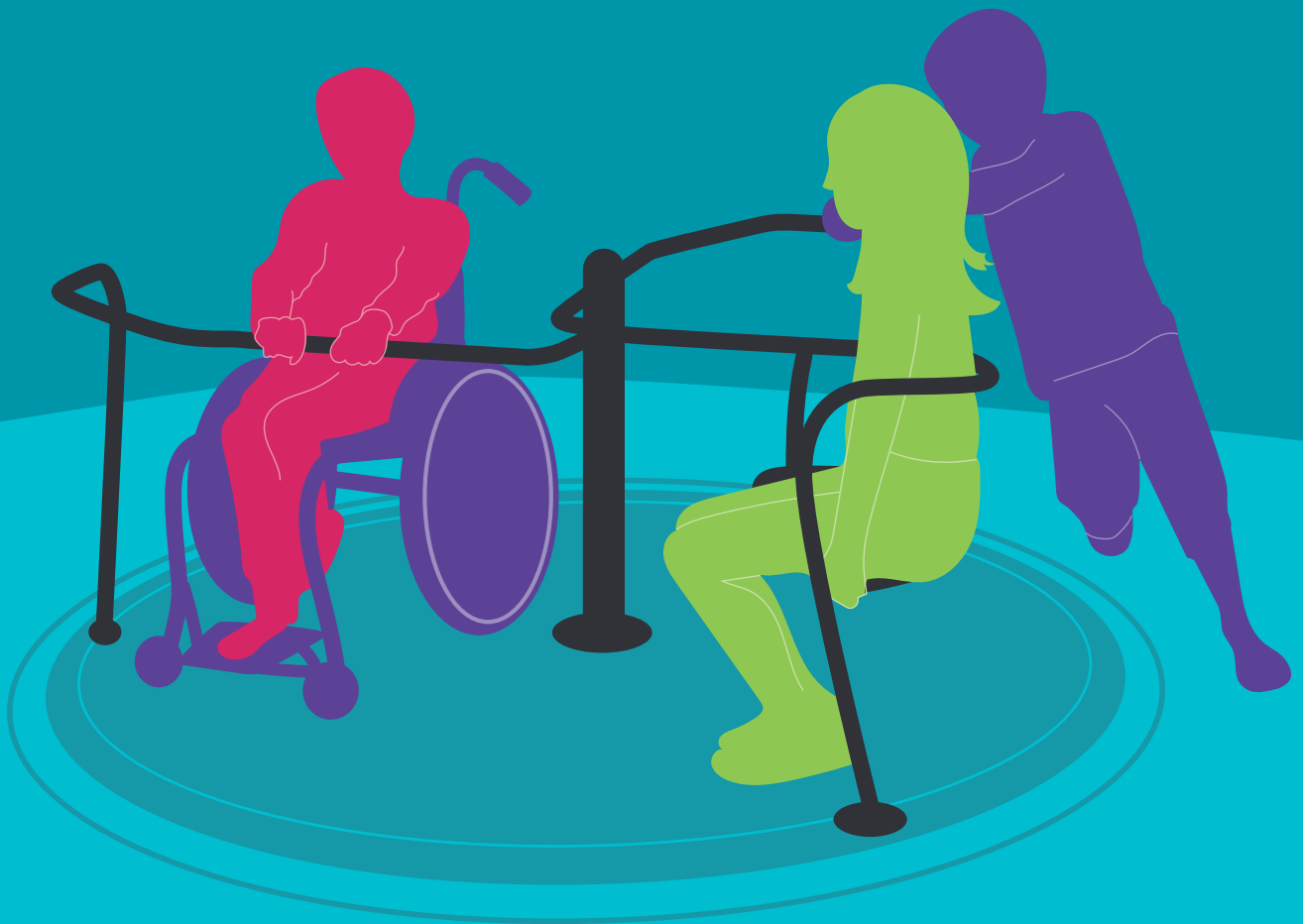


Ireland and the Rights of the Child

**Submission to the Committee on the Rights of the Child
on Ireland's combined fifth and sixth periodic reports**

Irish Human Rights and Equality Commission
August 2022



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

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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1.

Introduction

The Irish Human Rights and Equality Commission ('the Commission') is Ireland's 'A' Status National Human Rights Institution ('NHRI') and the National Equality Body.¹ The Commission is also the Independent National Rapporteur on the Trafficking of Human Beings; awaits statutory designation as the Independent Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities ('UNCRPD');² and will be assigned the role of the National Preventative Mechanism co-ordinating body under the Optional Protocol to the Convention against Torture, pending ratification.³

The Commission provided detailed comments to the UN Committee on the Rights of the Child ('Committee') in July 2020, and these comments provide additional background context and recommendations to inform the review.⁴ The purpose of this parallel report is to update the Committee on relevant developments since the adoption of its List of issues prior to reporting on Ireland in October 2020.⁵ The focus and structure of this report reflects the priority issues identified by the Committee for the review,⁶ as well as the Commission's Strategy Statement 2022-2024.⁷

The State report demonstrates that a significant number of legislative and policy initiatives have been progressed since the last examination under the Convention on the Rights of the Child ('Convention'),⁸ and the ongoing commitment to progressively realise children's rights is welcome. However, compliance with the

1 The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

2 The [Assisted Decision-Making \(Capacity\) \(Amendment\) Bill 2021](#) will amend the *Irish Human Rights and Equality Commission Act 2014* to provide a statutory basis for the Commission's designation as the Independent Monitoring Mechanism under the UNCRPD.

3 IHREC, [Strategy Statement 2022-2024](#), p. 7. The Draft General Scheme of the Inspection of Places of Detention Bill was published in June 2022. This Bill will provide for the designation of sectoral National Preventive Mechanisms that will act as national inspection bodies of places of detention, and the Commission will be the Co-ordinating National Preventive Mechanism. This will allow Ireland to ratify the Optional Protocol to the Convention against Torture. See also Section 11 of this Report.

4 IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#) (2020).

5 Committee on the Rights of the Child, [List of issues prior to submission of the combined fifth and sixth reports of Ireland](#) (2020), CRC/C/IRL/QPR/5-6.

6 Committee on the Rights of the Child, [List of issues prior to submission of the combined fifth and sixth reports of Ireland](#) (2020), CRC/C/IRL/QPR/5-6.

7 IHREC, [Strategy Statement 2022-2024](#) (2022). The Commission's Strategic Priorities are as follows: Economic equality: We will seek greater economic equality in housing, employment, income and for carers; Justice: We will defend access to justice and the rule of law in the international protection system, in the courts and in the use of public powers; Respect and recognition: We will promote the eradication of racism, ableism, ageism and sexism through public understanding and State action; Futureproofing: We will respond to crises that threaten rights and equality, including the Covid-19 pandemic and climate change; and Public Sector Duty: We will encourage, report on and enforce the compliance of public bodies.

8 Department of Children, Equality, Disability, Integration and Youth, [The combined fifth and sixth periodic reports submitted by Ireland under article 44 of the Convention pursuant to the simplified reporting procedure](#) (2022).

Convention requires improved outcomes for children in practice and chronic delays in progressing and implementing reform, including in the areas of family and child care law, racism, hate crime and hate speech, housing, disability rights, and international protection, have resulted in too many children continuing to face significant and regular violations of their rights.

The Commission is particularly concerned by the systemic inequality and exclusion experienced by structurally vulnerable groups⁹ of children in Ireland, including due to the prevalence and impact of ableism; institutional racism against minority ethnic communities, including Travellers, people of African descent and asylum-seeking, refugee and migrant children; a persistent housing crisis; and the failure of successive Governments to ensure the availability of appropriate services for children, including mental health services and support services for child victims/survivors of violence. These issues have been further exacerbated and exposed by the pandemic, and significant investment and prioritisation by the State will be required to prevent any regression in children's rights protections.

The Commission remains available to the Secretariat and Committee to further discuss the information presented in this report and our 2020 submission, and notes the important expertise that civil society organisations and the Ombudsman for Children's Office bring to the State review. Finally, the Commission wishes to acknowledge the extraordinary resilience demonstrated by children in Ireland in recent years in a rapidly changing world. The active and ongoing participation of children must inform reflections on the lessons learned from the pandemic, and the design and establishment of protective measures to prevent future rights abuses.

9 For the purpose of this parallel report, we define a structurally vulnerable child as someone who is particularly vulnerable to violations of their rights due to political, economic, social and cultural structures. Instead of focusing on the personal characteristics of individuals and groups and viewing them as lacking agency, 'structural vulnerability' refers to the structures in place which render certain sectors of the population particularly vulnerable to human rights abuses.

2.

New

developments

Children have been particularly affected by the public health measures introduced in response to Covid-19 in the last two years, including due to school closures, the lack of social interaction, and extended isolation.¹⁰ Children faced significant challenges to their rights to education, health, protection from harm, housing, private and family life, freedom of association and assembly, and non-discrimination. The pandemic had particularly adverse effects on disabled children, children without access to technology or living space, children living in overcrowded accommodation, Traveller and Roma children, and those living in or at risk of poverty.¹¹ The subsequent cost of living crisis has further compounded inequalities that the pandemic exacerbated, and heightened the need for sustained investment to ensure children and families receive the necessary support.¹²

The Commission raised concern about the use of Anti-Spit Guards as a use of force option against children by An Garda Síochána during the pandemic, and the lack of appropriate safeguards in place.¹³ The Commission also stressed that this use of force option should be a measure of last-resort, and should not be retained beyond the current public health emergency.¹⁴

Despite the disproportionate impact of the restrictions and their enforcement on children, the State's response to the pandemic lacked a focus on children's rights and equality standards, and children were not represented or involved in the core pandemic decision-making structures.¹⁵ During the pandemic, the Minister for Health had 'sweeping powers' to introduce restrictions on civil liberties, and most of these restrictions were introduced through regulations.¹⁶ This made it

10 IHREC/Covid-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (2021), p. 80. See also: OCO, [Annual Report 2021: Resilience Tested](#) (2022), p. 11 and OCO, [No Filter: A survey of children's experiences of the Covid Pandemic](#) (2022), p. 5.

