 1,733 families with 3,821 children and 4,039 persons without children in emergency homeless accommodation.¹¹⁰

According to the Dublin Region Homeless Executive, at the end of 2017 there were 688 families with 1,445 children in hotels and 433 families with 940 children in homeless accommodation in Dublin.¹¹¹ The research demonstrates that a significant contributory factor to homelessness is the inability of families to obtain secure housing in the private rented sector, triggering housing instability.¹¹² It has also been identified that lone parents, families from minority ethnic groups or nationalities and larger families are more susceptible to homelessness than other family types.¹¹³ Sixty per cent of homeless families are headed by a lone female parent, despite such families only comprising 16% of family units in the State.¹¹⁴ An Inter-Agency Group established by the Minister for Housing, Planning and Local Government has identified the need for State agencies to have improved access to data and information to inform better policy-making with regard to homelessness.¹¹⁵

The Commission has noted that in light of the delays in providing suitable permanent accommodation for families experiencing homelessness, the policy focus has shifted towards the provision of supported temporary accommodation such as family hubs.¹¹⁶ In early 2019, there were 26 family hubs in operation across Ireland with the capacity to

¹⁰⁸ Department of Housing, Planning and Local Government, [Homelessness Report - December 2017](#).

¹⁰⁹ Department of Housing, Planning and Local Government, [Homelessness Report – December 2018](#). Note, since March 2018 the data collected was re-categorised, resulting in 625 adults with 981 accompanying children who had previously been included in the monthly data being excluded. See Professor Eoin O’Sullivan, [Measuring Homeless in Ireland](#) (8 November 2018).

¹¹⁰ Department of Housing, Planning and Local Government, [Homelessness Report - March 2019](#).

¹¹¹ Dublin Region Homeless Executive, [Quarterly Activity Report](#) (Quarter 4, 2017). In Quarter 2 2018, there were 1,352 families with 2,858 dependents in emergency accommodation in the Dublin region (822 families with 1,782 children in hotels and 530 families with 1,076 dependents in homeless accommodation). See Dublin Region Homeless Executive, [DRHE Quarterly Activity Report](#) (Quarter 2, 2018).

¹¹² Research conducted by Focus Ireland with 23 families presenting to Dublin homelessness services found that 83% of respondents reported that their last home was in the private rental sector. See Focus Ireland, [Family homelessness end of year review 2017](#) (March 2018). See also, Dublin Region Homeless Executive, [A Report on the 2016 and 2017 families who experienced homelessness in the Dublin region](#) (April 2018).

¹¹³ Dublin Region Homeless Executive, [A Report on the 2016 and 2017 families who experienced homelessness in the Dublin region](#) (April 2018) at p. 11.

¹¹⁴ Irish Human Rights and Equality Commission and ESRI, [Discrimination and Inequality in Housing in Ireland](#) (June 2018) at pp. 65-66.

¹¹⁵ Homelessness Inter-Agency Group, [Report to Minister for Housing, Planning and Local Government](#) (June 2018) at p. 30.

¹¹⁶ Irish Human Rights and Equality Commission, [The provision of emergency accommodation to families experiencing homelessness](#) (July 2017) at p. 7.

accommodate 600 families.¹¹⁷ As recognised in the National Report,¹¹⁸ there is a Government focus on delivering additional hubs as a matter of priority.¹¹⁹

While the Commission welcomes the recognition that emergency accommodation must provide for family needs, it is concerned that the use of family hubs has normalised family homelessness, which may lead to families being institutionalised. Emerging research findings also confirm that family hubs are not adequate to meet the long-term housing needs of families. It has been identified that the rules and conditions applying to the use of communal spaces and visitors can impact on the autonomy and mental health of parents,¹²⁰ while developmental delays, emotional attachment issues, self-harm and accidental injuries have been reported with regard to children.¹²¹

Both the Commission and the CRC Committee have emphasised that emergency housing support in Ireland must be subject to adequate safeguards and reviews.¹²² The Commission notes that a National Quality Standards Framework for Homeless Services has been piloted. However, ongoing work on this Framework has to be completed before it is fully implemented and homeless services are still not subject to regular inspection by a national independent inspectorate.¹²³

The Commission believes that the provision of social housing is central to the solution to the homelessness crisis. The Commission is disappointed by the Government's attempt to take the emphasis off the human face of the homelessness crisis, and instead to recast the crisis as the by-product of market dynamics, or the price our society pays for progress. The Commission believes that the rise in homelessness has been significantly exacerbated by Government policy choices in this regard. The decision to withdraw from building social housing and to instead provide rent supplement for private renters has made low-income households extremely vulnerable to shocks in the housing market.¹²⁴ The impact of homelessness on families and children is a particular concern, and the Commission is of the view that emergency accommodation should only be used for the shortest possible period of time.

¹¹⁷ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 34.

¹¹⁸ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 175.

¹¹⁹ Joint Committee on Housing, Planning and Local Government, [Housing \(Homeless Families\) Bill 2017: Discussion](#) (3 October 2018).

¹²⁰ Dr R. Hearne and Dr M.P. Murphy, [Investing in the Right to a Home: Housing, HAPs and Hubs](#) (2017) at pp. 26-27, 31.

¹²¹ Ombudsman for Children's Office, [Ombudsman for Children warns of long term impact of homelessness on children](#) (29 January 2019); Ombudsman for Children's Office, [No Place Like Home: Children's views and experiences of living in Family Hubs](#) (April 2019); and Temple Street Children's Hospital, [842 children who attended Temple Street's ED in 2018 were discharged with no fixed home address: 29% increase on 2017 figure](#) (21 January 2019).

¹²² Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at paras 61-62 and Irish Human Rights and Equality Commission, [The provision of emergency accommodation to families experiencing homelessness](#) (July 2017) at p. 9.

¹²³ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 36.

¹²⁴ M. Norris and M. Byrne, 'Procyclical Social Housing and the Crisis of Irish Housing Policy: Marketization, Social Housing, and the Property Boom and Bust' *Housing Policy Debate* (2018) 28(1) at pp. 50-63.

Provision of accommodation to Traveller and Roma families

The Commission provided detailed information and commentary on Traveller accommodation in 2018, as part of the Committee's 'follow-up' consideration of the collective complaint, *European Roma Rights Centre v. Ireland*.¹²⁵ The Commission notes the Committee's recent finding that, despite some progress, there is still a substantial deficiency in providing accommodation for Travellers in Ireland and the situation has not been brought into conformity with Article 16 of the Charter.¹²⁶

Since the Commission's submission to the Committee, there have been a number of relevant updates. Firstly, the inadequacy of Ireland's accommodation provision for Travellers remains a significant issue of concern, with figures from 2018 demonstrating that Local Authorities continue to underspend the funding allocated for Traveller-specific accommodation. Ten Local Authorities did not draw down any funding for Traveller accommodation in 2018, including in Galway, Cork and Mayo.¹²⁷ The cases dealt with by the Commission's Legal Team also continue to demonstrate persistent discrimination and inertia towards the provision of services for the Traveller community. In 2018, the Commission provided legal assistance to a family in their successful challenge to the discrimination they faced in making an application for social housing to the local County Council, due to their status as members of the Traveller community. The Council refused the family's application to be included on the housing list, largely on the basis that it did not consider their roadside site to be a legal residence and, therefore, the family was not deemed 'normally resident' in the county. The Workplace Relations Commission found that the Council had introduced an additional legality criterion in interpreting normal residence which disproportionately affected members of the Traveller community and was, therefore, discriminatory.¹²⁸

In 2014, a Special Inquiry into the circumstances surrounding the removal of two Roma children from their families ('Logan Report') recommended that an assessment of need be undertaken by a nominated Government Department to establish how best to improve State agencies' interaction with, and provision of support to, the Roma community.¹²⁹ Subsequently, a *National Roma Needs Assessment*, commissioned by the Department of Justice and Equality in line with the Logan Report, was published in 2018. It identified significant issues with regard to housing for the Roma community, including discrimination in accessing accommodation; severe overcrowding; poor quality accommodation; a lack of security of tenure; homelessness; and a lack of access to social housing and rent supplement. Of the 108 respondents interviewed as part of this research, 36.6% did not

¹²⁵ Irish Human Rights and Equality Commission, [Comments on Ireland's 15th National Report on the implementation of the European Social Charter](#) (May 2018) at pp. 4-10.

¹²⁶ European Committee of Social Rights, [Follow-Up to Decisions on the Merits of Collective Complaints: Findings 2018](#) (December 2018) at paras 477-481.

¹²⁷ Department of Housing, Planning and Local Government, [Traveller Accommodation](#) (19 February 2019). Over the past ten years, 2009-18, the Department has recouped in excess of €75 million to Local Authorities from a capital budget of €128.8 million. See Seanad Éireann, [Traveller Accommodation: Statements](#) (6 March 2019).

¹²⁸ Irish Human Rights and Equality Commission, [County Council Criterion for Traveller Family Access to Services Discriminatory](#) (10 May 2018).

¹²⁹ Report of Ms Emily Logan, [Garda Síochána Act 2005 \(Section 42\) \(Special Inquiries relating to Garda Síochána\) Order 2013](#) (July 2014) at p. 106 (recommendation 4.2.3).

have a tenancy agreement. The average length of time in Ireland for those without tenancy agreements was 5.6 years. The research documented reports of Roma living in unsafe abandoned buildings and accommodation without basic facilities, including light and heat. 12.4% of the respondents did not have a kitchen, 13.5% did not have a fridge and 14.4% did not have a bathroom in their house or apartment. 44.8% of respondents said they did not have enough beds in their accommodation. Rat infestation also emerged as a regular theme in this research.¹³⁰

The Commission is concerned that Ireland is still not in compliance with Article 16 of the Charter, in light of the State's ongoing failure to meet the accommodation needs of Traveller and Roma families.

Domestic violence

Important progress has been made by the State since the Commission updated the Committee about domestic violence in 2017.¹³¹ In particular, the Commission welcomes the Government's ratification of the Convention on preventing and combatting violence against women and domestic violence ("Istanbul Convention"),¹³² albeit, with reservations to the provisions on State compensation to domestic violence victims and jurisdiction for the prosecution of offences.¹³³ As highlighted in the National Report,¹³⁴ there have also been important legislative and policy developments in recent years, including the publication of the *Second National Strategy on Domestic, Sexual and Gender-based Violence 2016-2021*,¹³⁵ and the enactment of the *Domestic Violence Act 2018*, the *Criminal Justice (Sexual Offences) Act 2017* and the *Criminal Justice (Victims of Crime) Act 2017*.

However, there are gaps in the legal framework for domestic violence not filled by the aforementioned legislation. The Commission has recommended that new criminal offences to deal with the posting online of intimate images without consent be enacted; that the State opt-in to the EU Directive on Family Reunification and introduce implementing legislation in order to ensure that victims of domestic violence may be granted autonomous residence permits; and that legal arrangements for undocumented women who are victims of domestic violence be considered.¹³⁶

¹³⁰ Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) at pp. 87-92.

¹³¹ Irish Human Rights and Equality Commission, [Comments on Ireland's 14th National Report on the implementation of the European Social Charter](#) (2017) at pp. 20-21.

¹³² Irish Human Rights and Equality Commission, [Statement on Ratification of the Istanbul Convention](#) (8 March 2019). The Istanbul Convention will enter into force in Ireland on 1 July 2019.

¹³³ Council of Europe Portal, [Reservations and Declarations for Treaty No. 210 - Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2019).

¹³⁴ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 78-79.

¹³⁵ [Second National Strategy on Domestic, Sexual and Gender-based Violence 2016 - 2021](#).

¹³⁶ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at p. 61.

The Commission has ongoing concerns about the multiple barriers faced by victims in accessing specialist support services, including women living in rural areas where there are insufficient or no domestic violence refuges and women required to demonstrate that they meet the necessary residence condition to be deemed eligible for support.¹³⁷ Recent reports indicate that Ireland has less than a third of the number of refuge spaces it is required to have under European standards.¹³⁸ There are nine counties which do not have any domestic violence refuges.¹³⁹ Furthermore, according to 2016 statistics, refuges were unable to meet 3,981 requests from women for emergency accommodation because they were full.¹⁴⁰ The Commission is of the view that the State should increase the number and geographical spread of domestic violence refuges, and that housing authorities should develop clear policies in relation to applications for social housing from victims of domestic violence.

Both the Commission and the Committee on the Elimination of Discrimination Against Women (“CEDAW”) have highlighted the limited nature of the data and research available on violence against women in Ireland, as well as reported inaccuracies in the reporting of crimes involving domestic violence by An Garda Síochána.¹⁴¹ Furthermore, victims of domestic violence continue to face barriers in accessing justice, including due to the lack of a specialised family or children’s court system, with appropriate waiting facilities;¹⁴² the lack of provision for children to make applications for protection and safety orders in their own right,¹⁴³ and the existence of negative attitudes among members of An Garda Síochána towards domestic violence victims.¹⁴⁴

The Commission is of the view that further measures are needed to ensure that the necessary protections for victims of domestic violence exist both in law and in practice.

¹³⁷ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s Combined Sixth and Seventh Reports](#) (January 2017) at p. 63. See also, Ombudsman for Children, [An Investigation by the Ombudsman for Children’s Office: Children homeless for two years after suffering domestic abuse](#) (2017).

¹³⁸ According to Minister Zappone, the Child and Family Agency is applying a standard of one shelter space per 10,000 of the *female* population. However, the Council of Europe has set the standard at one place per 7,500 of the population and one family place per 10,000 of the population. See WAVE – Women against Violence Europe, [WAVE Country Report 2017: The situation of women’s specialist support services in Europe](#) (March 2018); Council of Europe, [Combatting violence against women: minimum standards for support services](#) (September 2008) at p. 18; and Dáil Éireann Debate, [Domestic Violence](#) (28 March 2019).

¹³⁹ There are no domestic violence refuges in Carlow; Leitrim; Roscommon; Sligo; Cavan; Monaghan; Offaly; Laois; and Longford. See Written Answers, [Domestic Violence Refuges Provision](#) (26 March 2019).

¹⁴⁰ SAFE Ireland, [Domestic Violence Services National Statistics 2016](#).

¹⁴¹ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s Combined Sixth and Seventh Reports](#) (January 2017) at p. 59; Irish Human Rights and Equality Commission, [Submission to the Commission on the Future of Policing](#) (2018); and Committee on the Elimination of Discrimination against Women, [Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Ireland](#) at p. 7. See also, Central Statistics Office, [Garda Recorded Crime Statistics](#) (2017).

¹⁴² Professor Geoffrey Shannon, [Eleventh Report of the Special Rapporteur on Child Protection](#) (2018) at pp. 7, 74 and Joint Committee on Justice and Equality, [Reform of Family Law System: Discussion \(Resumed\)](#) (13 March 2019).

¹⁴³ Professor Geoffrey Shannon, [Eleventh Report of the Special Rapporteur on Child Protection](#) (2018) at p. 38.

¹⁴⁴ Women’s Aid, [Submission to the Commission on the Future of Policing in Ireland](#) (January 2018) at pp. 15-16.

Availability of childcare

As referenced above, Ireland has not accepted Article 27(1)(c) which requires the State to develop or promote childcare services. However, in its consideration of the implementation of Article 16, the Committee has examined the responsibility of the State to ensure affordable, good quality childcare facilities are available. The Commission refers the Committee to its 2017 submission and the information provided on childcare services in Ireland.¹⁴⁵ There have been more recent developments of note in this area, including legislative provision for the establishment of the Affordable Childcare Scheme (“ACS”),¹⁴⁶ the introduction of additional childcare subsidies,¹⁴⁷ and the publication of *First Five: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019-2028*.¹⁴⁸

However, the ACS has yet to be implemented and the Children’s Rights Alliance has reported ‘insufficient evidence of improved childcare service affordability for parents’ and ‘rising costs in childcare fees’.¹⁴⁹ A forthcoming report by the Commission and the ESRI highlights that among those regularly involved in unpaid, informal childcare, the average weekly hours spent caring are significantly higher for women (42.6 hours) than for men (25.2 hours). The report characterises Irish social policy as being a ‘Liberal modified male breadwinner regime’, in that the provision of care services, including childcare, by the State is relatively low, leaving households to provide these services themselves or to source them from the market if they can pay. Overall, families still face a high burden of cost and there is a high level of unmet need in Ireland for formal childcare supports, particularly among disadvantaged families.¹⁵⁰ The ESRI has also published research which demonstrates that the amount families pay for childcare influences maternal employment, and that higher costs are associated with a subsequent reduction in the paid working hours of mothers. On average, it identified that families are paying 12% of their disposable income on the cost of childcare for one three-year-old child.¹⁵¹ Research has also demonstrated that formal childcare costs represent a particularly substantial barrier to lone-parent labour market participation.¹⁵²

According to a recent report by the European Commission, 28.6% of children aged 0 to 3 years old have access to childcare in Ireland; 12.5% of parents in Ireland have ‘great difficulty’ in accessing childcare services for children under the mandatory school-going age; and participation rates in formal childcare for children in low income families are 12% in Ireland, less than a quarter of that for children from high-income families (57%). It also

¹⁴⁵ Irish Human Rights and Equality Commission, [Comments on Ireland’s 14th National Report on the implementation of the European Social Charter](#) (2017) at pp. 21-22.

¹⁴⁶ See the [Childcare Support Act 2018](#).

¹⁴⁷ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 149-150.

¹⁴⁸ Government of Ireland, [First Five: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019-2028](#) (2018).

¹⁴⁹ Children’s Rights Alliance, [Report Card 2019](#) (February 2019) at pp. 102, 105.

¹⁵⁰ Irish Human Rights and Equality Commission and ESRI, ‘*Caring and Unpaid Work in Ireland*’ (forthcoming). This report is due to be published in May/June 2019 and will be available on www.ihrec.ie.

¹⁵¹ H. Russell, F. McGinnity, É. Fahey and O. Kenny, [Maternal Employment and The Cost of Childcare in Ireland](#) (September 2018) (ESRI Research Series Number 73).

¹⁵² M. Regan, C. Keane and J.R. Walsh, [Lone-Parent Incomes and Work Incentives](#) (July 2018) (ESRI Budget Perspectives 2019: Paper 1) and Children’s Rights Alliance, [Report Card 2019](#) (February 2019) at p. 42.

identifies that over 15% of women are inactive in the labour market and 10% of women are working part-time in Ireland because of caring responsibilities, of which 40% report a lack of suitable care services.¹⁵³

With regard to the standards in the childcare services that are available, it has been reported that 309 staff members working directly with children did not meet the minimum qualification requirement in May 2018.¹⁵⁴ Data from the Inspectorate for early childhood education and care services demonstrates that in 2017 only 55% of services were found to be compliant with the standard on safeguarding the health, safety and welfare of children. 33% of the complaints received by the Inspectorate in 2017 also related to the health, welfare and development of children.¹⁵⁵

The Commission remains concerned about the ongoing deficiencies in the childcare infrastructure and the high cost of childcare in Ireland.¹⁵⁶

Economic protection of families

The Commission provided the Committee with relevant information and data relating to poverty and deprivation in 2016.¹⁵⁷ It notes that the Government's national targets are: to reduce consistent poverty to 4% by 2016 and to 2% or less by 2020, from the 2010 baseline rate of 6.3%;¹⁵⁸ and to lift over 70,000 children out of consistent poverty by 2020, a reduction of at least two-thirds on the 2011 level.¹⁵⁹ Since the Commission's 2017 submission, the following data has been published by the Central Statistics Office:

- The consistent poverty rate was 6.7% in 2017, compared with 8.2% in 2016. Those living in households where there was one adult and one or more children had the highest consistent poverty rate at 20.7%.
- The 'at risk of poverty' rate was 15.7% in 2017, compared to 16.2% in 2016. The 'at risk of poverty' rate for households with one adult and one or more children was 39.9%.
- In 2017, 18.8% of the population experienced two or more types of enforced deprivation, compared with 21% in 2016. The deprivation rate for households with one adult and one or more children was 44.5%.

¹⁵³ European Commission, [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the development of childcare facilities for young children with a view to increase female labour participation, strike a work-life balance for working parents and bring about sustainable and inclusive growth in Europe \(the "Barcelona objectives"\)](#) (May 2018).

¹⁵⁴ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 97.

¹⁵⁵ The Child and Family Agency, [Early Years Inspectorate Annual Report 2017](#) (2018) at pp. 4, 28.

¹⁵⁶ The Commission raised these issues with CEDAW in 2017. See Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at pp. 94-95.

¹⁵⁷ Irish Human Rights and Equality Commission, [Comments on Ireland's 14th National Report on the implementation of the European Social Charter](#) (2017) at pp. 30-31.

¹⁵⁸ Department of Social Protection, [Updated National Action Plan for Social Inclusion 2015-2017](#) (2016) at p. 5.

¹⁵⁹ Government of Ireland, [Better Outcomes, Brighter Futures: The national policy framework for children and young people 2014-2020](#) (2014) at p. 93.

- In 2017, children had a consistent poverty rate of 8.8% (compared to 10.9% in 2016); an 'at risk of poverty' rate of 18.4% (compared to 19.1% in 2016); and a deprivation rate of 23% (compared to 25% in 2016).¹⁶⁰

Overall, the above data on poverty and deprivation demonstrates that specific groups within society are disproportionately affected, including lone parents and children. The Commission has previously raised its concerns about changes to the eligibility criteria for the One Parent Family Payment in Ireland, and the ensuing financial and social impact on lone parents.¹⁶¹ It has been reported that children of lone parents are more than twice as likely to live in consistent poverty as the general child population.¹⁶² The CRC Committee also highlighted its concerns in 2016 that consistent poverty disproportionately affects children from Traveller, Roma and refugee backgrounds.¹⁶³ Furthermore, according to the Social Inclusion Monitor, the consistent poverty rate in 2016 was 20% for people with a disability, 12.7% for non-Irish nationals and 21.8% for social housing tenants.¹⁶⁴

The Committee has confirmed that the State's positive obligations under Article 16 include implementing means to ensure the economic protection of particularly vulnerable families.¹⁶⁵ However, the Habitual Residence Condition ("HRC") is an extra qualifying condition requiring applicants to demonstrate a connection to Ireland in order to access a range of social welfare benefits, including Child Benefit. The National Report highlights that the HRC is applied to all applicants for benefits, 'regardless of their nationality'.¹⁶⁶ However, in practice, the HRC is not neutral in its application as it can have a disproportionate and discriminatory impact on certain groups, including migrant families, Traveller families and Roma families.¹⁶⁷ For example, these families can face particular challenges in satisfying the conditions of the HRC due to their nomadic way of life, employment patterns, family ties or overall length of time spent in the country.¹⁶⁸

The Commission is concerned that the State has not taken sufficient measures to meet its own targets on poverty and deprivation and to ensure that the right of families to economic protection is progressively realised. The Commission is also concerned about the discriminatory impact of the Habitual Residence Condition on access to social welfare supports for particular families, including migrant families, Traveller families and Roma families.

¹⁶⁰ Central Statistics Office, [Survey on Income and Living Conditions \(SILC\) 2017](#).

¹⁶¹ Irish Human Rights and Equality Commission, [Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review](#) (May 2015) at pp. 50-51.

¹⁶² Children's Rights Alliance, [Report Card 2019](#) (February 2019) at pp. 41-42.

¹⁶³ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (1 March 2016) at p. 13.

¹⁶⁴ Department of Employment Affairs and Social Protection, [Social Inclusion Monitor 2016](#) (2018). Note, there was a small sample size available for measuring the consistent poverty rate for people with a disability.