11 See Section 4 of this report. See also: IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (2021), p. vii; IHREC, [Submission to the Oireachtas Joint Committee on Justice: COVID-19 and Civil Liberties](#) (2021), p. 7; and Irish Council for Civil Liberties, [Human Rights in a Pandemic: A Human Rights Analysis of the Irish Government's Response to Covid-19](#) (2021), p. 70.

12 Children's Rights Alliance, [Report Card 2022](#) (2022), p. 3.

13 Specifically, the Commission raised its concerns that the procedures on the use of anti-spit guards ('ASG') are silent on the use of ASG on children aged 12-18; and about the absence of disaggregated data on the use of additional force, whether medical assistance was sought, perceived specific characteristic of the individual (for example signs of an intellectual disability) and length of time the ASG was deployed: IHREC, [Letter to Assistant Commissioner Dublin Metropolitan Region re Use of Anti-Spit Guards by An Garda Síochána](#) (27 August 2020).

14 IHREC, [Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties](#) (2021).

15 The Commission recalls that the Committee has urged States to 'provide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic': [United Nations Committee on the Rights of the Child](#), 8 April 2020. See also IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (2021).

16 In Ireland, the Minister for Health is empowered to enact certain restrictions via secondary legislation (regulations), rather than primary legislation. Research published by the Commission in January 2021 demonstrated that the Minister for Health had made 67 sets of Covid-related regulations by that point in the pandemic. See IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (2021), pp. 2, 49.

difficult to maintain effective democratic oversight over emergency measures, with no scope for pre-enactment consultation with, or scrutiny by, a Parliamentary committee.¹⁷

The Commission has repeatedly called for the establishment of a dedicated Parliamentary Committee on Human Rights and Equality,¹⁸ and this would enable a children's rights focus to be embedded into national responses to future crises. There has also been a recent call by the Council of Europe for states to involve children in decision-making processes related to crises and emergencies, such as environmental policies, or measures to handle pandemics.¹⁹

The Commission notes the Government's indication that there will be an evaluation of the State's response to the pandemic,²⁰ but that no concrete details about the scope, timeframes or approach have been published. There is a clear need for this evaluation to take a human rights and equality-based approach, including a focus on children's rights and the impact of emergency powers on children.²¹

» **The Commission recommends that the State carries out a comprehensive inquiry into the pandemic response. This should include a thorough examination of the impact of emergency measures on children's rights; the identification of ameliorating actions to limit negative long term impacts; the development of legal and policy measures to mitigate the disproportionate impact of future crises on children; and make recommendations to ensure the participation of children in future emergency planning and decision-making structures.²²**

17 Regulations were also applied retroactively, and were frequently not published for several days after they were made. Research published by the Commission noted: 'it is difficult to avoid the conclusion that the delegation of legislative power to the Minister for Health has resulted in a black hole for the consideration of human rights and equality concerns.' IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (2021), pp. 48-49, 64, 68.

18 See for example, IHREC, [Submission to the Third Universal Periodic Review Cycle for Ireland](#) (2021), p. 3. A former Parliamentary Sub-Committee on Human Rights, relative to Justice and Equality matters met three times before the Parliament was dissolved on 3 February 2016 and it was not re-established following the 2016 general election.

19 This includes recognising the value of children's contributions and developing child friendly versions of reference texts, guidelines and handbooks: Council of Europe, [Strategy For The Rights Of The Child \(2022-2027\)](#), p. 48.

20 Dáil Debates, [Order of Business](#) (1 March 2022); Dáil Éireann Debate, [Covid-19 pandemic](#) (15 February 2022); Dáil Éireann Debate, [Covid-19 Pandemic](#) (26 May 2022).

21 The Ombudsman for Children's Office recommended in 2022 that a comprehensive child rights-based evaluation of the impacts of school closures and (corresponding mitigating measures on children) should be conducted with a view to developing measures to further mitigate negative impacts and of learning for the future: Ombudsman for Children's Office, [The impact of school closures on children's rights in Ireland - A Pilot Child Rights Impact Assessment \(CRIA\)](#) (2022), p. 35.

22 The Human Rights Committee has recently recommended that the State should consider undergoing a comprehensive review of its response to Covid-19, including a human rights impact assessment that evaluates the effect of rights restrictions, specifically in regard to minority groups. It also recommended that the State

- » **The Commission recommends that the State establish a Parliamentary Committee on Human Rights and Equality that is inclusive of children's rights, with an expansive mandate across all Government Departments.**

consider establishing a human rights and equality-based independent monitoring mechanisms to ensure that restrictive measures taken in time of public emergency remain in conformity with international standards: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 28.

3.

General measures of implementation

(Articles 4, 42 and 44(6))

Domestic incorporation of the Convention

Despite some positive legislative developments,²³ the State has not fully incorporated the Convention into domestic law.²⁴ This is consistent with the State's general approach to domestic incorporation of international treaties, rooted in its dualist legal system.²⁵ Experience in other jurisdictions highlights the positive impacts of domestic incorporation to ensure systematic and effective legal implementation of the Convention at national level, and to foster a greater culture of respect for children's rights.²⁶ The Commission notes that the State is conducting a preliminary assessment to inform an audit of Irish legislation for compliance with the Convention,²⁷ as recommended by the Committee in 2016,²⁸ but that no concrete details or timelines are publicly available.

- » **The Commission recommends that the State incorporate the Convention into domestic law, with the allocation of dedicated resources to ensure the effective and systematic implementation of children's rights.**
- » **The Commission recommends that the State publish a detailed programme of work for assessing the compliance of domestic law with the Convention, including clear timeframes and responsibility for implementation.**

Second Optional Protocol

The Commission remains concerned about the State's delay in ratifying the Optional Protocol on the sale of children, child prostitution and child pornography,

23 Developments include the enactment of the *Domestic Violence Act 2018* and the *Criminal Law (Sexual Offences) Act 2017*, along with the commencement of the *Children and Family Relationships Act 2015* and the *Children First Act 2015*.

24 In its 2016 Concluding Observations, the Committee urged the State to take, as a matter of priority, all necessary measures to fully incorporate the Convention into domestic law: Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4 (2016), para 9.

25 Article 29.6 of the Constitution of Ireland provides that 'no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas'. This provision has been interpreted as precluding the Irish courts from giving effect to an international agreement if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law: Law Reform Commission, [Discussion Paper: Domestic Implementation of International Obligations](#) (2020), para 1.7.

26 The Commission notes Norway's experience, for example, where 'the process of incorporation was a critical point in the development of a children's rights culture, with a knock-on effect on the progressive development of child law.' See University College Cork, [Does legal incorporation of the UNCRC matter?](#) (2020).

27 Department of Children, Equality, Disability, Integration and Youth, [The combined fifth and sixth periodic reports submitted by Ireland under article 44 of the Convention pursuant to the simplified reporting procedure](#) (2022), para 28.

28 Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4 (2016), para 11.

despite the Committee's recommendation in 2016,²⁹ and the Government's commitment to initiate the ratification process in 2020.³⁰ As of August 2022, Ireland is the only EU Member State not to ratify the Optional Protocol,³¹ which is of particular concern given the significant children's rights issues involved.

» **The Commission recommends that the State progresses ratification of the Optional Protocol on the sale of children, child prostitution and child pornography as a matter of priority, including by prioritising the passage of any legislative and policy reforms deemed necessary for ratification.**

Public Sector Equality and Human Rights Duty

Since 2014, the Public Sector Equality and Human Rights Duty ('Public Sector Duty') has been part of the legislative framework governing human rights and equality in Ireland. Section 42 of the *Irish Human Rights and Equality Commission Act 2014* ('2014 Act')³² imposes a legal obligation on public bodies to have regard to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work. It puts equality and human rights in the mainstream of how public bodies execute their functions.

To fulfil the Public Sector Duty requirements to assess, address and report,³³ the Commission guidance recommends that public bodies consult with service users, including a diversity of children, to identify issues and actions, and monitor progress.³⁴ The Commission is of the view that compliance with the Public Sector Duty is fundamental to the public service's ability to meet its obligations under international human rights norms, including the Convention.

29 Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4 (2016), para 77.

30 'The approved Memorandum will be furnished to the Department of Foreign Affairs and Trade with a view to initiating the ratification process next year.' See Merrion Street, [Ireland joining international stand against sale of children, child pornography and child prostitution](#) (2019). On 27 July 2022, the Government approved the publication of the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 which 'removes the final legislative barriers to Ireland's ratification of the Second Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography': Department of Justice, [Government approves publication of General Scheme of Bill which will strengthen law on consent in rape cases and support victims in sexual violence and human trafficking cases](#) (press release, 27 July 2022).

31 Children's Rights Alliance, [Report Card 2022](#) (2022), p. 222.

32 See *Irish Human Rights and Equality Commission Act 2014*.

33 The Public Sector Duty requires public bodies to undertake an assessment of the equality and human rights issues pertaining to their purpose and functions; to devise an action plan to address the issues raised in the assessment; and to report annually on progress and achievements.

34 Further information and guidance on the Duty can be found at: <http://www.ihrec.ie/our-work/public-sector-duty>.

- » **The Commission recommends that the State should issue a formal communication, in the form of a circular, to public bodies to advance compliance with the Public Sector Equality and Human Rights Duty, in line with the Commission’s guidance. This communication should highlight the importance of ensuring inclusive consultation, including with a diversity of children, in the implementation of the Duty.**

National policy frameworks

The Commission notes that the *Better Outcomes Brighter Futures: National Policy Framework for Children and Young People 2014-2020* has concluded and a successor strategy has been delayed to the first half of 2023.³⁵ A number of reports conducted in relation to this Policy Framework have highlighted weaknesses in implementation, awareness and visibility, engagement and outcomes.³⁶ It is important that their recommendations are implemented in the successor strategy currently being developed by the State.³⁷

A number of other national equality strategies of relevance to children have concluded in the absence of successor strategies and are either undergoing review or awaiting evaluation, with the focus on the processes for implementation.³⁸ The State has committed to the development and implementation of new national strategies relating to migrants, Travellers and Roma, disabled people and LGBTI+ people,³⁹ and is also conducting a mid-term review of the *Roadmap for Social*

35 Department of Children and Youth Affairs, [Better Outcomes Brighter Futures: The national policy framework for children & young people 2014-2020](#) (2014). The new policy framework, which will extend over the period 2023-2028, has been delayed to the first half of 2023 because the hearing before the Committee is expected to take place at this time. The new policy framework plans to take a rights based approach, aligned to the Convention in its principles and implementation measures, taking into account the comments received from the Committee. See Dáil Debates – Written Answers (7 July 2022).

36 Department of Children, Equality, Disability, Integration and Youth, [Better Outcomes Brighter Futures: Annual Report for the Final Year of Implementation](#) (2014), pp. 67-72; Department of Children and Youth Affairs, [Mid-Term Review of Better Outcomes, Bright Futures](#) (2018), pp. 41-50; BOBF Advisory Council, [Better Outcomes, Brighter Futures Mid-Term Review](#) (2018).

37 Dáil Éireann debate, [Written answers](#) (24 February 2022).

38 The *National Traveller and Roma Inclusion Strategy 2017-2021* and *Migrant Integration Strategy 2017-2020* have concluded and are awaiting evaluation with the *National Strategy for Women and Girls 2017-2020*, as they are all due to be examined together. As of June 2022, an external evaluator has been contracted, looking at both the effectiveness of these strategies and their implementation mechanisms. See [Dáil Éireann Debate Thursday – 24 March 2022 and](#) Oireachtas Joint and Select Committees (2 June 2022). The *LGBTI+ National Youth Strategy 2018-2020* has concluded and is currently under review. See [Dáil Éireann Debate Thursday – 24 March 2022](#).

39 Department of the Taoiseach (2020) [Programme for Government: Our Shared Future](#), pp. 76-77. See also, Department of Children, Equality, Disability, Integration and Youth, [Minister O’Gorman publishes Better Outcomes, Brighter Futures Annual Report 2020](#) (2022). The successor framework to the *National Disability Inclusion Strategy 2017-2022* will be framed taking account of the need to prioritise implementation of the UNCRPD: Department of Children, Equality, Disability, Integration and Youth, [Departmental Strategies](#) (24 March 2022).

Inclusion 2020-2025.⁴⁰ As noted previously in this report, the Commission has highlighted the disproportionate impact of pandemic response measures on children, particularly disabled children, children without access to technology or living space, children living in overcrowded accommodation, Traveller and Roma children, and those living in or at risk of poverty.⁴¹

The Commission considers that existing decision-making structures require greater human rights and equality expertise, including in relation to considering the views, needs and rights of children.⁴² A child rights, child-centric approach to the evaluation of equality strategies and the development of successor strategies is essential if a coherent, effective response to the disproportionate impact of the pandemic on children is to be delivered.

- » **The Commission recommends that the evaluation reports of the national equality strategies, and the anonymised evidence on which they are based, are published and include findings on the extent that they have progressed children's rights through implementation processes and outcomes.**
- » **The Commission recommends that successor equality strategies are co-designed with children. They should include a focus on the implementation of the Convention and the Public Sector Duty; address the exacerbation of inequality, discrimination and exclusion for children during the Covid-19 pandemic; and establish protective measures for future national emergencies.**

Allocation of resources

In 2021, the Organisation for Economic Co-operation and Development ('OECD') conducted a review of equality budgeting in Ireland,⁴³ and noted that efforts to engage Government Departments have been hindered by the fact that equality budgeting is not obligatory, Departments have limited incentive or capacity to participate, and they are unclear of the ultimate goal of the initiative.⁴⁴ The OECD recommended that an equality budgeting statement be published alongside the budget, and that tax expenditures should be subject to equality review.⁴⁵

40 Dáil Éireann Debate, [Departmental Strategies](#) (22 March 2022).

41 See also, Section 2 of this parallel report.

42 For more context see: IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), pp. 21-23.

43 Equality Budgeting attempts to provide greater information on how proposed or ongoing budgetary decisions impact on particular groups in society in order to integrate equality into the budgetary process: Department of Public Expenditure and Reform, [Budget 2022, Equality Budgeting: Equality Audit of Tusla Data](#) (2021), p. 5.

44 OECD, [OECD Scan: Equality Budgeting in Ireland](#) (2021), p. 4.

45 OECD, [OECD Scan: Equality Budgeting in Ireland](#) (2021), p. 22.

The Commission notes that Ireland's National Recovery and Resilience Plan ('NRRP') 2021⁴⁶ does not contain any direct references to children, or specifically address children's rights concerns.⁴⁷ The EU *Strategy on the Rights of the Child*,⁴⁸ calls on States to use funds, including the Recovery and Resilience Facility, to address children's rights. The Commission believes the State needs to adopt a child rights-based approach to implementing the NRRP, taking note of the disproportionate effect of the pandemic on particular groups of children, including those without access to technology or adequate living space.⁴⁹

» **The Commission recommends that the State adopt a comprehensive child rights approach to State budgeting. This includes recognising that children are active participants in policy and budgetary processes, as well as beneficiaries of Government services and programmes. The system should use a tracking system for the allocation and use of resources for children, based on comprehensive disaggregated data.**

Data collection

The Commission has repeatedly highlighted the considerable shortfalls in equality data in Ireland,⁵⁰ and advocated for the full implementation of the European Commission's Guidelines on improving the collection and use of equality data.⁵¹ Despite the longstanding criticism by the Committee and other treaty monitoring bodies about the lack of disaggregated data in the State,⁵² there continues to be a significant dearth of data in relation to children from structurally vulnerable groups,

46 Government of Ireland, [Ireland's National Recovery and Resilience Plan](#) (2021). Through its NRRP, the Irish Government has secured a significant investment from the European Commission to mitigate the public health, economic and social crisis caused by the Covid-19 pandemic.

47 The NRRP does make reference to young people in the context of employment. The three priorities of the NRRP are: Advancing the Green Transition, Accelerating and Expanding Digital Reforms and Transformation, and Social and Economic Recovery and Job Creation.

48 European Commission, [EU Strategy on the Rights of the Child](#) (2021).

49 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland's Emergency Powers During the Covid-19 Pandemic](#) (February 2021), p. vii; IHREC, [Submission to the Oireachtas Joint Committee on Justice: COVID-19 and Civil Liberties](#) (2021), p. 7. See also, Irish Council for Civil Liberties, [Human Rights in a Pandemic: A Human Rights Analysis of the Irish Government's Response to Covid-19](#) (2021), p. 70.

50 See for example, IHREC [Ireland and the International Covenant on Civil and Political Rights](#) (2022), p.

10; IHREC [Developing a National Action Plan Against Racism](#) (2021), pp. 13-18; IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020), p. 7; IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (2019), pp. 22-23; [IHREC Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women \(2017\)](#), p. 30; and IHREC, [Ireland and the United Nations Convention on the Rights of the Child](#) (2015), p. 33.

51 European Commission High Level Group on Non-Discrimination, Equality and Diversity – Subgroup on Equality Data, [Guidelines on improving the collection and use of equality data](#) (2018).

52 [Committee on the Rights of the Child](#) (2016), para 17; [Committee on the Elimination of Racial Discrimination](#) (2020), para 5; [Committee on the Elimination of Discrimination against Women](#) (2017), paras. 18, 26; and [Committee on Economic, Social and Cultural Rights](#) (2015), para 6.

in particular.⁵³ This includes children in alternative care, minority ethnic children, including Travellers and Roma, and child victims of abuse and exploitation.⁵⁴ In particular, the Commission notes the confusion or reluctance among many public bodies – including across the criminal justice system⁵⁵ – in relation to the collection and processing of ‘special category’ data such as race, ethnicity and religion.⁵⁶ This creates significant challenges in determining the impact of State policies and practices on children, including for example the exercise of enforcement powers by An Garda Síochána during the pandemic.⁵⁷

The Commission welcomes the commitment to maximising the use of research and data in the *Youth Justice Strategy 2021- 2027*,⁵⁸ as well as progress on the development of a national Equality Data Strategy,⁵⁹ which is expected in 2023.⁶⁰

» **The Commission recommends that the State improves the availability of disaggregated equality data on children across all sectors, including by mandating all bodies subject to the Public Sector Duty⁶¹ to collect, process, and publish such data.**

» **The Commission recommends that the State provides a ring-**

53 Ombudsman for Children’s Office, [The impact of school closures on children’s rights in Ireland - A Pilot Child Rights Impact Assessment \(CRIA\)](#) (2022), p. 47.

54 Children’s Rights Alliance, [Submission to the Department of Children, Equality, Disability, Integration and Youth on the EU Child Guarantee](#) (2022), p. 8; Tusla, [Exploring ethnic data collection for the Child and Family Agency](#); Dr E. Furey & Dr J. Canavan, [A review on the availability and comparability of statistics on child protection and welfare, including children in care, collated by Tusla: Child and Family Agency with statistics published in other jurisdictions](#); 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. See also IHREC, [Comments on Ireland’s 16th National Report on the implementation of the European Social Charter](#) (2019).

55 IHREC, [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination](#) (2022), p. 2 and IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), p. 11.

56 See Article 9(1), European Union (EU) General Data Protection Regulation 2016/679.

57 IHREC/COVID-19 Law and Human Rights Observatory, [Ireland’s Emergency Powers During the Covid-19 Pandemic](#) (February 2021), pp. xiii.