¹⁶⁵ European Committee of Social Rights, [Conclusions 2011 - Ireland - Article 16](#).

¹⁶⁶ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 80-81.

¹⁶⁷ The Commission previously highlighted this issue to CEDAW in 2017. See Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at p. 92.

¹⁶⁸ FLAC, [FLAC Briefing for Nils Muižnieks: Council of Europe Commission for Human Rights](#) (2016) at p. 8.

Article 17, para 1: The provision of care and assistance to children

Children in conflict with the law

The age of criminal responsibility

The Committee concluded in 2011 that the age of criminal responsibility is too low for some offences.¹⁶⁹ The Commission has also been critical of the current legislative provision which places the age of criminal responsibility at 12 years but permits children aged 10 or 11 to be charged with serious offences, provided that the permission of the Director of Public Prosecutions has been obtained.¹⁷⁰

This statutory position has been criticised for negating scientific and developmental evidence, revealing tangible incoherence regarding how social rights and responsibilities are statutorily assigned and failing to protect and observe children's rights.¹⁷¹ The Commission notes that the minimum age of criminal responsibility in Ireland has been described as 'highly illogical' by the Special Rapporteur on Child Protection¹⁷² and is considered 'not to be internationally acceptable' by the CRC Committee.¹⁷³ In its 2016 Concluding Observations, the CRC Committee called on Ireland to set the age of criminal responsibility at 14 years for all offences.¹⁷⁴ **The Commission acknowledges that the Department of Justice and Equality is currently engaged in a review of the Children Act 2001,¹⁷⁵ but is concerned about the absence of any clear commitment or timeline for raising the age of criminal responsibility.**

Referrals to diversion

The Commission notes that the necessary systems, safeguards and resources must be in place to guarantee that children can access a diversion mechanism that fully respects their rights and best interests, and amounts to a constructive and timely response to their behaviour.¹⁷⁶ In Ireland, the Garda Youth Diversion Programme ("GYDP") offers children

¹⁶⁹ European Committee of Social Rights, [Conclusions 2011 – Ireland – Article 17-1](#).

¹⁷⁰ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (2015) at pp. 35-36.

¹⁷¹ Children's Rights Alliance, [Child Law Audit – Chapter 7: Youth Justice](#) (2015) at pp. 152-153 and Professor Geoffrey Shannon, [Tenth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2016) at pp. 83-84.

¹⁷² Professor Geoffrey Shannon, [Tenth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2016) at pp. 8, 83-84.

¹⁷³ Committee on the Rights of the Child, [General Comment No. 10: Children's rights in juvenile justice](#) (25 April 2007) at pp. 11-12.

¹⁷⁴ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (1 March 2016) at p. 17. The Special Rapporteur on Child Protection has also called for the age of criminal responsibility to be set at least at the age of 14 years for all offences. See Professor Geoffrey Shannon, [Tenth Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2016) at p. 22.

¹⁷⁵ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 93.

¹⁷⁶ See Committee on the Rights of the Child, [General Comment No. 10: Children's rights in juvenile justice](#) (25 April 2007) at pp. 8-9, 26.

who accept responsibility for their offending behaviour the opportunity of a caution instead of prosecution through the court system. The caution is administered by a specially trained Juvenile Liaison Officer and a period of supervision may be included.¹⁷⁷

However, even when they accept responsibility for their behaviour, children do not have an automatic right to diversion in Ireland. The Director of the GYDP must be satisfied that the admission of a child is not inconsistent with the interests of society and any victim.¹⁷⁸

Concerns have been raised regarding the lack of transparency about how the criteria for admission to the GYDP are applied by the Director,¹⁷⁹ as well as the existence of delays in the administrative decision-making process. In a recent judgment, the High Court was critical that an assessment as to whether a child suspect was suitable for admission to the GYDP took 20 weeks, which went ‘beyond what might be considered a reasonable delay’ in its view.¹⁸⁰ There were also significant delays in the transfer of the child’s file between the relevant agencies and the Court noted the absence of any satisfactory explanation.¹⁸¹

Concerns have also been raised with regard to the processing of crimes committed by children who were not deemed to meet the criteria for diversion. A report by the Garda Commissioner has identified that from July 2010 to July 2017, 7,894 cases referred to the GYDP were deemed unsuitable for inclusion in the Programme and were ‘not appropriately progressed to final conclusion due to Garda inaction’.¹⁸² The Minister of State at the Department of Justice and Equality has described this as a ‘completely unacceptable situation that must be thoroughly addressed in the interests of victims and the proper administration of justice, and for the future welfare of the children who committed the crimes’.¹⁸³

75% of the 7,894 referrals involved public order, theft, traffic offences and criminal damage, while 55 involved more serious offences.¹⁸⁴ The referrals also related to 3,489 separate children, of which 57 are recorded as now deceased. On average, these children had 4 prior referrals, 2 prior charges and 1 prior summons and following their ‘failed referral’ to the GYDP, they had 10 subsequent referrals, 17 subsequent charges and 7 subsequent summons.¹⁸⁵

The examination of these referrals by An Garda Síochána identified issues relating to inadequate information and communications technology, a lack of training, supervision and

¹⁷⁷ See Part 4 of the [Children Act 2001](#).

¹⁷⁸ See Section 23 of the [Children Act 2001](#).

¹⁷⁹ See Children’s Rights Alliance, [Child Law Audit – Chapter 7: Youth Justice](#) (2015) at p. 160.

¹⁸⁰ *A.B. v. The Director of Public Prosecutions* [2019] IEHC 214 at paras 14-15.

¹⁸¹ *A.B. v. The Director of Public Prosecutions* [2019] IEHC 214 at paras 16-19.

¹⁸² Policing Authority, [Information provided by the Garda Commission to the Authority \(8/1/2019\) concerning Youth Diversion Programme Referrals for the seven years from July 2010 – July 2017](#) (2019). Joint Committee on Justice and Equality, [Interim Report on Review of Youth Referrals: An Garda Síochána](#) (13 February 2019).

¹⁸³ Dáil Éireann debate, [Priority Questions](#) (30 January 2019).

¹⁸⁴ Dáil Éireann debate, [Priority Questions](#) (30 January 2019) and Dáil Éireann debate, [Juvenile Crime: Motion \(Resumed\) \[Private Members\]](#) (31 January 2019).

¹⁸⁵ Policing Authority, [Information provided by the Garda Commission to the Authority \(8/1/2019\) concerning Youth Diversion Programme Referrals for the seven years from July 2010 – July 2017](#) (2019). Joint Committee on Justice and Equality, [Interim Report on Review of Youth Referrals: An Garda Síochána](#) (13 February 2019).

knowledge about the systems in place, and alleged failures by individual Gardaí.¹⁸⁶ In total, 3,414 Garda members have been identified as not appropriately progressing referrals.¹⁸⁷

The Commission is concerned about the reported delays in the operation of the Diversion Programme and that the complex needs of children deemed ‘unsuitable’ for inclusion are not being met. Furthermore, while there is specialism among Juvenile Liaison Officers, the documented issues highlight that additional training is needed for all Garda members on engaging with children in conflict with the law and diversion.¹⁸⁸

Children involved in court proceedings

The right of children to access justice requires States to put in place a number of modified procedures and practices, included specialised courts to ensure that cases involving children are dealt with in child-sensitive settings and by trained professionals.¹⁸⁹ In particular, the Commission notes the confirmation by the Committee that Article 17 requires the criminal procedure relating to children in conflict with the law to be adapted to their age and conducted rapidly.¹⁹⁰

The Children’s Court is the criminal court in Ireland which hears all minor charges against children under the age of 18 years. However, in the case of serious offences, it has jurisdiction to send the child forward for trial to the Circuit and Central Criminal Courts.¹⁹¹ Concerns have been raised about the absence of procedural safeguards or practice guidelines to govern the trial of a child when they are transferred to the adult court setting, including to ensure that sufficient adaptations are made to the process.¹⁹²

Significant delays in the court process have also resulted in children ‘ageing out’ of the youth justice system and having to face trial as an adult for an offence they were alleged to have committed as a child. This can have a significant impact as they can no longer benefit from the specific protections in place for children in conflict with the law, including provisions mandating anonymity, the use of detention only as a measure of last resort and the obtaining of a probation report where a court is of the opinion that the appropriate sanction is detention.¹⁹³ **The Commission is concerned that there are inadequate procedures and protections in place to ensure that the rights of all children in conflict with the law are guaranteed, including their right to a speedy and adapted trial regardless of the nature of the alleged or proven offence.**

¹⁸⁶ Dáil Éireann debate, [Priority Questions](#) (30 January 2019).

¹⁸⁷ Policing Authority, [Information provided by the Garda Commission to the Authority \(8/1/2019\) concerning Youth Diversion Programme Referrals for the seven years from July 2010 – July 2017](#) (2019). Joint Committee on Justice and Equality, [Interim Report on Review of Youth Referrals: An Garda Síochána](#) (13 February 2019).

¹⁸⁸ For additional commentary, see U. Kilkelly, [Time for a more radical reform of police diversion](#) (Irish Examiner, 19 January 2019).

¹⁸⁹ European Commission, [Children’s involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU](#) (2015) at p. 4.

¹⁹⁰ European Committee of Social Rights, [Digest of the Case Law of the European Committee of Social Rights](#) (December 2018) at p. 171.

¹⁹¹ U. Kilkelly, [The Children’s Court: A Children’s Rights Audit](#) (2005) at p. vii.

¹⁹² Children’s Rights Alliance, [Child Law Audit – Chapter 7: Youth Justice](#) (2015) at pp. 162-163.

¹⁹³ See *A.B. v. The Director of Public Prosecutions* [2019] IEHC 214 at para 6.

Children in detention

Concerns have arisen before the Irish Courts with regard to the segregation of children in Oberstown Children's Detention Centre, in circumstances where the child detainees claimed to have been confined to their cell, without respite for a period of weeks, in conditions that they alleged amounted to solitary confinement. In its *amicus curiae* function, the Commission highlighted its view to the Court that solitary confinement embraces any de facto situation where a person is confined to their cell for more than 22 hours a day with limited social interaction. Further to this, it noted that any separation policy that amounts to de facto solitary confinement should never be imposed on children.¹⁹⁴

On 6 November 2017, the High Court reached the conclusion that it could not 'definitely state that the length of the separation period, albeit that it amounted to some three weeks, was in breach of a constitutional norm'.¹⁹⁵ However, it found that the constitutional rights of the child applicants were breached insofar as they were deprived of daily exercise and any contact with their families during the period of separation and there were no procedural safeguards relating to the imposition of the separation and associated deprivations.¹⁹⁶

Monitoring reports published by HIQA, following its inspections of Oberstown, have also recorded poor practice in the management of challenging behaviour, a number of instances of children spending prolonged periods of time in single separation, and the lack of robust management oversight in the monitoring of these incidents.¹⁹⁷ Furthermore, the UN Committee Against Torture has recommended that the State abolish solitary confinement of children in all cases, including as a disciplinary sanction.¹⁹⁸ **While a new national policy on single separation was introduced in 2017,¹⁹⁹ the Commission notes that no legislative measures have been adopted to give effect to this recommendation.**

¹⁹⁴ Irish Human Rights and Equality Commission, [Applicant v. The Director of Oberstown Detention Centre and Another](#) (January 2017) and Irish Human Rights and Equality Commission, [Irish Human Rights and Equality Commission Secures Court Role in Oberstown Child Detention Cases](#) (January 2017). See also, See Irish Human Rights and Equality Commission, [Submission to the United Nations Committee against Torture on Ireland's Second Periodic Report](#) (July 2017) at p. 32.

¹⁹⁵ [S.F., L.C. and T.G. v. Director of Oberstown Children's Detention Centre & Ors](#) [2017] IEHC 829 at para 122.

¹⁹⁶ [S.F., L.C. and T.G. v. Director of Oberstown Children's Detention Centre & Ors](#) [2017] IEHC 829 at para 131.

¹⁹⁷ Data provided to Inspectors showed that there were 1,701 incidents of single separation involving 140 children in 2017. This represented a significant reduction (56%) in the use of this type of intervention from 2016 when there were 3,027 recorded incidents involving 8 children. HIQA's 2018 Inspection Report noted improvements but identified ongoing deficits in the recording, monitoring and management oversight of restrictive practices, including single separation. See HIQA, [Monitoring Inspection Report - Detention Schools Services under the Children Act, 2001 \(as amended by section 152 of the Criminal Justice Act 2006\)](#) (2017) at pp. 19-20 and HIQA, [Monitoring Inspection Report - Detention Schools Services under the Children Act, 2001 \(as amended by section 152 of the Criminal Justice Act 2006\)](#) (2018) at p. 24.

¹⁹⁸ Committee Against Torture, [Concluding Observations on the Second Periodic Report of Ireland](#) (31 August 2017) at p. 6.

¹⁹⁹ Department of Children and Youth Affairs, [A National Policy on Single Separation Use in Secure Accommodation for Children: Special Care and Oberstown](#) (November 2016).

Children's access to mental health services

In 2017, the Commission highlighted a number of concerns to the Committee with regard to mental health services in Ireland, including the provision of child and adolescent mental health services ("CAMHS").²⁰⁰

In particular, the Commission has repeatedly criticised the placement of any child in an adult mental health facility.²⁰¹ However, there were 82 admissions of children to 21 adult inpatient units in 2017, compared to 68 admissions in 2016.²⁰² Contributory factors to the continued admission of children to adult units are the shortage of operational beds in dedicated child units and the inability of CAMHS teams to admit children outside of office hours. The Mental Health Commission has described this situation as a 'clear breach of the human rights and dignity of the child'.²⁰³ The need for better transition arrangements for children transferring from CAMHS to adult services has also been identified, including through improved oversight and coordination mechanisms.²⁰⁴

As previously noted by the Commission,²⁰⁵ the level of community mental health services falls short of the targets set in 2006 by the national policy framework, *A Vision for Change*.²⁰⁶ The Inspector of Mental Health Services has identified that community CAMHS teams continue to be inadequately staffed and to have considerable variation in funding depending on their geographic region.²⁰⁷ At the end of 2017, 2,419 children were on waiting lists to see CAMHS, of which 1,257 were on the waiting list for more than 12 weeks.²⁰⁸ There were 6,811 children awaiting a psychology appointment across all Community Healthcare Organisations ("CHOs") at the end of July 2017, of which 2,186 were waiting

²⁰⁰ Irish Human Rights and Equality Commission, [Comments on Ireland's 14th National Report on the implementation of the European Social Charter](#) (2017) at pp. 8-9. The Commission has also raised these concerns with the CRC Committee. See Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at pp. 19-20.

²⁰¹ Irish Human Rights and Equality Commission, [Comments on Ireland's 14th National Report on the implementation of the European Social Charter](#) (2017) at pp. 8-9 and Irish Human Rights and Equality Commission, [Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review](#) (May 2015) at pp. 79-80.

²⁰² There were 4 involuntary admission orders of children to adult units. In 2017, 357 children were admitted to six child and adolescent units, for an average duration of 65 days. See Mental Health Commission, [Annual Report \(including Report of the Inspector of Mental Health Services\)](#) (2017) at p. 23.

²⁰³ Mental Health Commission, [Annual Report \(including Report of the Inspector of Mental Health Services\)](#) (2017) at pp. 7, 23.

²⁰⁴ Children's Mental Health Coalition, [Children's Mental Health Coalition submission to the Independent Monitoring Group on A Vision for Change](#) and Department of Health and National Youth Mental Health Taskforce, [National Youth Mental Health Taskforce Report 2017](#) (2017) at p. 67.

²⁰⁵ Irish Human Rights and Equality Commission, [Comments on Ireland's 14th National Report on the implementation of the European Social Charter](#) (2017) at pp. 8-9.

²⁰⁶ Staffing of CAMHS teams is only 60% of that recommended by A Vision for Change. See Mental Health Commission, [Annual Report \(including Report of the Inspector of Mental Health Services\)](#) (2017) at p. 60 and Seanad Public Consultation Committee, [Report on Children's Mental Health Services](#) (October 2017) at p. 16.

²⁰⁷ Mental Health Commission, [Annual Report \(including Report of the Inspector of Mental Health Services\)](#) (2017) at p. 7.

²⁰⁸ Ombudsman for Children's Office, ["Take My Hand": Young People's Experiences of Mental Health Services](#) (2018) at p. 9.

more than a year.²⁰⁹ There is no primary care psychology service to refer children to in North Dublin.²¹⁰

Children and young people themselves have highlighted the delays they have faced in accessing community CAMHS and the differences in the frequency and consistency of services throughout the country, including the distance of inpatient units from their homes.²¹¹ In 2016, the CRC Committee called on the State to establish a national mental health advocacy and information service that is specifically for children and accordingly accessible and child-friendly.²¹² However, this recommendation has yet to be implemented.

The Government commissioned an expert review of the underpinning legislation for mental health care in Ireland, the *Mental Health Act 2001*, in 2012 and committed to implementing the findings of this review through revised legislation in March 2015. In particular, the Expert Group were critical of the absence of a standalone section in the Act specifically for children²¹³ and the legislative uncertainty regarding medical consent. Currently, 16 and 17-year-old children have no legal right to give or refuse consent for admission and mental health treatment.²¹⁴ Despite the need for reform, the proposed *Mental Health (Amendment) Bill* has not yet been published and is not on the Government's legislative priority list for the Summer Session 2019.²¹⁵ There have also been ongoing delays in the review of *A Vision for Change*, which came to the end of its ten year term in 2016.²¹⁶ The Minister for Health established an Oversight Group in October 2017 to develop a revised policy for mental health and, although this work was scheduled to conclude by December 2018,²¹⁷ the review process is still ongoing.²¹⁸

The Commission repeats its concerns about children's access to mental health services in Ireland, including with regard to the availability of community-based services, age-appropriate inpatient units and delays in progressing policy and legislative reform. Similar

²⁰⁹ Department of Health, [Written Answers – HSE Waiting Lists](#) (28 September 2017).

²¹⁰ Seanad Public Consultation Committee, [Report on Children's Mental Health Services](#) (October 2017).

²¹¹ Ombudsman for Children's Office, ["Take My Hand": Young People's Experiences of Mental Health Services](#) (2018) at pp. 39-40.

²¹² Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at p. 12.

²¹³ The [Mental Health \(Amendment\) Act 2018](#) introduced guiding principles in respect of children, including their right to access services that are focused on delivering the highest attainable standard of child mental health. However, this legislative framework has yet to be commenced by the Government.

²¹⁴ Department of Health, [Report of the Expert Group on the Review of the Mental Health Act 2001](#) (2015) at p. 67. Under the *Non-Fatal Offences Against the Person Act 1997*, children aged 16 years and over are permitted consent to physical and dental health treatment but they do not have an explicit right to consent to mental health treatment. See also, Seanad Éireann, [Mental Health \(Capacity to Consent to Treatment\) Bill 2018: Second Stage](#) (10 October 2018).

²¹⁵ Office of the Government Chief Whip, [Legislation Programme Summer Session 2019](#) (2 April 2019) at p. 11.

²¹⁶ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 58.

²¹⁷ Joint Oireachtas Committee on the Future of Mental Health Care, [A Vision for Change: Engagement with Department of Health Oversight Group](#) (30 May 2018).

²¹⁸ The draft report of the Oversight Committee is due to be submitted to the Department of Health in Quarter 2, 2019. It will then be reviewed and submitted to the Government for consideration. The Department of Health intends to launch the revised policy in Quarter 3, 2019. Information received from the Department of Health on 24 April 2019.

concerns were also raised by the CRC Committee in its 2016 Concluding Observations on Ireland.²¹⁹

Children's access to disability services

Coordinated services

It has been documented that there appears to be a 'concerted effort' by the Child and Family Agency to ensure that where children present with a disability, they are categorised as the responsibility of disability services. A 2015 review of the framework used by the Child and Family Agency to describe the categorisation of children's needs identified that it appeared to discriminate against children with a disability and may have excluded them from accessing child protection services.²²⁰ Inclusion Ireland, the National Association for People with an Intellectual Disability, has reported its experience of the Child and Family Agency refusing to get involved in a number of child protection and welfare situations where the child had a disability.²²¹

Furthermore, a recent investigation by the OCO found undesirable administrative practices in the provision of services to a child with a disability in foster care. As a result of the standardised approach adopted, the Child and Family Agency recognised the child's protection and welfare needs, but made no distinction with regard to her disability requirements. The Health Service Executive ("HSE") recognised the child's disability needs but made no distinction with regard to her protection and welfare vulnerabilities as a child in care.²²² A new Joint Protocol for Interagency Collaboration between the Child and Family Agency and the HSE has been in place since March 2017, however the OCO stated in April 2019 that their working relationship is still of concern.²²³

The Commission is concerned about the extent to which the rights and needs of children with disabilities are prioritised in the provision of services and administrative decision-making processes.

Assessment of need process

The *Disability Act 2005* provides that children who have or may have a disability are entitled to an assessment of their needs, an assessment report, and a statement of the services they will receive.²²⁴ According to this Act, these assessments must be commenced within three months of an application being received and completed within a further three months.

²¹⁹ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at p. 12.

²²⁰ Ombudsman for Children's Office, [Molly's case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State](#) (January 2018) at pp. 18-19.

²²¹ Inclusion Ireland, [Inclusion Ireland calls on Minister Katherine Zappone to review decision to exclude children with a disability from Tusla's remit](#) (January 2018).

²²² Ombudsman for Children's Office, [Molly's case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State](#) (January 2018).

²²³ Ombudsman for Children's Office, [Molly One Year On](#) (April 2019) at p. 6.

²²⁴ See Part 2 of the [Disability Act 2005](#).

There is an additional one month timeframe for the completion of the report and service statement.²²⁵

The Commission is aware of concerns about the failure of the HSE to meet these statutory deadlines and the resulting waiting lists that are in place.²²⁶ An inconsistent approach with regard to the assessment of need process has also been identified, with the HSE stating that there is 'evidence that practice varies widely' across the different CHOs.²²⁷ It has been reported that in March 2018, there were 4,242 children waiting for an assessment of need to be commenced. Of these children, 4,104 or 80% had been waiting beyond the statutory limit of three months.²²⁸ According to a Government Committee on Health, at the end of June 2018, there were 3,850 overdue assessments across the 9 CHOs in Ireland. 1,578 of these overdue assessments were from the Cork-Kerry region (CHO 4). The average waiting time for the completion of an assessment of need report was 18.48 months in Quarter 2 of 2018. The waiting time in CHO 4 was the highest at 28.98 months.²²⁹

It has also been reported that following delays in the assessment process, children can often have further waiting times of several years to access additional services, including due to the lack of resourcing of Disability teams and staff shortages. This can result in families having to rely on private services.²³⁰ The HSE is proposing a new Standard Operating Procedure for the assessment of need process to promote consistency and address existing waiting times. However, the Commission notes that this new Procedure has been widely criticised, including for reducing the level of assessment that is provided to children.²³¹

The Commission is concerned about the documented gaps in the assessments and follow-on services provided to children with disabilities, including the geographic disparities in the existing waiting times.

Children in public care

There were 6,189 children in care at the end of 2017, of which 65% were in general foster care, 27% were in relative foster care and 6% were in residential care. 395 children were in private foster care placements in December 2017.²³²

²²⁵ Dáil Éireann debate, [Disabilities Assessments](#) (4 July 2018) and Health Service Executive, [Opening Statement by Dr. Cathal Morgan, Head of Operations – Disability Services to the Joint Committee on Health](#) (27 June 2018).