58 Department of Justice, [Youth Strategy 2021-2027](#) (April 2021).

59 Recommended in the OECD Scan, [Equality Budgeting in Ireland](#): ‘Designing a data strategy to support equality budgeting. Such a strategy would focus on improving the extent to which official statistics and administrative data provide insights into equality gaps and assess the impact of different government interventions. Efforts should build on the existing *Open Data Strategy 2017-2020*, the *Public Service Data Strategy 2019-2023* and the work of the National Statistics Board in setting priorities’ and ‘The development of an equalities data strategy can further bolster the impact of equality budgeting’.

60 Department of Children, Equality, Disability, Integration and Youth, [“Minister O’Gorman announces the development of a National Equality Data Strategy”](#), (press release, 21 March 2022). The Commission also welcomes the recommendations in the Department of Public Expenditure and Reform’s *Equality Audit of Tusla Data* (2021) that classifications used in the collection and reporting of equality-relevant variables should be standardised, as far as possible, across Tusla national data sets, and the coverage of both PPSN and Eircode across Tusla data sets should continue to increase. See: Department of Public Expenditure and Reform, [Budget 2022, Equality Budgeting: Equality Audit of Tusla Data](#) (2021), p. 4.

61 This should include organisations who are sub-contracted to deliver the functions and services of public bodies.

fenced budget to public sector bodies to ensure that they have the necessary resources to collect comprehensive disaggregated equality data, including on children.

- » **The Commission recommends that all public bodies should publish equality data on children, in an accessible and age-appropriate format, that can be readily communicated to children, and utilised by the public, civil society organisations and independent researchers.**

Children's rights and the business sector

The Commission has previously recommended, in 2015,⁶² and 2019⁶³ that the State should introduce through legislation a mandatory requirement for human rights due diligence, including in the context of Government procurement. Progress in this area is crucial given the responsibility of businesses to respect human rights,⁶⁴ including children's rights.⁶⁵

- » **The Commission recommends the introduction of a mandatory requirement for human rights due diligence, including in the context of Government procurement, and including a focus on children's rights.**

The Commission notes that Ireland's *National Plan on Business and Human Rights 2017–2020*⁶⁶ has concluded, and that children's rights did not feature prominently in the Plan. The Commission supports recommendations made in 2021 that Ireland's second National Plan should contain a series of time-limited plans; use more specific and directive language; and contain clear timelines and responsibilities.⁶⁷

- » **The Commission recommends that the Second National Plan on Business and Human Rights includes greater consideration of**

62 The Commission previously made this recommendation to the Committee on the Rights of the Child in 2015. See IHREC, [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), p. 12.

63 IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (2019), p. 148.

64 OHCHR, [Guiding Principles on Business and Human Rights](#) (2011).

65 In 2016, the Committee recommended that Ireland strengthen its regulatory framework to ensure that enterprise's activities do not negatively affect the rights of the child; establish independent mechanisms to monitor the implementation of international and national environment and health standards; sanction and provide remedies when violations occur; require companies to assess and disclose the environmental, health-related and human rights impacts of their business activities; and be guided by the United Nations "Protect, Respect and Remedy" Framework. See: Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (2016), para 24.

66 See: Government of Ireland, [Ireland's National Plan on Business and Human Rights 2017 – 2020](#).

67 Department of Foreign Affairs, [Review of implementation of National Plan on Business and Human Rights 2017–2020](#) (December 2021), p. 7.

children's rights, and adopts the recommendations of the 2021 review.

A 2020 review of access to remedy in Ireland, in the context of business and human rights and EU legislative proposals,⁶⁸ outlined barriers such as unavailable mechanisms of collective redress, significant legal costs, and a lack of available legal aid or third party funding.⁶⁹ Access to remedies for human rights abuses must be available in Ireland for victims of Irish-domiciled or State-owned enterprises, whether such harms occur domestically or overseas. In this context, the Commission expresses its concern at the renewed purchasing of coal from the Cerrejón mining complex in Colombia,⁷⁰ and recalls its 2019 comments that the Cerrejón mining complex has been linked with serious human rights abuses.⁷¹

- » **The Commission recommends that the State ensures full and expansive implementation of the proposed Corporate Sustainability Reporting Directive,⁷² and robust access to effective remedies for child victims of human rights abuses of Irish-domiciled companies, whether harms occur domestically or overseas.**

68 The Commission positively notes the publication of an EU Commission proposal on Corporate Sustainability Due Diligence, with particular emphasis on provisions in relation to access to remedy. European Commission, [Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/19377](#) (February 2022), p. 63. The Commission notes that voluntary action does not appear to have resulted in large scale improvement across sectors, and that observable negative externalities include child labour (p. 2). On 21 June 2022, MEPs and the European Council struck a provisional agreement on new reporting rules for large companies: <https://www.europarl.europa.eu/news/en/press-room/20220620IPR33413/new-social-and-environmental-reporting-rules-for-large-companies>.

69 Dr Rachel Widdis, [Review of access to remedy in Ireland](#) (2020), p. 1. See also FLAC, [Annual Report 2021](#) (2022).

70 The Irish Independent, ["Activists fear blow to climate action and human rights as ESB resumes buying coal from notorious Colombian coal mine"](#) June 2022.

71 IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (2019), p. 149.

72 See Department of Enterprise, Trade and Employment, [Minister Troy welcomes agreement on the Corporate Sustainability Reporting Directive](#) (press release, 30 June 2022).

4.

Non- discrimination

(Article 2)

In light of findings on the prevalence of age-based discrimination against children,⁷³ the Commission notes that the Equal Status Act, which prohibits discrimination in access to goods services and facilities, accommodation and education currently excludes children who have experienced age discrimination from taking action under its provisions.⁷⁴ The ongoing review into the Equality Acts⁷⁵ has heard calls to remove this exemption from the legislation on the grounds that it is unnecessary, disproportionate and illogical for treatment which would otherwise constitute discrimination to be excluded.⁷⁶ Excluding children from the protection of anti-discrimination legislation denies them an effective remedy, and raises clear concerns about the justiciability of children's right to non-discrimination.⁷⁷ There is no minimum age prescribed for the enjoyment of this right or the corollary right to an effective remedy.

» **The Commission recommends that the Section 3(3) exemption in the *Equal Status Acts* be removed.**

Hate crime and hate speech

The Commission recently issued its recommendations in relation to the proposed *Criminal Justice (Incitement to Hatred or Violence and Hate Crime) Bill*.⁷⁸ In particular,

73 Department of Children, Equality, Disability, Integration and Youth, [Statistical Spotlight #7: Experiences and Perceptions of Discrimination in Ireland](#) (2022): 43% of children aged 12-14 years and 50% of children aged 15-17 reported experiencing age discrimination. 10% said they experienced age discrimination often or very often and girls were more likely to experience it than boys. While the data does not indicate where these experiences occurred, reports of mosquito devices and children being banned from shops during the pandemic indicate discrimination in the provision of goods and services is a live issue: See Ombudsman for Children, [Consultation on the Review of the Equality Acts](#) (2021), and pg. 3-5.

74 *Equal Status Acts*, Section 3(3) – treating a child under the age of 18 years less favourably than another person, whatever that person's age, shall not be regarded as discrimination under the age ground.

75 Department of Children, Equality, Disability, Integration and Youth, [Minister O'Gorman announces review of the Equality Acts](#) (press release, 22 June 2021). The Commission notes that it is intended that some legislative proposals arising from the Review will be brought forward in 2023: See Dáil Debates – [Written Answers](#) (7 July 2022).

76 Ombudsman for Children, [Consultation on the Review of the Equality Acts](#) (2021), pp. 3-5: 'Where the purposes of discriminating against children on the ground of age is not directed towards upholding their rights and best interests, it appears both illogical and problematical that a person aged 18 or over can avail of the protection offered by the age ground but a child under 18 cannot'. FLAC, Submission to the Consultation on the Review of the Equality Acts (2021), p. 53: 'It is a broad blanket exemption that can hardly be said to be necessary or appropriate.'

77 See: Committee on the Rights of the Child, [General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child](#), (2003) CRC/GC/2003/5, para 24: 'For rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in this Convention.'

78 IHREC, [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#) (2022); The Commission is concerned that the proposed definition of 'hatred' does not align with international standards and that the effectiveness of the Bill would be improved by the provision of clearer definitions of harm, unlawful discrimination and by defining hostility and incitement. Effective enforcement of hate crime legislation also requires the establishment of robust sustainably funded hate crime reporting mechanisms and the collection and publication of accurate and reliable disaggregated data on such offences. This Bill is expected to be

effective operation and enforcement of hate crime legislation requires that members of AGS, the judiciary and prosecutors be provided with ongoing training on incitement to hatred and hate crime offences.⁷⁹ The State also has an obligation under the Convention to ensure the development of specialised training on the unique experiences and needs of children in the context of hate crime and discrimination.⁸⁰

The Commission also notes the publication of the *Online Safety and Media Regulation Bill* and regrets that there is no specific reference to hate speech or incitement to violence and hatred in the definition of harmful online content under this Bill.⁸¹ The Commission considers it critical that the two Bills are aligned.⁸²

» **The Commission recommends that efforts to legislate for hate crime and hate speech prioritise ongoing specialised child-specific training for An Garda Síochána, the judiciary and the legal profession, as well as the provision of clear and precise definitions of relevant terms.**⁸³

National Action Plan Against Racism

The Commission welcomed the establishment of the Anti-Racism Committee ('ARC') in June 2020 but regrets the delayed publication of the National Action Plan Against Racism ('NAPAR').⁸⁴ The Commission calls for greater urgency and prioritisation of the State's commitment to the elimination of racial discrimination. An authoritative, participatory mechanism for coordinating and monitoring the implementation of the NAPAR should also be established for the lifetime of the strategy⁸⁵ and it is imperative that minority ethnic children are facilitated to take

published in Autumn; See Dáil Debates, [Written Answers](#) (7 July 2022) and Department of Justice, [Justice Plan](#) (2022).