²²⁶ Joint Committee on Health, [Report on the New Standard Operating Procedure for Assessment of Need under the Disability Act 2005](#) (January 2019) at p. 30.

²²⁷ Health Service Executive, [Opening Statement by Dr. Cathal Morgan, Head of Operations – Disability Services to the Joint Committee on Health](#) (27 June 2018).

²²⁸ Barnardos, [Summer Waiting List Report](#) (June 2018) at p. 10.

²²⁹ Joint Committee on Health, [Report on the New Standard Operating Procedure for Assessment of Need under the Disability Act 2005](#) (January 2019) at pp. 29, 31.

²³⁰ Joint Committee on Health, [Report on the New Standard Operating Procedure for Assessment of Need under the Disability Act 2005](#) (January 2019) at pp. 30-31.

²³¹ Barnardos, [Summer Waiting List Report](#) (June 2018) at p. 10 and Psychological Society of Ireland, [Review of the Assessment of Need Standard Operating Procedure](#) (March 2018).

²³² Child and Family Agency, [National Performance and Activity Dashboard](#) (December 2017).

Ongoing concerns have been raised about the availability of appropriate placements for children in State care. The OCO has identified evidence from its complaints and investigation work that there are insufficient placements available within each of the Child and Family Agency's administrative areas. This has been reported as resulting in children being required to stay in inappropriate placements, including at a considerable distance from their homes and local communities, or being moved to multiple different placements.²³³ In 2016, the CRC Committee raised its concerns about insufficient alternative care services in Ireland for children with complex needs and recommended that the State prioritise the development of its special care services.²³⁴ Similarly, the Child Care Law Reporting Project has documented a chronic shortage of appropriate care placements in Ireland for children with highly specialised needs.²³⁵

The Special Rapporteur on Child Protection has highlighted difficulties with the State's reliance on private, non-statutory service providers for the provision of emergency, out-of-hours foster placements. He notes that such providers are under no statutory obligation to organise placements for children they deem to be 'too problematic or challenging'.²³⁶ As referenced above, the Commission has previously raised its concerns that accountability mechanisms surrounding economic, social and cultural rights can be weakened through the State's practice of subcontracting its functions to deliver health and social services to non-State actors.²³⁷ **The Commission is concerned about the documented gaps in the availability of appropriate placements to meet the needs of children in care. The Commission is of the view that the State's human rights obligations should be fully met, including where public services are provided to children through private actors.**

Article 17, para 2: Children's right to education

Access to and participation in education

Socio-economic gradient in education

Research has identified that the socio-economic characteristics of families in Ireland shape the educational experiences and attainment of children. The longitudinal *Growing Up in*

²³³ Ombudsman for Children's Office, [Department of Children and Youth Affairs: Review of the Child Care Act 1991](#) (February 2018).

²³⁴ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at pp. 9-10.

²³⁵ The Child Care Law Reporting Project examines and reports on judicial child care proceedings. See Child Care Law Reporting Project, [Final Report](#) (2015) at pp. 18-19, 27.

²³⁶ Professor Geoffrey Shannon, [Eleventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas](#) (2018) at p. 160.

²³⁷ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at p. 12; Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at p. 50 and Irish Human Rights and Equality Commission, [Oral Statement, Ms Emily Logan, to the UN Committee on Economic, Social and Cultural Rights](#) (8 June 2015).

Ireland study²³⁸ demonstrates that children differ in their cognitive and language development before starting school, with marked variations by the socio-economic circumstances of their family.²³⁹ By the age of 5, children from families with lower incomes and lower maternal education levels have poorer vocabulary and problem-solving test scores, and are rated more negatively by their teachers in relation to language, reading and numeracy skills. For example, 39% of 5-year-old children from families in the lowest income quintile have not reached the expected language milestones compared with just 19% of those from families in the highest income quintile.²⁴⁰ The verbal reasoning and numerical abilities of 13-year-olds are also strongly associated with social advantage and disadvantage, with the highest scores being achieved by children with families in the highest income quintile for all tests.²⁴¹ There is international evidence that social differentiation in skills such as literacy and numeracy can have a long-term effect on educational and socio-emotional outcomes.²⁴²

Furthermore, children from socio-economically disadvantaged families are found to experience greater adjustment difficulties in their transition to the primary and secondary education settings, and to have more negative dispositions towards school.²⁴³ 13 year-old-children from families with higher incomes and higher levels of education report significantly more positive interactions with their teachers than those from families in the lowest income category and with lower levels of education.²⁴⁴ The highest absenteeism levels are also recorded among 13-year-old children whose parents have never been employed. 13-year-olds from professional/managerial family backgrounds are the most likely to have no days absent from school.²⁴⁵

The DEIS (Delivering Equality of Opportunity in Schools) programme provides targeted 'additional resources to schools serving disadvantaged populations in Ireland'. However, the ESRI has highlighted that the majority of students from these communities do not attend DEIS schools and therefore, do not receive additional supports on the basis of their socio-economic circumstances.²⁴⁶

Traveller and Roma children

Significant challenges relating to the participation, attendance and attainment of children from the Traveller and Roma communities in the Irish education system have been

²³⁸ *Growing Up in Ireland* is the national longitudinal study of children and young people in Ireland, funded by the Department of Children and Youth Affairs. See [Growing Up in Ireland](#).

²³⁹ ESRI, [The Transition to Primary Education: Insights from the Growing Up in Ireland Study](#) (May 2018) at p. 105.

²⁴⁰ Growing Up in Ireland, [The Lives of 5-Year-Olds: Infant Cohort](#) (2019) at pp. 123, 126.

²⁴¹ Growing Up in Ireland, [The Lives of 13-Year-Olds](#) (2018) at pp. 127-128.

²⁴² ESRI, [The Transition to Primary Education: Insights from the Growing Up in Ireland Study](#) (May 2018) at p. 117.

²⁴³ ESRI, [The Transition to Primary Education: Insights from the Growing Up in Ireland Study](#) (May 2018) at p. 117. See also, Growing Up in Ireland, [Key Findings: Cohort '08 at 9 Years Old](#) (November 2018).

²⁴⁴ Growing Up in Ireland, [The Lives of 13-Year-Olds](#) (2018) at p. 91.

²⁴⁵ Growing Up in Ireland, [The Lives of 13-Year-Olds](#) (2018) at p. 121.

²⁴⁶ ESRI, [The Transition to Primary Education: Insights from the Growing Up in Ireland Study](#) (May 2018) at p. 117 and Dr. E. Smyth, [Educational Disadvantage and the DEIS programme](#) (Education Matters Yearbook 2017-2018) at pp. 177-178.

identified. The CRC Committee highlighted in 2016 that it is ‘deeply concerned about the structural discrimination against Traveller and Roma children, including as regards their access to education’ and it called on the State to undertake concrete and comprehensive measures to address this.²⁴⁷

As highlighted in the National Report,²⁴⁸ the new *National Traveller and Roma Inclusion Strategy 2017-2021* and the *DEIS Plan 2017* include a number of specific actions relating to improving the educational outcomes of Traveller and Roma children.²⁴⁹ However, the Report also notes that separate achievement data is not collected for Traveller and Roma pupils so it is not possible to establish the impact of the measures adopted.²⁵⁰ Despite improvements in this area, recent reports indicate that Travellers and Roma continue to experience high levels of educational disadvantage.²⁵¹ Census 2016 demonstrates that the level of education among Travellers remains well below that of the general population, with just 13.3% of girls from the Traveller community being educated to upper secondary or above compared with 69.1% of the general population. Boys from the Traveller community are approximately four times as likely to leave school at primary level than the general population.²⁵²

Research has also highlighted school attendance and completion rates as an issue for the Roma community, with service providers sharing their view that additional supports and resources are required.²⁵³ In particular, the inadequate and overcrowded nature of the accommodation that many families are living in has been repeatedly identified as impacting on the attainment levels and participation of Roma children in school.²⁵⁴ Traveller and Roma children are also significantly more likely to report being bullied in schools. Members of the Roma community have spoken about having to hide their identity to prevent or protect themselves against bullying and discrimination in schools.²⁵⁵

The *Education (Admissions to Schools) Act 2018* sets out that 25% of the places in a school that is oversubscribed can be reserved for children or grandchildren of past pupils.²⁵⁶ The

²⁴⁷ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at p. 16.

²⁴⁸ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 95-97.

²⁴⁹ Department of Justice and Equality, [National Traveller and Roma Inclusion Strategy 2017-2021](#) (June 2017) and Department of Education and Skills, [DEIS Plan 2017 – Delivering Equal Opportunity in Schools](#) (2017).

²⁵⁰ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at pp. 95-96.

²⁵¹ Children’s Rights Alliance, [Report Card 2019](#) (February 2019) at pp. 120-121.

²⁵² Central Statistics Office, [Census of Population 2016 – Profile 8: Irish Travellers, Ethnicity and Religion](#).

²⁵³ Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) at p. 113.

²⁵⁴ Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) at p. 114.

²⁵⁵ It has been highlighted that further research is needed to obtain a comprehensive picture of the experiences of children from the Roma community attending school in Ireland. See Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) at p. 53.

²⁵⁶ See Section 62(10)(b) of the *Education Act 1998*, as amended by the [Education \(Admission to Schools\) Act 2018](#).

CRC Committee referred to this as a discriminatory policy in 2016.²⁵⁷ The Commission has also repeatedly called on the State, including through legislative observations²⁵⁸ and its *amicus curiae* intervention in the Supreme Court in the *Stokes* case,²⁵⁹ to ensure equity of access to publicly funded schools. It is concerned that the application of this ‘past pupil’ criterion will act as a barrier, particularly for children of Travellers, immigrants and people with disabilities, in accessing education and may result in their segregation in specific schools.²⁶⁰

Diversity in education

Census 2016 highlights that people indicating ‘no religion’ accounted for 9.8% of the population and Catholics accounted for 78.3% of the population. There were 63,443 Muslims in Ireland in 2016 (an increase of 95% since 2006). Orthodox Christians are also the fastest growing religion in Ireland, with 62,187 people identifying as Orthodox in 2016.²⁶¹

While the Commission has welcomed commitments by the State to divest patronage from Catholic schools and establish more multi-denominational schools,²⁶² it has concerns about the slow progress to date. The CRC Committee raised similar concerns in 2016 and called on the State to expeditiously undertake concrete measures to significantly increase the availability of non-denominational or multi-denominational schools.²⁶³

From 2013-2018, only 11 schools were divested to multi-denominational patrons.²⁶⁴ In the 2017/2018 academic year, 95.8% of primary schools had a religious patron. 90% of all primary schools remained under the patronage of the Catholic Church and 6% were run by minority religions. In four counties in Ireland, there is no alternative to denominational primary school provision.²⁶⁵ In 2017, 48.3% of post-primary schools had a Catholic ethos, while 42.5% were inter-denominational and 5.5% were multi-denominational.²⁶⁶ Overall,

²⁵⁷ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at p. 14.

²⁵⁸ Irish Human Rights and Equality Commission, [Observations on the Education \(Admission to Schools Bill 2015\)](#) (November 2015) and Irish Human Rights and Equality Commission, [Observations on the Education \(Admission to Schools\) Bill 2016](#) (November 2016).

²⁵⁹ *Mary Stokes v. Christian Brothers High School Clonmel & Ors* (December 2012). See also, Irish Human Rights and Equality Commission, [IHREC submits its views and recommendations on the Education \(Admission to Schools\) Bill 2015](#) (November 2015).

²⁶⁰ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at pp. 85-87 and Irish Human Rights and Equality Commission, [‘Segregation Out’ of Traveller, immigrant children & children of people with disabilities from schools through preferential access for others should be prohibited](#) (November 2016). In 2011, approximately seven out of ten Traveller children (67.3%) lived in families where the mother had either no formal education or a primary education only. See Department of Children and Youth Affairs, [State of the Nation's Children](#) (2016) at p. 22.