79 IHREC, [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#) (2022) pp. 18-20.

80 Committee on the Rights of the Child, [General Comment No.5 General measures of implementation of the Convention on the Rights of the Child](#) (2003) CRC/GC/2003/5, para 53.

81 IHREC (2021) [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#), pg. 23-26. See also From Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, [Minister Martin brings forward amendments to the Online Safety and Media Regulation Bill](#) (press release, 11 July 2022).

82 IHREC (2022) [Submission on the General Scheme of the Criminal Justice \(Hate Crime\) Bill](#), p. 26.

83 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee recommended that the State should provide adequate training to central and local authorities, law enforcement officials, judges, and prosecutors on addressing hate speech and hate crimes: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 18.

84 The latest information available to the Commission is that the timeline for publication of the NAPAR is September 2022. The Chair of the Anti-Racism Committee submitted the draft Action Plan to the Government in June 2022. See Dáil Debate, [Anti-Racism Measures](#) (7 July 2022). The Commission notes that under the EU Anti-Racism Action Plan 2020-2025, all Member States are encouraged to develop and adopt national action plans against racism and racial discrimination by the end of 2022.

85 IHREC, [Submission to the Anti-Racism Committee](#) (2021) pg. 7-10.

part in the monitoring of NAPAR and are adequately resourced to do so.⁸⁶

- » **The Commission recommends the publication of the National Action Plan Against Racism, without further delay.⁸⁷ The authority for the oversight and implementation of the Plan should be vested in the Department of the Taoiseach, and the State should take immediate action to establish implementation structures, allocate resources and deliver recommendations.**
- » **The Commission recommends that the principle of participation be evident in the involvement of minority ethnic children in evaluation, monitoring, review and implementation activities throughout the life of the National Action Plan Against Racism.**

86 IHREC, [Submission to the Anti-Racism Committee](#) (2021) pg. 8-9; "Monitoring must include participation of rights holders who must be adequately resourced to participate. The Plan needs to explicitly set out how rights holders will be involved in implementation and monitoring across its lifetime. Monitoring should also include appropriate technical and subject matter expertise and receive high level political and financial support from Government. It should be an ongoing process and allow for plan's objectives or activities to be further resourced, actively revised or modified as appropriate throughout the term of the plan."

87 The Human Rights Committee recently recommended that the State should guarantee the swift and full implementation of the National Action Plan Against Racism: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 18.

5.

Civil rights and freedoms

(Articles 7, 8 and 13-17)

Access to citizenship

The Commission has repeatedly raised concerns about the legislative framework on citizenship, including its impact on children's rights.⁸⁸ The General Scheme of the *Courts and Civil Law (Miscellaneous Provisions) Bill* proposes reducing residency requirements for the naturalisation of children born in the State from 5 years to 3 years, but the Bill has yet to be published, despite being scheduled in the Government's Legislation Programmes in 2021 and 2022.⁸⁹ Under Irish law, the Minister for Justice can refuse citizenship by naturalisation to a child born in the State on 'good character' grounds, which is a vague term and provides wide discretion to the Minister.⁹⁰ Furthermore, all applications for children must be made by a parent, guardian or person acting in loco parentis.⁹¹ Concern exists that such a requirement is dependent on a co-operative relationship between the child and their parent, guardian or person acting in loco parentis, and adversely impacts children living in care.⁹² In light of General Comment No. 23, the Commission stresses that all nationality laws in Ireland should be implemented in a non-discriminatory manner to ensure that every child's right to a nationality is respected, protected and fulfilled.⁹³

The Commission recently appeared as *amicus curiae* before the Supreme Court in a case concerning citizenship rights of the child⁹⁴ in which the Court upheld

88 The 27th amendment of the Constitution of Ireland, which was approved by referendum on 11 June 2004, removed the automatic right to citizenship for all children born in the State. For Commission commentary on the barriers faced by children due to the current legislative framework on citizenship, see IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#) (2020), pp. 11-12.

89 For example, see Department of An Taoiseach, [Government Legislation Programme: Summer Session 2022](#) (April 2022), p. 6.

90 Section 15(b) of the *Irish Nationality and Citizenship Act 1956*, as amended by the *Irish Nationality and Citizenship Act 2004*.

91 Section 15(3) of the *Irish Nationality and Citizenship Act 1956*, as amended by the *Irish Nationality and Citizenship Act 2004*.

92 See Immigrant Council of Ireland, [Submission to the Migrant Workers' Committee and Committee on the Rights of the Child Joint General Comment on the Human Rights of Children in the Context of International Migration](#) (2016), p. 9. The Commission notes the recent commitment by the Minister of Justice in 2021 on exploring whether it would be possible for the Child and Family Agency to apply for citizenship on behalf of children in care, although no update is available at the time of reporting. See Department of Justice, [Minister McEntee to make it easier for children to secure Irish citizenship](#) (2021).

93 UN CMW and UN CRC, [Joint general comment No. 4 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 \(2017\) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return](#), CMW/C/GC/4-CRC/C/GC/23 (2017) at para. 25.

94 The case *U.M. v Minister for Foreign Affairs* and focused on a child ('UM') born in Ireland asserting Irish citizenship on the basis of his Afghan father's residency in the country, as a refugee, prior to his birth. His father was granted refugee status in 2006. However the Department of Justice informed the father in August 2013 that the Minister was revoking his refugee status due to fraud. UM, born before the revocation of his father's refugee status, had his Irish passport application refused later on the basis that any residence derived from his father's refugee grant could not be relied on for the purposes of UM's assertion of citizenship. See IHREC, [Commission Appears as Amicus Curiae & Publishes Legal Arguments](#), February 2022.

the importance of taking account of derivative rights and recognised that the acquisition or loss of citizenship is a matter of profound significance.⁹⁵ Citizenship is a fundamental aspect of the child's right to identity, and any decision resulting in the deprivation of a child's Irish citizenship must be subject to procedural safeguards and a proportionality assessment.⁹⁶ The Commission notes that Ireland's current legislative framework continues to deprive certain children of their right to Irish citizenship, particularly children born through surrogacy arrangements whose non-genetic parent is an Irish citizen.⁹⁷

- » **The Commission recommends that the State progresses proposed legislative amendments contained within the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill.**
- » **The Commission recommends that the State conducts a broad child rights-based review of the legislative and administrative framework on citizenship, to address the current barriers in place for children and meet its obligations under Article 7 of the Convention.**
- » **The Commission recommends that the State introduces legislation to prevent the deprivation of Irish citizenship to children born through surrogacy arrangements, whose non-genetic parent is an Irish citizen at the time of their birth.**

95 Such derivative rights include those of children impacted by any decision to revoke refugee status of the parent: IHREC [Child's Citizenship Rights upheld by Supreme Court](#) (press release, 2 June 2022).

96 See IHREC, [Commission Appears as Amicus Curiae & Publishes Legal Arguments](#), (press release, 15 February 2022).

97 *The Commission also recently intervened as Amicus in the Supreme Court case A, B and C v. Minister for Foreign Affairs and Trade* which concerns the denial of Irish citizenship to a child born through surrogacy, whose non-genetic parent was an Irish citizenship at the time of the child's birth. When the child was born, his surrogate mother and his biological father (known as 'B'), were recorded on his birth certificate as his parents. A parental order subsequently issued under UK law, which reassigned the parentage of the child to his biological father, B, and his intending parent (known as 'A'). Any rights of the surrogate mother were effectively extinguished by this order. In early 2017 the Irish parent, A, applied for an Irish passport for C. The Minister indicated that the application would be refused as he did not accept that under Irish law the non-biological parent, A, was the parent of C at the time of his birth, and contended that the child was therefore not considered to be an Irish citizen pursuant to the Irish Nationality and Citizenship Act 1956. In its submission to the Supreme Court, the Commission outlined that a denial to a child of the citizenship of their parent may adversely affect their life prospects and well-being in a number of ways: including the creation of a two-tier status within the family, whereby some children are Irish and thereby EU citizens and the other child is not. See IHREC, [Human Rights and Equality Commission Addresses Citizenship Rights of Surrogate Children in Supreme Court Case](#) (press release, 30 June 2022).

Right to identity

Information and tracing

The *Birth Information and Tracing Bill*⁹⁸ was passed into law in June 2022. The Commission notes that a number of its recommendations in relation to the legislation's compliance with human rights and equality standards were not implemented.⁹⁹ This includes the lack of provision for children under the age of 16 to have access to early life information.¹⁰⁰ The legislation has an in-built review period which will commence two years after enactment,¹⁰¹ and it is essential that this review considers the significant impacts of the Act on children and that their experience of the operation of the law informs future amendments.

- » **The Commission recommends that the State includes children as a dedicated participatory group in the planned review of the *Birth Information and Tracing Act*, and that a report of the review should be made publically available. In particular, this review should examine the State's policy to exclude children under the age of 16 from accessing early life information.**

Assisted Human Reproduction

The *Children and Family Relationships Act 2015* introduced a regulatory framework to provide for access to information for people conceived through Donor-Assisted Human Reproduction.¹⁰² While a positive development, the Minister is afforded significant discretion in making a decision where there are 'sufficient reasons' to withhold identifying information.¹⁰³ Moreover, children

98 The legislation will be commenced in [two separate stages](#). In July 2022, a new Contact Preference Register, operated by Adoption Authority of Ireland, opened for applications. The Act provides that the Contact Preference Register must be open for a minimum period of 3 months before applications for birth certificate and related birth information will be accepted. A public information campaign was launched in July 2022 to inform people of the important services to be provided for under this new legislation. In October 2022, Information and Tracing services under the legislation will open. Applications for records can be made to the Adoption Authority of Ireland and Tusla. A bespoke website is also available for people seeking to make an application or seeking further information: <https://www.birthinginfo.ie/what-options-do-i-have/register-or-update-my-contact-preferences>.