²⁶¹ Central Statistics Office, [Census of Population 2016 – Profile 8: Irish Travellers, Ethnicity and Religion](#).

²⁶² Irish Human Rights and Equality Commission, [Report to UN Committee on Economic, Social and Cultural Rights on Ireland's Third Periodic Review](#) (May 2015) at p. 87.

²⁶³ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at p. 14.

²⁶⁴ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at pp. 19-20.

²⁶⁵ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 19.

²⁶⁶ Information provided by the Department of Education and Skills on 24 April 2019.

the State has been criticised about the absence of a clear, long-term plan as to how its targets on the divestment and patronage of schools will be met.²⁶⁷

The Commission has welcomed the legislative provisions introduced through the *Education (Admissions to Schools) Act 2018* which give effect to the principle that no child should be given preferential access to a publicly funded school on the basis of their religion. This is with due regard to the particular requirements of children of minority faiths.²⁶⁸ However, as highlighted by the Children's Rights Alliance, children will continue to be educated in schools that promote a particular ethos because of the integrated curriculum and the fact that few schools have the resources to facilitate children opting out of denominational teaching.²⁶⁹

As stated above, the Commission has expressed concerns that children of migrant families may be 'segregated out' of schools on the basis of enrolment policies that give preference to children of past pupils.²⁷⁰ Research has demonstrated that students from minority ethnic and national groups are more likely to attend large urban schools which are less likely to be oversubscribed and have a concentration of students who experience socio-economic disadvantage.²⁷¹ For example, 25% of children whose mothers migrated from Africa are reported as attending the most disadvantaged schools, compared to 9% of children of Irish mothers.²⁷² The Commission has also noted that despite recent demographic changes in Ireland, this diversity has yet to be reflected within the teaching profession.²⁷³

Children living in Direct Provision and homeless accommodation

It has been documented that living in Direct Provision centres or temporary and emergency homeless accommodation can have a particularly negative impact on children's educational attendance, engagement and experience, including due to their poor physical or mental health, low self-esteem, exhaustion, and feelings of isolation.²⁷⁴

Firstly, the unavailability of appropriate spaces to study and complete homework has been identified as an issue, including in a consultation carried out with children living in Direct

²⁶⁷ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 18.

²⁶⁸ Irish Human Rights and Equality Commission, [Proposals to End 'Baptism Barrier' Welcomed by Irish Human Rights and Equality Commission](#) (09 May 2018).

²⁶⁹ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at p. 22. In its observations on the *Education (Admissions to School) Bill 2015*, the Commission recommended that a legislative amendment should require schools to have regard to providing information in relation to religion in an objective, critical and pluralistic manner that avoids indoctrination. See Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at p. 29.

²⁷⁰ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at pp. 85-87.

²⁷¹ M. Darmody, F. McGinnity and G. Kingston, [The experiences of migrant children in Ireland](#) (October 2016) at p. 181.

²⁷² M. Darmody, F. McGinnity and G. Kingston, [The experiences of migrant children in Ireland](#) (October 2016) at p. 181.

²⁷³ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at p. 31.

²⁷⁴ Irish Primary Principals Network, [Schools becoming a safe haven for Ireland's 4,000 homeless children](#) (21 February 2019).

Provision.²⁷⁵ Research carried out on the educational needs of children experiencing homelessness identified a number of factors impacting on children's participation and learning in school, including: the lack of access to a sufficient and nutritionally balanced diet; poor sleep and disrupted bedtime routines; illness and infectious diseases from living in cramped conditions and having limited access to health services; and placement in homeless accommodation at a significant distance from the child's school. These issues were described as affecting children's school attendance, as well as their reduced engagement and participation in school life and learning.

The Commission is also aware of the challenges that can be faced by families who have recently arrived in Ireland in seeking information about registering for a school place. Furthermore, the OCO has expressed its concern about the provision of education for children who arrived in Ireland under Irish Refugee Protection Programme and are living in Emergency Reception and Orientation ("EROC") Centres. Schools in EROCs are not recognised by the Department of Education and Skills and, according to the OCO, this makes it much more difficult for them to access the additional supports needed. The Ombudsman for Children has called for children to be placed in local mainstream schools without delay pending their resettlement to ensure equity in educational outcomes.²⁷⁶

Children with disabilities

The Commission welcomes recent developments in this area, including Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities on 20 March 2018²⁷⁷ and the *Education (Admission to Schools) Act 2018*, which introduces a provision compelling schools to make additional provision for children with special educational needs.²⁷⁸ However, the Commission has previously noted that the *Education for Persons with Special Educational Needs Act 2004* has yet to be fully commenced and implemented, resulting in an ongoing gap in the legislative framework with regard to the rights of children with disabilities.²⁷⁹

The Commission notes reports of children being restrained and/or secluded in schools across Ireland, including children with autism.²⁸⁰ In 2018, the National Council for Special Education ("NCSE") highlighted that Special Needs Assistants in schools are managing challenging behaviours - often without the required skillsets, training and appropriate supervision – which is resulting in the behaviour being contained but not therapeutically

²⁷⁵ Children's Rights Alliance, [Home Works: A Study on the Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation](#) (2018); Focus Ireland, [Homelessness costs children their education](#) (17 June 2018) and Department of Children and Youth Affairs, [Report of DCYA consultations with children and young people living in Direct Provision](#) (2015).

²⁷⁶ Ombudsman for Children, [Equal education for refugee children](#) (20 February 2019).

²⁷⁷ Irish Human Rights and Equality Commission, [Statement on the UN Convention on the Rights of Persons with Disabilities](#) (07 March 2018). The Convention came into force in Ireland on the 19 April 2018. See Dáil Éireann Debate, [UN Convention on the Rights of Persons with Disabilities](#) (20 September 2018).

²⁷⁸ Department of Education and Skills, [Minister Bruton commences key provisions in the Education \(Admission to Schools\) Act 2018](#) (03 October 2018).

²⁷⁹ Irish Human Rights and Equality Commission, [Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's Combined Third and Fourth Periodic Reports](#) (December 2015) at p. 31.

²⁸⁰ Inclusion Ireland, [Shining a light on seclusion and restraint in schools in Ireland: The experience of children with disabilities and their families](#) (September 2018) and Autistic Rights Together, [Statement on the continued use of physical restraint systems and seclusion in Irish special needs schools](#).

responded to.²⁸¹ According to NCSE, unless the management of challenging behaviours and the use of restrictive practices is adequately addressed, these situations could have very serious consequences for students and staff. It called for the immediate preparation and publication of guidance for schools by the Department of Education and Skills.²⁸² The NCSE has previously called for such guidelines in 2012 and 2016 but they have yet to be published.²⁸³

The Commission is concerned about the failure of the State to ensure that the education system is fully accessible and effective for all children in Ireland.²⁸⁴

Reduced timetables

A specific ‘soft barrier’ to education faced by some children in Ireland is exclusion from school by means of a reduced timetable. It is being reported that schools are opting to place children – particularly those from educationally disadvantaged backgrounds - on reduced timetables as a response to challenging behaviour when there is a lack of learning supports available, while others are using it as a disciplinary method.²⁸⁵ The Irish Traveller Movement has also documented a rising trend in the use of reduced timetables for Traveller children.²⁸⁶ This measure involves the school allowing a child to attend school for a few hours or less per day, without appropriate monitoring by the Child and Family Agency or the Department of Education and Skills.²⁸⁷ It has been highlighted that there is widely diverging practice with regard to the use of reduced timetables across Ireland and a lack of regulations and guidelines in place.²⁸⁸ **The Commission is very concerned about emerging and consistent reports of the use of reduced timetables in schools.**

The cost of education

Primary and secondary education

In 2011, the Committee noted that the de facto cost of education and materials in public primary schools is in some instances the responsibility of parents.²⁸⁹ As highlighted in the National Report, the Minister for Education and Skills has introduced measures and

²⁸¹ National Council for Special Education, [Comprehensive Review of the Special Needs Assistant Scheme](#) (March 2018) at pp. 24, 52.

²⁸² National Council for Special Education, [Comprehensive Review of the Special Needs Assistant Scheme](#) (March 2018) at pp. 52-53.

²⁸³ Inclusion Ireland, [Shining a light on seclusion and restraint in schools in Ireland: The experience of children with disabilities and their families](#) (September 2018).

²⁸⁴ The Committee has made a clear statement that Article 17(2) requires States to establish and maintain an education system that is both accessible and effective. See European Committee of Social Rights, [Conclusions 2011 – Ireland – Article 17-2](#).

²⁸⁵ Barnardos, [Barriers to education facing vulnerable groups](#) (2018) at p. 2 and Joint Committee on Education and Skills, [Traveller Education: Discussion](#) (26 March 2019).

²⁸⁶ Irish Traveller Movement, [Presentation to the Joint Committee on Education and Skills](#) (26 March 2019).

²⁸⁷ K. Holland, [Children on reduced timetables ‘denied education’](#) (Irish Times, 16 November 2018) and Joint Committee on Education and Skills, [Traveller Education: Discussion](#) (26 March 2019).

²⁸⁸ Barnardos, [Barriers to education facing vulnerable groups](#) (2018) at p. 2.

²⁸⁹ European Committee of Social Rights, [Conclusions 2011 – Ireland – Article 17-2](#).

proposals focused on reducing school costs for parents.²⁹⁰ However, it has been reported that the significant costs associated with school continue to place pressure on families,²⁹¹ particularly families with children experiencing homelessness.²⁹²

According to the results of a survey conducted by Barnardos in 2017, the total 'back to school' costs were €395 for a parent with a child in the fourth class of primary school and €800 for a parent with a child in the first year of secondary school. School books, stationary and uniforms are the largest expenditure items. Although the Back to School Clothing and Footwear Allowance is an important support, this survey documents that it falls short of the real costs incurred.²⁹³ Furthermore, it has been documented that Roma children face significant financial barriers to education, yet many Roma families are not deemed eligible for this Allowance.²⁹⁴

There is also a common practice in primary and secondary schools of seeking voluntary financial contributions from parents. Concerns have been raised about the lack of transparency as to whether this money is used to meet basic school running costs and the pressure faced by parents when schools pursue the non-payment of such contributions.²⁹⁵ It has also been reported by a financial institution in Ireland that there is a rise in the number of parents in debt due to school related costs.²⁹⁶ **The Commission is concerned about the financial barriers being faced by children and families in accessing primary and secondary school education.**

Further and third-level education

The National Report recognises that the current system of access to further and third-level education can be a barrier to some individuals on the grounds of their nationality, immigration or residence status.²⁹⁷ Access to third-level education is commonly available to many in Ireland by way of free third-level fees. The high cost of fees would otherwise prove to be widely prohibitive. Access to the Free Fees Initiative is subject to criteria pertaining to nationality or immigration status, along with an ordinary residence requirement of three out of five years preceding entry to third-level education.²⁹⁸

²⁹⁰ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019).

²⁹¹ Barnardos, [School Costs Survey 2017 – Briefing Paper](#) (August 2017) and Barnardos, [School Costs Survey 2018 – Briefing Paper](#) (August 2018).

²⁹² Children's Rights Alliance, [Home Works: A Study on the Educational Needs of Children Experiencing Homelessness and Living in Emergency Accommodation](#) (2018) at p. 13.

²⁹³ In 2017, the Back to School Clothing and Footwear Allowance was €125 for children in the fourth class of primary school and €250 for children in the first year of secondary school. See Barnardos, [School Costs Survey 2017 – Briefing Paper](#) (August 2017) at pp. 5-8.

²⁹⁴ Children's Rights Alliance, [Report Card 2019](#) (February 2019) at pp. 120-121. See also, Pavee Point Traveller and Roma Centre and Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018) at pp. 110-111.

²⁹⁵ Barnardos, [School Costs Survey 2017 – Briefing Paper](#) (August 2017) at pp. 9-10.

²⁹⁶ Irish League of Credit Unions, [Irish League of Credit Unions survey finds more than a third of families in debt](#) (July 2018).

²⁹⁷ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 97.

²⁹⁸ For further information, see the [Higher Education Authority](#).

As highlighted in the National Report,²⁹⁹ the Government introduced the Pilot Student Support Scheme in 2015 to support school leavers who are in the international protection system to access further and higher education. However, applicants are required to have attended a minimum of five academic years in the Irish school system. Additionally, applicants must have completed their Leaving Certificate, and been accepted onto an approved course.³⁰⁰ The Commission has previously highlighted that the Scheme's effect is significantly limited due to the onerous requirements in place.³⁰¹ In 2016, fifteen students applied to the Scheme and two were deemed eligible while in 2017, five students applied and one was deemed eligible.³⁰² **The Commission is concerned about the barriers faced by migrants, asylum-seekers and refugees in accessing affordable further and third-level education.**

Article 19, para 1: Integration of migrants

Historically a country of emigration, Ireland began to experience significant net immigration from the 1990s onwards. According to Census 2016, there were 535,475 non-Irish nationals living in Ireland (11.6% of the population) originating from 200 different countries³⁰³ and, as the ESRI has identified, a significant number of migrants have become Irish citizens.³⁰⁴ A growing population of young Irish people have parents and grandparents of different nationalities.³⁰⁵ Ireland is now a more diverse multi-national and multi-ethnic society. In the 2016 Census, 82% of the usually resident population of 4.689 million people reported that they were of 'White Irish' ethnicity, 0.7% were 'Irish Travellers', 9.5% were of 'Any other White background', 2.1% were of 'Asian background', 1.4% were of 'Black African' or 'Any other Black background', 1.5% were 'Other (including mixed background)' and ethnicity was not stated for 2.6%.³⁰⁶ Also, as we have seen above, Ireland is now more diverse in terms of religion and belief and indeed non-belief. The Commission is of the view that diversity and interculturalism and combatting racism must be central to our understanding and practice of integration.

As highlighted to the Committee in 2018,³⁰⁷ the Commission has funded a Human Rights and Equality Research Programme by the ESRI, which has produced a series of reports that contribute to the evidence base about the integration of minority ethnic groups and

²⁹⁹ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 97.

³⁰⁰ Department of Education and Skills, [Student Support Scheme for asylum seekers to continue for coming year](#) (07 September 2018).

³⁰¹ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at p. 87.

³⁰² L. Fletcher, [Third level access scheme for asylum seekers extended](#) (RTÉ News - 7 September 2018).

³⁰³ Central Statistics Office, [Census of Population 2016 – Profile 7: Migration and Diversity](#).

³⁰⁴ ESRI, [Monitoring Report on Integration 2018](#) (November 2018) at pp. 63-64.

³⁰⁵ ESRI, [Monitoring Report on Integration 2018](#) (November 2018) and A. Röder, M. Ward, C. Frese and E. Sánchez, [New Irish Families: A Profile of Second Generation Children and their Families](#) (Dublin: Trinity College Dublin, 2014).

³⁰⁶ Central Statistics Office, [Census of Population 2016 – Profile 8: Irish Travellers, Ethnicity and Religion](#).

³⁰⁷ Irish Human Rights and Equality Commission, [Comments on Ireland's 15th National Report on the implementation of the European Social Charter](#) (May 2018) at p. 11.

nationalities in Ireland: *Who Experiences Discrimination in Ireland* (2017);³⁰⁸ *Attitudes to Diversity in Ireland* (2018);³⁰⁹ *Discrimination and Inequality in Housing in Ireland* (2018);³¹⁰ and *Nationality and Ethnicity in the Irish Labour Market* (2018).³¹¹

Attitudes to Diversity in Ireland reported that 50% of adults born in Ireland believe some cultures to be superior to others (45% is the European average), while 45% believe that some races/ethnic groups were born harder working (40% is the European average). A lower proportion, 17%, believes that some races/ethnic groups were born less intelligent (14% is the European average). Overall, the report demonstrates that these values represent rates of biological and cultural racism slightly above the West European average.³¹² With regard to the construction of such 'ethnic hierarchies', the report also highlights particular prejudices towards the Muslim and Roma communities in Ireland.³¹³

According to *Who Experiences Discrimination in Ireland*, compared to White Irish respondents, Black respondents are three times more likely to experience discrimination in access to public services and almost five times more likely to experience discrimination in access to private services, such as shops, banks and housing. Asian respondents also report more discrimination than White Irish in private services.³¹⁴

The Commission welcomes the fact that the *Migrant Integration Strategy 2017-2020*, acknowledges data gaps in relation to migrant needs and experiences and proposes a specific 'targeted initiative' to address this.³¹⁵ The documented disproportionate under-representation or exclusion of minority ethnic and national groups in official survey and data collection strategies has the potential to underestimate the extent of inequality, disadvantage and discrimination in Ireland.³¹⁶

The Commission is concerned by the growing body of evidence demonstrating significant experiences of discrimination amongst minority ethnic groups and nationalities in Ireland, as well as troubling attitudes to particular groups in society. It is also concerned that

³⁰⁸ Irish Human Rights and Equality Commission and ESRI, [Who Experiences Discrimination in Ireland?](#) (November 2017).

³⁰⁹ Irish Human Rights and Equality Commission and ESRI, [Attitudes to Diversity in Ireland](#) (March 2018).

³¹⁰ Irish Human Rights and Equality Commission and ESRI, [Discrimination and Inequality in Housing in Ireland](#) (June 2018).

³¹¹ Irish Human Rights and Equality Commission and ESRI, [Ethnicity and Nationality in the Irish Labour Market](#) (December 2018).

³¹² The report examines data from the European Social Survey and therefore the results for Ireland are compared with averages from ten other West European countries (Belgium, Denmark, Finland, France, Germany, the Netherlands, Portugal, Spain, Sweden and the United Kingdom) to set Ireland in comparative context. See Irish Human Rights and Equality Commission and ESRI, [Attitudes to Diversity in Ireland](#) (March 2018) at pp. 27-28.

³¹³ Support for Muslim and Roma immigration is lower in Ireland than the average for the ten Western European countries presented. See Irish Human Rights and Equality Commission and ESRI, [Attitudes to Diversity in Ireland](#) (March 2018) at pp. 25, 34.

³¹⁴ Irish Human Rights and Equality Commission and ESRI, [Who Experiences Discrimination in Ireland?](#) (November 2017) at p. 36.

³¹⁵ Department of Justice and Equality, [The Migrant Integration Strategy: A Blueprint for the Future](#) (2017) at p. 9.

³¹⁶ ESRI, [Monitoring Report on Integration 2018](#) (November 2018) and ESRI and the Office for the Promotion of Migrant Integration, [Data for Monitoring Integration: Gaps, challenges and opportunities](#) (March 2019).

ongoing data gaps make it difficult to comprehensively assess the experience of minority ethnic and national groups in Ireland.

The Commission notes that the *National Action Plan Against Racism* lapsed in 2008. The CRC Committee called on the State to establish an appropriately high-level, comprehensive successor to this Plan in 2016.³¹⁷ The Commission has also previously raised its concerns that insufficient urgency is being placed on addressing gaps that have been highlighted in Ireland's legislative and procedural infrastructure for combatting hate crime. The legislation in place, the *Prohibition on Incitement to Hatred Act 1989*, is largely unused with the low rate of prosecutions calling into question the effectiveness and accessibility of the available sanctions.³¹⁸ The State has indicated that the Department of Justice and Equality is undertaking a review of the 1989 Act, which was due for completion by the end of 2018.³¹⁹ This aligns with the State's commitment under the *Migrant Integration Strategy* to review current legislation 'with a view to strengthening the law against hate crime, including in the area of online hate speech.'³²⁰ It is the Commission's understanding, however, that the review remains incomplete, and has not been the subject of clear terms of reference or an updated timeframe for delivery. **The Commission is concerned that the legislative and policy framework in place is inadequate to protect people from minority ethnic and national groups from racial discrimination, hate crime and online hate speech.**

Article 19, para 4: Equal treatment of migrants

Access to the labour market

The Commission notes the Committee's statement that it is not enough for a Government to demonstrate that no discrimination exists in law alone, but it is obliged to prove that no discrimination exists in practice.³²¹ The recent announcement by the Government that spouses and partners of Critical Skills Employment Permit holders will be granted an immigration permission with an automatic right to work is welcome.³²² However, as

³¹⁷ Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016) at p. 6.

³¹⁸ Irish Human Rights Commission, [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) at para 188.

³¹⁹ Committee on the Elimination of Racial Discrimination, [Combined Fifth to Ninth Periodic Reports submitted by Ireland under Article 9 of the Convention](#) (November 2018) at para 68.

³²⁰ Department of Justice and Equality, [The Migrant Integration Strategy: A Blueprint for the Future](#) (2017) at p. 33. Recent research funded by the Irish Human Rights and Equality Commission and the Irish Research Council has demonstrated the prevalence of 'racially loaded' speech online in Ireland. See E. Siapera, E. Moreo, & J. Zhou, [Hate Track: Tracking and Monitoring Racist Speech Online](#) (2018). The project used insights from civil society and experts in the field of race, racism and hate speech to build a computational tool that harvests and classifies Facebook and Twitter posts in terms of their probability to contain racially-loaded toxic contents, generating a dataset which was subsequently analysed in terms of the toxic repertoires it contained, the communities targeted, the kinds of people posting, and the events that trigger racially-toxic contents.

³²¹ European Committee of Social Rights, [Conclusions 2011 - Ireland - Article 19-4](#).

³²² Department of Justice and Equality, [Ministers Flanagan and Humphreys announce change to immigration arrangements for spouses and partners of Critical Skills Employment Permit Holders](#) (6 March 2019).

referenced in our 2018 submission to the Committee,³²³ labour market discrimination in Ireland continues to be a significant issue.³²⁴ The ESRI's *2018 Monitoring Report on Integration* stated that the most disadvantaged group with regard to labour market outcomes in Ireland is African nationals. The employment rate for African nationals is 45% compared to an average of 70% for non-Irish nationals.³²⁵ According to the *Ethnicity and Nationality in the Irish Labour Market* report:

- White EU-East nationals are more likely to experience discrimination in the workplace (1.5 times as likely) and considerably less likely to occupy managerial/professional jobs (0.2 times as likely) than White Irish nationals;
- The White non-EU group is more likely to experience discrimination in the workplace than White Irish (1.6 times as likely);
- The Black non-Irish group is much more likely to experience discrimination seeking work (5 times as likely) and in the workplace (2.7 times as likely) than White Irish.
- The Black non-Irish group is also much less likely to be employed (0.4 times as likely) and, when individuals from this group do have a job, they are much less likely to hold a managerial/professional position (0.3 times as likely) than White Irish.³²⁶

The Commission has also highlighted to the Committee³²⁷ that the racism and discrimination experienced by migrant women workers is often closely linked to their immigration status, particularly in the case of undocumented workers, and there is a need for a regularisation scheme to be established.³²⁸

In most cases, civil service employment is not open to non-EEA nationals and, more generally, the lack of representation of people from minority ethnic and national groups in the public sector (for example, in education) has been identified as a barrier to integration.³²⁹ Furthermore, the recognition of qualifications acquired abroad has been raised as an issue by migrants.³³⁰ While Quality and Qualifications Ireland provides assistance to non-Irish nationals, research has indicated that difficulties in obtaining recognition of qualifications acquired abroad pose a barrier to labour market integration and

³²³ Irish Human Rights and Equality Commission, [Comments on Ireland's 15th National Report on the implementation of the European Social Charter](#) (May 2018) at pp. 11-12. Note, this submission provided the Committee with information with regard to forced labour and trafficking in Ireland.