99 IHREC (2021) [Submission on the General Scheme of the Birth Information and Tracing Bill](#); The Commission recommended among other things that the legislation include statutory timeframes for compliance with information access requests, that the mandatory information session provided to those requesting access whose birth parents expressed a no contact preference be removed completely and that the entitlement to counselling and support be extended to all relevant persons under the law. None of these recommendations have been reflected in the Act.

100 IHREC, [Submission on the General Scheme of the Birth Information and Tracing Bill](#) (2021), p. 24; Children aged 16-18 are provided with a right of access to early life information whereas there is no provision for children under 16 years of age. The Commission has recommended children who meet a defined 'maturity threshold' should be provided with the same right of access regardless of age.

101 *Birth Information and Tracing Act 2022*, Section 70.

102 Parts 2 and 3 of the *Children and Family Relationships Act 2015* commenced in 2020.

103 The child may appeal to the Circuit Court against any decision to withhold information.

under the age of 18 are unable to directly request information from the register, which appears to be in conflict with the child's inherent right to identity, as protected under Article 8(1) of the Convention.

Children conceived through other Assisted Human Reproduction ('AHR') procedures, including surrogacy, are not provided for under the 2015 Act. As of August 2022, surrogacy remains unregulated in Irish law,¹⁰⁴ The Commission welcomes the publication of the *Health (Assisted Human Reproduction) Bill* in March 2022,¹⁰⁵ and notes that the proposed legislation limits the right to request identifying genetic information to children aged 18 years and older.¹⁰⁶

- » **The Commission recommends that the State prioritise the enactment of legislation to secure the rights of children born through surrogacy arrangements, with a particular focus on their best interests.**¹⁰⁷
- » **The Commission recommends that the State enable children born through Assisted Human Reproduction to directly request identifying genetic information.**

Freedom of thought, conscience and religion

The Commission welcomed the introduction of the *Education (Admission to Schools) Act 2018* ('2018 Act'),¹⁰⁸ but notes that religious discrimination in school admissions

104 The *Health (Assisted Human Reproduction) Bill* does not address international surrogacy arrangements, which the Commission understands is now to be considered separately by the Parliamentary Joint Committee on International Surrogacy, established in February 2022. The Joint Committee's 'Order of Reference' includes the consideration and making of recommendations on measures to address issues arising from international surrogacy. See Houses of the Oireachtas, [Report of the Committee on Standing Orders and Dáil Reform: Orders of Reference for Special Committee on International Surrogacy](#) (2022).

105 The Bill is currently before Dáil Éireann, Third Stage (lower house of Parliament). It aims to regulate a range of AHR procedures, including domestic surrogacy, as well as establishing an independent regulatory authority: [Health \(Assisted Human Reproduction\) Bill 2022](#) (as initiated) (2022).

106 The Special Rapporteur on Child Protection has recommended that identifying information should be made available on request directly to the child from the age of 12 years. Structuring the legislation in this way would strike a reasonable balance between the child's right to identity, the parents' right to make decisions for their child, and the child's evolving capacities. See Professor Conor O'Mahony, Special Rapporteur on Child Protection, [A Review of Children's Rights and Best Interests in the Context of Donor-Assisted Human Reproduction and Surrogacy in Irish Law](#) (2020), p. 30. The Joint Committee on International Surrogacy also published a number of recommendations, noting that the intended parents of a child born through surrogacy should have access to the information stored on the National Surrogacy Register, on behalf of the child, until the child reaches the age of 12, and that when a child born through surrogacy reaches the age of 12, they should be entitled to access their information stored in the National Surrogacy Register themselves. See Joint Committee on International Surrogacy, Final Report of the Joint Committee on International Surrogacy (July 2022).

107 See Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#) (2016), paras 33-34.

108 IHREC, [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#) (2019), p. 35.

is still permitted.¹⁰⁹ Exemptions remain for certain schools to give preferential treatment to students of a particular religion or where their exclusion is deemed essential to maintain the 'ethos' of the school.¹¹⁰ In order to ensure appropriate balancing between the rights to equal treatment, education and freedom of religion, including for children of non-faith backgrounds, the Commission has called for the relevant provisions of the *Equal Status Acts* and the 2018 Act to be reviewed.¹¹¹

- » **The Commission recommends that the State amend the *Education (Admission to Schools) Act 2018* and the *Equal Status Acts* to ensure access to education for all children, including to define 'ethos' and precisely what is required to establish that a refusal was 'essential' to maintain the ethos of the school.**

The Commission notes that the 2018 Act introduced a requirement on schools to provide details of how they will facilitate students opting out of religious instruction but provides no further direction on the minimum standards to be met.¹¹² The Commission is concerned that 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.¹¹³

- » **The Commission recommends that the State consider amending the *Education Act 1998* to set down minimum standards for a school's policy on arrangements for students who opt-out of denominational teaching, or use Ministerial power to make regulations on how schools shall provide for such students.**¹¹⁴

109 See also, IHREC, [Submission on the Review of the Equality Acts](#) (2021), pp. 34-36. In its July 2022 Concluding Observations on Ireland, the Human Rights Committee also raised concerns that the provisions of the Act relating to the prohibition of religions as a selection criteria only applies to primary education: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 41.

110 See section 7(3)(ca) of the *Equal Status Acts 2000-2018* as amended by the 2018 Act, section 11(b). Privately funded primary schools and secondary schools which purport to be providing education in an environment which promotes religious values can give preferential treatment to students of a particular religion, and public funded schools providing education in an environment which promotes religious values and can refused to admit students on the basis of religion where doing so is considered essential to maintain the 'ethos' of the school.

111 IHREC, [Submission on the Equality Acts Review](#) (2021), p. 36; IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#) (2020), p. 35.

112 The Minister for Education when questioned has stated that the manner of provision is the school's discretion. See: Dáil Éireann Debate, [Written Answers](#) (25 May 2022); Section 9 inserts, among others, a new section 62(7)(n) into the *Education Act 1998* which provides that a school's admission policy must 'provide details of the school's arrangements in respect of any student, where the parent of that student, or in the case of a student who has reached the age of 18 years, the student, has requested that the student attend the school without attending religious instruction at the school (which arrangements shall not result in a reduction in the school day in respect of the student concerned).'

113 IHREC, [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#) (2019), p. 35 and Children's Rights Alliance, [Report Card](#) (2020), p. 24.

114 This Ministerial power is provided for under section 65 of the 1998 Act. Such minimum standards should

The Commission remains concerned that the State's slow progress on the divestment of school patronage means it will not achieve its stated target of 400 multi-denominational schools by 2030.¹¹⁵ Concerns about State delays in providing access to secular education were also expressed by the Human Rights Committee in July 2022.¹¹⁶ In the academic year 2021/22, only 4.7% of primary schools were classed as multi-denominational,¹¹⁷ with this figure rising to 29% for post-primary schools.¹¹⁸ These figures indicate only marginal improvement since the Committee's recommendation,¹¹⁹ particularly in relation to primary schools.¹²⁰ The Commission is also concerned by reports that efforts to divest Catholic primary schools have been frustrated by requests from religious bodies for the 2018 Act to be amended to re-enable such schools to prioritise Catholic children in school admissions.¹²¹ This would constitute a regression of the rights of non-Catholic children to be protected from discrimination.

» **The Commission recommends that the State establishes a clear long-term plan for how it will meet its targets for the establishment of non-denominational and multi-denominational schools and the divestment of schools from religious patronage.**

be set down in the spirit of pluralism and interculturalism and in a way that is not overly onerous on the student or his or her parents. For further information, see: IHREC (2016) [Observations on the Education \(Admission to Schools\) Bill 2016](#), p. 23.

115 IHREC (2015) [Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review](#), pg. 87; IHREC (2020) [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#), pg. 35; Department of the Taoiseach (2020) [Programme for Government: Our Shared Future](#), p. 96: "Achieve the target of at least 400 multid denominational primary schools by 2030 to improve parental choice."

116 The Committee noted its regret about the lack of information from the State regarding the access to secular education through the establishment of non-denominational schools, and reports that over half of secondary schools are under religious patronage and operate with a religious ethos. It recommended that the State take appropriate measures to provide secular education through the establishment of non-denominational schools: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), paras 41-42.

117 4.7% amounts to 147 multi-denominational schools. 0.55% of primary schools are also inter-denominational.

118 20% of post-primary schools are inter-denominational. See: Department of Education, [Primary schools enrolment figures](#) – 2021/2022 Preliminary Results and [Post-primary enrolment figures](#) – 2021/2022 Preliminary Results.

119 Committee on the Rights of the Child, [Concluding Observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4 (2016), para 64.

120 According to figures published by the Department of Education in the academic year 2014/15, 3% of primary schools were multi-denominational and 0.5% were inter-denominational. 3% of post-primary schools were multi-denominational and 45% were interdenominational. For more see: [2014/15 data on primary schools](#) and [2014/15 data for post-primary schools](#).

121 Emma O'Kelly (2022) [Bishops sought 'commitment' on priority for Catholic children in schools](#) (10 June 2022).

Access to appropriate information

Digital divide

The Committee has underlined the need to ensure that States provide children with equal, effective, and meaningful access to the digital environment.¹²² In this context, the Commission notes the Government's increasing preference for a 'digital first' policy for provision of public services.¹²³ This further reinforces the digital divide¹²⁴ and can isolate children from structurally disadvantaged groups, who are more likely to experience digital poverty.¹²⁵ Evidence indicates that access to information and communications technology,¹²⁶ high-speed internet,¹²⁷ and basic digital skills¹²⁸ are unequal among children in Ireland, with children from low-income families,¹²⁹ children with intellectual disabilities,¹³⁰

122 Committee on the Rights of the Child, [General Comment No.25 on children's rights in relation to the digital environment](#) (2021), paras 9-11 and Committee on the Rights of the Child, [The Committee on the Rights of the Child warns of the grave physical, emotional and psychological effect of the COVID-19 pandemic on children and calls on States to protect the rights of children](#) (2020), para 3.

123 [Civil Service Renewal 2030 Strategy 'Building on our Strengths'](#) (2021), p. 18,22; Department of Public Expenditure and Reform, [Public Service ICT Strategy](#) (2015); and Department of Communications, Energy and Natural Resources, [National Digital Strategy for Ireland](#) (2013), p. 4.

124 'The gap between individuals, households, businesses and geographic areas at different socioeconomic levels with regard to both their opportunities to access information and communication technologies (ICTs) and to their use of the Internet for a wide variety of activities:' OECD, [Understanding the Digital Divide](#) (2001), p. 5.

125 Digital Poverty can be defined as a lack of reliable access to the internet and technology, and of digital skills; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), p. 84. See also: IHREC, [Submission to the Oireachtas Joint Committee on Justice, COVID-19 and Civil Liberties](#), (2021), p. 8, IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021), p. 28; IHREC, [Annual Report 2020](#) (2020), p. 5; Disability Federation of Ireland, -19 [Submission to Oireachtas Special Committee on Covid-19 Response: Non-Covid Healthcare](#) (2020), pp. 11-12; and Irish Association of Social Workers, [Social Work During Covid-19 Ongoing Survey Lockdown Data](#) (2020), p. 2.

126 72% of youth workers observed a lack of digital access among young people, affecting provision of mental health, arts, extra-curricular, and other youth services. See National Youth Council of Ireland, [Youth Work and Covid-19](#) (2021), p. 5. 2018 PISA data suggests that for those from the bottom quartile of the socio-economic distribution, only 73 per cent of students reported having a computer they could use for schoolwork at home, lower than the OECD average of 78%. See OECD, [Ireland Country Note](#) (2020), p. 4.

127 In 2019, 23% of Irish premises did not have high-speed broadband. See ERSI, [Learning for all? Second-level education in Ireland during the COVID-19 pandemic](#) (2020), p. 3.

128 The EU Commission's annual Digital Economy and Society Index in 2020 ranked Ireland 18th of the 28 EU States for the percentage of individuals with at least basic digital skills. See Accenture, [Bridging the Gap – Ireland's Digital Divide](#) (2020), p. 13. 57% of individuals in 'two-adult & dependent children' households have used word-processing recently, compared to 44% of one parent families. See National Economic and Social Council, [Digital Inclusion in Ireland: Connectivity, Devices & Skills](#) (2021), p. 15.

129 Internet connection varies by income. For example, 20% of very disadvantaged households had either no broadband or were reliant on mobile broadband in 2019, compared with 0.5% of very affluent households. See National Economic and Social Council, [Digital Inclusion in Ireland: Connectivity, Devices & Skills](#) (2021), p. 11. See also ERSI, [Learning for all? Second-level education in Ireland during the COVID-19 pandemic](#) (2020), p. 66 and OECD, [Ireland Country Note](#) (2020), p. 4.

130 In May 2020, a survey of 1,064 parents of children with intellectual disabilities showed that

11 per cent had no access to any technology at all for schoolwork, and 45 per cent did not have high-speed broadband. See National Economic and Social Council, [Digital Inclusion in Ireland: Connectivity, Devices &](#)

children in Direct Provision,¹³¹ and Traveller and Roma children¹³² facing particular issues.

- » **The Commission recommends that the State adopts measures¹³³ to bridge the digital divide in Ireland and address digital poverty among children.¹³⁴**
- » **The Commission recommends that public services remain accessible to those who do not use or have access to digital technology, including by retaining non-digital access options.**

Online safety and media regulation

Digital technology must be regulated to ensure that it does not violate children's rights. The Committee has recommended that regulation is based on the best interests of the child, and should have regard for all children's rights, including their rights to seek, receive and impart information, to be protected from harm and to have their views given due weight.¹³⁵ The Commission recognises the potential of the recently published *Online Safety and Media Regulation Bill* to regulate online content and create accountability for children's rights violations, but notes several areas where its provisions could be strengthened.¹³⁶ The open-ended nature of the definition of harmful online content may undermine the ability of the Bill to tackle online harms.¹³⁷ Clarification on the difference between harmful content and age-inappropriate content is advisable to ensure the effectiveness of the Bill in practice.¹³⁸

[Skills](#) (2021), p. 19.

131 Ombudsman for Children's Office, [Direct Division: Children's views and experiences of living in Direct Provision](#) (2020), p. 39.

132 See Children's Rights Alliance, [Report Card 2020](#) (2021), p. 93; Pavee Point, [School Closures' Severe Impact on Traveller and Roma Children](#) (2021); Government of Ireland, [Report on the Social Implications of Covid-19 in Ireland: Preliminary Assessment](#) (2020), p. 26.

133 The Commission is of the view that such measures should not be limited to educational measures.

134 The Commission welcomes the recent Digital Ireland Framework, which sets out plans to reform the school curriculum to ensure an inclusive digital transition. Curriculum adjustments must be accompanied by increased resources in order to achieve the goal of digital inclusion. See Government of Ireland, [Harnessing Digital - The Digital Ireland Framework](#) (2022), p. 29.

135 Committee on the Rights of the Child, [General Comment No.25 on children's rights in relation to the digital environment](#) (2021), para 13.

136 *Online Safety and Media Regulation Bill 2022*. The Bill is currently before Dáil Éireann, second stage (the upper house of the Irish Parliament). See also Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, [Minister Martin brings forward amendments to the Online Safety and Media Regulation Bill](#) (press release, 11 July 2022).

137 The Commission has recommended elsewhere that that Head 49A of the *Online Safety and Media Regulation Bill* be revised to ensure that the definition of harmful online content is clear and sufficiently precise. See IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the](#)

[Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (2021), pp. 23-26.

138 Office of the Ombudsman for Children, [Submission by the Ombudsman for Children's Office to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht](#) (2021), p. 4. The Commission notes that the Minister for Media, Tourism, Arts, Culture, Sport and the Gaeltacht has brought forward

Concerns have also been raised regarding the limited jurisdiction of the complaints mechanism.¹³⁹

The Bill provides for the establishment of a Media Commission which will oversee online safety regulation,¹⁴⁰ but fails to detail the children's rights considerations which underpin its work.¹⁴¹ The Commission has also called for provisions detailing the role and function of the proposed Online Safety Commissioner,¹⁴² and notes recent proposals to introduce amendments to the Bill to address this gap.¹⁴³ Above all, there is a need to take a rights-based, collaborative, and cross-departmental approach to online safety, which is informed by the active participation of children and their best interests.

» **The Commission recommends that the work of the Media Commission and the Online Safety Commissioner should be grounded in, and comply with, the State's children's rights obligations.**

Given the risks gambling poses for the lives, survival and development of children,¹⁴⁴ the Commission welcomes the child protective measures contained

62 amendments to the Online Safety Bill, proposing a more robust definition of 'age-inappropriate online content.' However, the amendments provide no clarification on 'harmful online content' and the jurisdiction of the complaints mechanism. See Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, Minister Martin brings forward amendments to the Online Safety and Media Regulation Bill (press release, 11 July 2022).

139 Children's Rights Alliance, [Analysis of the Online Safety and Media Regulation Bill](#) (2022), pp. 13-15.

140 [Online Safety and Media Regulation Bill 2022](#), Part 3. It is intended that the Media Commission will govern this new framework through binding online safety codes and robust compliance, enforcement and sanction powers, as previously recommended by the Commission. In light of the broad powers of the Media Commission, it is essential that it be adequately resourced. See IHREC, [Ireland and the Convention on the Elimination of All Forms of Racial Discrimination Submission to the United Nations Committee on the Elimination of Racial Discrimination on the follow-up procedure to Ireland's combined 5th to 9th periodic reports](#) (2022), pp. 6-7.

141 Given the interaction between the work of the Media Commission and children's rights, Media Commission members should be adequately trained in this area, and such training should be provided for in the Bill itself. See IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (2021), pp. 17-19.

142 While the role and duties of the Online Safety Commissioner have been reported in documents accompanying the General Scheme, there is no specific or detailed provision in the General Scheme establishing the role of the Online Safety Commissioner or, specifying the functions of the Commissioner. See IHREC, [Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill](#) (2021) pp. 17-19. The Minister for Culture, Heritage and the Gaeltacht has committed to amending the Bill to make provision for the Online Safety Commissioner but details about the scope and content of the amendment are not currently available. See [Seanad Debates](#) (28 April 2022).

143 The Commission notes that amendments have been proposed relating to the Bill, including amendments related to the role of the Online Safety Commissioner 'who shall oversee the regulatory framework for online safety, including, inter alia, through the development of binding online safety codes that set out how regulated online services ought to deal with harmful online content and conduct on their platforms.' See Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, [Minister Martin brings forward amendments to the Online Safety and Media Regulation Bill](#) (press release, 11 July 2022).

144 Committee on the Rights of the Child, [General Comment No.25 on children's rights in relation to the digital environment](#) (2021), para 14.

in the *Gambling Regulation Bill*.¹⁴⁵ The identity and age verification requirements for remote gambling are positive developments;¹⁴⁶ however, in light of the failure of age restrictions to prevent children from accessing social media,¹⁴⁷ due consideration should be given to creating sophisticated verification mechanisms which work effectively in practice.

- » **The Commission recommends that the *Gambling Regulation Bill* incorporates appropriate and effective prevention measures, developed in consultation with children.**

145 The General Scheme of the Bill was published in October 2021. See *General Scheme of the Gambling Regulation Bill 2021*. See also Joint Committee on Justice, [Report on Pre-Legislative Scrutiny of the General Scheme of the Gambling Regulation Bill](#) (May 2022).