³²⁴ Irish Human Rights and Equality Commission and ESRI, [Who Experiences Discrimination in Ireland?](#) (November 2017) at p. 33.

³²⁵ ESRI, [Monitoring Report on Integration 2018](#) (November 2018) at pp. 25-26.

³²⁶ Irish Human Rights and Equality Commission and ESRI, [Ethnicity and Nationality in the Irish Labour Market](#) (December 2018). Note this report accounted for differences between groups that are expected to influence labour market outcomes - educational qualifications, age, gender, family type, broad region and length of time living in Ireland.

³²⁷ Irish Human Rights and Equality Commission, [Comments on Ireland's 15th National Report on the implementation of the European Social Charter](#) (May 2018) at p. 23.

³²⁸ For additional information, see Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Reports](#) (January 2017) at pp. 90-91.

³²⁹ Department of Justice and Equality, [The Migrant Integration Strategy: A Blueprint for the Future](#) (2017) at pp. 4, 40.

³³⁰ Department of Justice and Equality, [The Migrant Integration Strategy: A Blueprint for the Future](#) (2017) at p. 40.

may lead non-Irish nationals to situations of under-employment and over-qualification.³³¹ The Commission notes the OECD's comments about the need for a formal recognition process, whereby migrants' education, skills and work experience are systematically assessed, recorded and, where appropriate, recognised and translated into domestic equivalents.³³²

The Commission is concerned by the reported incidences of discrimination in recruitment processes and the workplace, as well as the structural barriers faced by migrant communities in accessing the labour market.

Accommodation

In 2011, the Committee called on the State to eliminate all legal and de facto discrimination concerning access to public and private housing.³³³ The *Discrimination and Inequality in Housing in Ireland* report provides evidence of the following:

- Black respondents are more than five times more likely to report housing discrimination than White Irish nationals. Even after education, employment status and housing tenure are taken into account, Black people remain 3.5 times more likely to be discriminated against with respect to housing than White Irish people;
- Non-EU nationals are more likely to experience housing deprivation than Irish nationals (1.7 times as likely);
- Nationals from outside the EU are more likely to live in over-crowded accommodation compared to Irish nationals, even when they are within the same income group (2.5 times as likely);
- Non-Irish nationals are substantially over-represented among the homeless population, particularly Romanians and Africans;
- Non-Irish nationals, except those from the UK, are considerably over-represented in the private rented sector and are particularly affected by entry barriers to the mortgage market.³³⁴

There has been a notable lack of policy focus in this area. For example, the recently published *Migrant Integration Strategy* makes no mention of housing.³³⁵ Also, the Government's action plan for housing and homelessness, *Rebuilding Ireland*, does not contain any specific actions or targets relating to the migrant population.³³⁶ Where policies do exist, they can place migrants at a disadvantage. As acknowledged in the National Report,³³⁷ social housing applicants who are not Irish or UK nationals must meet additional

³³¹ Irish Human Rights and Equality Commission and ESRI, [Ethnicity and Nationality in the Irish Labour Market](#) (December 2018) at p. 72.

³³² OECD, [Working Together for Local Integration of Migrants and Refugees](#) (2018) and OECD, [Making Integration Work: Refugees and others in need of protection](#) (2016).

³³³ European Committee of Social Rights, [Conclusions 2011 - Ireland - Article 19-4](#).

³³⁴ Irish Human Rights and Equality Commission and ESRI, [Discrimination and Inequality in Housing in Ireland](#) (June 2018).

³³⁵ Department of Justice and Equality, [The Migrant Integration Strategy: A Blueprint for the Future](#) (2017).

³³⁶ Government of Ireland, [Rebuilding Ireland](#) (June 2016).

³³⁷ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 129.

criteria in order to be assessed for social housing. In particular, non-EEA nationals can only qualify for supports if they meet both employment eligibility criteria and residency rules, which typically require the applicant to have lived in the country for at least 5 years.³³⁸ **The Commission is concerned about the discrimination and inequalities faced by people with a migrant background in seeking to access appropriate housing in Ireland, and the failure of Government policy to address this issue.**

Article 19, para 6: Family reunification

As recognised in the National Report, the criteria for family reunification for migrants varies depending on the type of permission they reside in the State under.³³⁹ Family reunification applications made by non-EEA nationals (not including beneficiaries of international protection who fall under the *International Protection Act 2015*) are governed by the Irish Naturalisation and Immigration Service *Policy Document on non-EEA Family Reunification* (2016).³⁴⁰ This process operates on an administrative basis and is subject to Ministerial discretion.

Firstly, the lack of comprehensive data on family reunification for economic migrants has been identified as a significant issue.³⁴¹ Concerns have also been raised about the absence of a legislative entitlement to family reunification for migrants, with the reliance on discretion resulting in inconsistencies in decision-making and a lack of transparency. However, it has also been acknowledged that some level of discretion in decision-making can be important, to allow income and other requirements to be waived on a case-by-case basis for example.³⁴²

Overall, the family reunification process in Ireland has been described as lengthy, ‘not applicant friendly’, ‘labour intensive’ and ‘prohibitively costly’, with the absence of targeted legal services to support families. Providing sufficient documentary evidence to establish the relationship between family members has been frequently cited as a challenge in the literature.³⁴³ The Commission has previously recommended that the policy is reformed to provide clarity to applicants regarding the provision of information to demonstrate family links and to facilitate their accompaniment to interviews, by their legal representative for example.³⁴⁴

³³⁸ Irish Human Rights and Equality Commission and ESRI, [Discrimination and Inequality in Housing in Ireland](#) (June 2018) at p. 7.

³³⁹ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 135.

³⁴⁰ Irish Naturalisation and Immigration Service, [Policy Document on non-EEA Family Reunification](#) (December 2016).

³⁴¹ ESRI and the Office for the Promotion of Migrant Integration, [Data for Monitoring Integration: Gaps, challenges and opportunities](#) (March 2019) at p. 25.

³⁴² S. Arnold and E. Quinn, [Family Reunification of Non-EU Nationals in Ireland](#) (May 2017) (ESRI Research Series Number 62) at pp. ix-x, 21.

³⁴³ S. Arnold and E. Quinn, [Family Reunification of Non-EU Nationals in Ireland](#) (May 2017) (ESRI Research Series Number 62) at pp. 21-22, 36-37, 51-52.

³⁴⁴ For further information see, Irish Human Rights and Equality Commission, [The right to family reunification for beneficiaries of international protection](#) (June 2018) at pp. 16-17.

The family reunification process has also been criticised due to the narrow interpretation of dependency. The Court of Justice of the European Union has held that dependency is an autonomous concept in EU law which is the result of a ‘factual situation characterised by the fact that legal, financial, emotional or material support for that family member is provided by his/her spouse/partner’.³⁴⁵ However, the *Policy Document on Non-EEA Family Reunification* and the decisions made demonstrate a clear focus on financial dependency, which has previously been criticised as a barrier to family reunification.³⁴⁶ Furthermore, research has observed that having income requirements waived on humanitarian grounds is difficult and requires a great deal of advocacy, including letters from professionals working with the family and other supports.³⁴⁷ The Commission has previously called for the policy to be amended to ensure that the description of dependency aligns with international standards.³⁴⁸

The Commission reiterates its view that the legal and policy framework in place needs to be strengthened and expanded, in order to ensure that the right of migrant workers to family reunification is respected, protected and fulfilled.

Article 19, para 7: Access to legal proceedings for migrants

The Commission notes the Committee’s request for information in 2011 as to whether migrant workers may have the free assistance of an interpreter if they cannot properly understand or speak the national language used in legal proceedings and have any necessary documents translated.³⁴⁹ The National Report notes that such interpretation and translation services can be provided by the Courts Service and Legal Aid Board in certain circumstances.³⁵⁰

However, the Commission notes that the availability of interpreters for different languages has been highlighted as an issue in the family courts. Furthermore, concerns have been raised about the quality of the legal interpretation services that are being provided, including due to the absence of regulations in this area.³⁵¹ The Commission also notes that Practice Direction 81 came into force in the High Court in Ireland on 1 January 2019. It places an obligation on all applicants involved in asylum, immigration, freedom of movement and citizenship cases to disclose a significant amount of information and

³⁴⁵ European Commission, [Guidance for application of Directive 2003/86/EC on the right to family reunification](#) (2014) at p. 6.

³⁴⁶ C. Gotzelmann, ‘The implementation and administration of family reunification rights in Ireland’ *Irish Jurist* (2016) at p. 84 and S. Arnold and E. Quinn, [Family Reunification of Non-EU Nationals in Ireland](#) (May 2017) (ESRI Research Series Number 62) at pp. 27-28.

³⁴⁷ S. Arnold and E. Quinn, [Family Reunification of Non-EU Nationals in Ireland](#) (May 2017) (ESRI Research Series Number 62) at pp. 21-22.

³⁴⁸ For further information see, Irish Human Rights and Equality Commission, [The right to family reunification for beneficiaries of international protection](#) (June 2018) at pp. 16-17.

³⁴⁹ European Committee of Social Rights, [Conclusions 2011 - Ireland - Article 19-7](#).

³⁵⁰ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 139.

³⁵¹ Joint Committee on Justice and Equality, [Reform of the Family Law System: Discussion \(Resumed\)](#) (13 March 2019).

documentation to the Court regarding their case.³⁵² It also requires the applicant to arrange for the translation of all documents into Irish or English by a qualified translator. Concerns have been raised by legal practitioners about the extent to which this Practice Direction acts as a specific and disproportionate barrier for asylum seekers and migrants, including due to the increased workload and costs generated by the new rules.³⁵³ **The Commission is concerned that the administrative and financial barriers in place may impede the fundamental right of migrants to access legal proceedings.**

Article 27, para 3: Discrimination on the grounds of family status

In 2007, the Committee was critical that the compensation awarded to employees unlawfully dismissed on the grounds of their family status is subject to a ceiling.³⁵⁴ The National Report confirms that ‘family status’ discrimination cases are decided by an Adjudication Officer of the Workplace Relations Commission – where an upper limit of 104 weeks remuneration applies to awards – and cannot be taken to the Circuit Court.³⁵⁵

The Commission highlighted to the Committee in 2018 that similar limitations on compensation in other EU Member States have been found to be incompatible with EU law. This has led to Ireland’s compliance with EU law being questioned, particularly in relation to the question of ‘whether the legislation includes real and effective compensation’.³⁵⁶ The Commission also raised this issue with CEDAW in 2017.³⁵⁷ **The Commission is concerned that Irish law is still not in compliance with the requirements under Article 27(3), due to the ongoing limits to the levels of compensation that may be awarded in cases involving discrimination on the grounds of ‘family status’.**

³⁵² Courts Service of Ireland, [HC81 – Asylum, Immigration and Citizenship List](#).

³⁵³ See, for example, Bloomsbury Professional, [Irish Immigration and Asylum Law Briefing](#) (24 January 2019) and Law Society Gazette, [Judge tells solicitors his door open on asylum ruling](#) (22 January 2019).

³⁵⁴ European Committee of Social Rights, [Conclusions 2007 - Ireland - Article 27-3](#).

³⁵⁵ Government of Ireland, [16th National Report on the implementation of the European Social Charter](#) (30 October 2019) at p. 157.

³⁵⁶ For further information see, Irish Human Rights and Equality Commission, [Comments on Ireland’s 15th National Report on the implementation of the European Social Charter](#) (May 2018) at pp. 13-14.

³⁵⁷ Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s Combined Sixth and Seventh Reports](#) (January 2017) at pp. 35-36.



**16 – 22 Sráid na Faiche,
Baile Átha Cliath, D07 CR20**
16 – 22 Green Street,
Dublin, D07 CR20

Idirlíon/Web www.ihrec.ie

Twitter @_ihrec