146 See *General Scheme of the Gambling Regulation Bill 2021*, Head 106.

147 84% of 8-12 year olds surveyed by CyberSafeKids reported using social media and messaging apps, despite all popular social media apps having a minimum age restriction of at least 13. CyberSafeKids, [Annual Report 2020](#) (2021), p. 24.

6.

Violence against children

**(Articles 19, 24(3), 28(2), 34, 37(a)
and 39)**

Domestic, sexual, and gender-based violence

The Commission notes the publication of the Third National Strategy on Domestic, Sexual and Gender-Based Violence, but is immediately concerned by its inadequate provision for refuge accommodation.¹⁴⁸ While the Strategy undertakes to double the number of available refuge spaces by 2026, this falls considerably short of Istanbul Convention requirements.¹⁴⁹ The Strategy's clear identification of children as both witnesses and victims/survivors of domestic abuse is a promising development.¹⁵⁰ Timely implementation of the new Strategy is essential, in light of the increase in domestic violence¹⁵¹ and requests for support from, and on behalf of, children during the Covid-19 pandemic,¹⁵² as well as the proven long-term health¹⁵³ and developmental¹⁵⁴ impacts of violence against children.

» The Commission recommends the immediate revision of the

148 Department of Justice, [Third National Strategy on Domestic, Sexual and Gender-Based Violence](#) (2022); Department of Justice, [Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan](#) (2022), p. 25.

149 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; Council of Europe, [Combating violence against women: minimum standards for support services](#) (September 2008), p. 18.

150 The Strategy commits to ensuring wraparound services for child victims/survivors, using child-friendly and age-appropriate messaging to support children, and reviewing the response to children as victims of sexual crime within the criminal justice system. See Department of Justice, [Third National Strategy on Domestic, Sexual and Gender-Based Violence](#) (2022), pp. 20, 27.

151 In 2020, An Garda Síochána received approximately 43,000 calls regarding domestic violence, which was a 16% increase on 2019; Laura Foley, [Gender-based violence in Ireland](#) (Geary Institute for Public Policy, 2022), p. 4. The number of children accessing domestic violence services grew between September and December 2020, with a total of 604 children accessing services in December 2020; Safe Ireland, [Tracking the Shadow Pandemic - Lockdown 2: A report on women and children seeking support from Domestic Violence Services September 2020 – December 2020](#) (2021), pp. 3-4. See also Government of Ireland, [Report on the Social Implications of Covid-19 in Ireland](#) (2020).

152 Childline, a national helpline for children, has reported an increased demand of 25 per cent in its services since the closure of schools during the pandemic; ISPC, [Childline here for every child and young person](#), (press release, 4 May 2020). 5,383 incidents of child abuse were disclosed to Women's Aid in 2021; Women's Aid, [Annual Impact Report 2021](#) (2022); Oireachtas Library & Research Service, [L&RS Spotlight: Addressing Gender-Based Violence. Part One: Overview](#) (2021). 589 children contacted a domestic violence service for the first time during the initial Covid-19 Lockdown between March and August 2020; Laura Foley, [Gender-based violence in Ireland](#) (Geary Institute for Public Policy, 2022), p. 5. See also Council of Europe, [Strategy for the Rights of the Child 2022-2027](#) (2021), p. 13.

153 The CRC has listed some of the short- and long-term health consequences of violence against children and child maltreatment as including, fatal injury; non-fatal injury (possibly leading to disability); physical health problems; cognitive impairment; psychological and emotional consequences; mental health problems and health-risk behaviours. Committee on the Rights of the Child, [General Comment No. 13 The right of the child to freedom from all forms of violence](#) (2011), para 15 (a). See also European Commission, [EU Strategy on the Rights of the Child](#) (2021), p. 11.

154 The CRC has noted that developmental and behavioural consequences of violence, such as school non-attendance and aggressive, antisocial, self-destructive and interpersonal destructive behaviours can lead to deterioration of relationships, exclusion from school, conflict with the law, further victimization, and accumulation of violent experiences: Committee on the Rights of the Child, [General Comment No. 13 The right of the child to freedom from all forms of violence](#) (2011), para 15(b).

Third National Strategy on Domestic, Sexual and Gender-Based Violence to comply with Council of Europe standards on refuge accommodation provision.

- » **The Commission recommends the full implementation of the targeted, child-specific objectives set out Third National Strategy on Domestic, Sexual and Gender-Based Violence to address violence against children.**

Specialist support services

In its Concluding Observations in 2016, the Committee sought capacity building of the Child and Family Agency, and increased provision of domestic violence refuge accommodation.¹⁵⁵ Recent figures on open child protection and welfare cases,¹⁵⁶ child therapeutic services,¹⁵⁷ and the current provision of refuge accommodation¹⁵⁸ indicate that resource shortages have not been adequately addressed. A holistic approach with streamlined access to appropriate services is essential. In this context, the Commission welcomes the Barnahus, Onehouse Galway pilot project and looks forward to the prompt extension of the model in Dublin and Cork.¹⁵⁹ An appraisal of the pilot project recommended further legal and regulatory harmonisation of the collaborating agencies.¹⁶⁰

155 Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#) CRC/C/IRL/CO/3-4 (29 January 2016), para 38.

156 At the end of 2021, there were 4,807 cases not allocated to a social worker, including 436 high-priority cases. See HIQA, [Overview Report: Monitoring and Regulation of Children's Services in 2021](#) (2022), p. 44; IHREC, [Submission to the UN Committee on the Rights of the Child on the list of issues prior to reporting for the fourth periodic examination of Ireland](#), (July 2020), p. 16.

157 In May 2022, CARL reported that 254 child victims and survivors of sexual abuse were waiting for support services, the highest number in the charity's 33-year history. Without emergency government support, it will take an estimated 5 years to clear the waiting list. See Michelle McGlynn, [Child sex abuse charity's waiting list for support services doubles](#) (31 May 2021).

158 Domestic refuge accommodation is not available in nine counties in Ireland and over a quarter of Irish women live more than 30 minutes' drive from refuge accommodation, impacting the ability of child victims and survivors of domestic violence to access refuge. See Laura Foley, [Gender-based violence in Ireland](#) (Geary Institute for Public Policy, 2022), p. 5. As of 2022, Ireland had less than a third of the number of domestic violence refuge spaces it is required to have under European standards. See [Joint Committee on Gender Equality Debate, Recommendations of the Citizens' Assembly on Gender Equality: Discussion \(Resumed\)](#), 27 April 2022, pp. 6-8. The Citizens' Assembly on Gender Equality has recommended that the Government should ensure sufficient publicly funded provision of beds, shelters and accommodation for victims/survivors of domestic, sexual and gender-based violence across the country and their dependents in line with the Istanbul Convention (June 2021) p. 82.

159 Barnahus will cater for children up to 18 years, with close engagement with the HSE's Sexual Assault Treatment Unit services for older teenagers. See, Department of Children, Equality, Disability, Integration and Youth, [Draft Combined Fifth and Sixth State Report of Ireland to the UN Committee on the Rights of the Child](#) (2021), pp. 40-41. As of May 2022, approximately €1.38m was available to support the implementation of the Barnahus model of service delivery in Ireland. See Roderic O'Gorman TD, Minister for Children, Equality, Disability, Integration and Youth, [Written Answers 4 May 2021](#).

160 See Department of Children, Equality, Disability, Integration and Youth, [Draft Combined Fifth and Sixth State Report of Ireland to the UN Committee on the Rights of the Child](#) (2021), pp. 40-41.

- » **The Commission recommends that the State ensures the adequately resourced provision of specialised, accessible and multi-disciplinary services and refuge spaces for child victims/survivors of violence. Cultural, ethnic, disability and other identities should be taken into account in the provision of services and supports.**

Access to justice

While engaging with the justice system, victims and survivors of child violence encounter untrained Gardaí, inaccurate recording of crimes, and severe delays.¹⁶¹ Between 2019 and 2021, hundreds of emergency calls relating to domestic violence were cancelled by An Garda Síochána.¹⁶² The Commission is concerned about the lack of provision for children to apply for protection and safety orders in their own right.¹⁶³ There are particular concerns for children who are members of communities impacted by institutional racism and other structural barriers,¹⁶⁴ and there is a need for a child-centred and inclusive approach to ensure access to justice.¹⁶⁵

161 See IHREC, [Submission to the UN Committee on the Rights of the Child on the list of issues prior to reporting for the fourth periodic examination of Ireland](#), (July 2020); N. Gould, [The Victim Experience in Focus: An empirical study into the experiences of sexual crime complainants in the criminal justice system in Ireland](#) (One in Four: 2022).

162 An independent review of the cancellation of calls noted that between 1 January 2019 and 31 October 2020, there were almost 203,000 cancelled incidents. Additional cancelled calls were identified in September 2021. The cancellation of calls related to domestic violence 'could have delayed or deprived a victim of the opportunity to obtain a barring order'; Derek Penman, [Independent Report for the Policing Authority: Interim Update on the Preliminary Examination of the Garda Síochána review of the closure, \(including cancellation\) of Computer Aided Dispatch incidents](#) (2021).

163 See also, Professor Geoffrey Shannon, [Twelfth Report of the Special Rapporteur on Child Protection](#) (2019), p. 44.

164 A recent study has found low levels of trust in the criminal justice system by Travellers, stemming from their over policing as suspects and under policing as victims; S. Joyce, O. O'Reilly, M. O'Brien, D. Joyce, J. Schweppe, and A. Haynes, [Irish Travellers' Access to Justice](#) (European Centre for the Study of Hate, (2022)), pp. 7-8. Traveller and Roma women have reported negative experiences with Gardaí who were called out to respond to a domestic violence situation, such as slow response times, negative comments by responding Gardaí, and Gardaí checking for evidence of other crimes during a call out for domestic violence; Pavee Point, [Submission to the Garda Inspectorate on the Inspection into the Effectiveness and Efficiency of An Garda Síochána's Response to Domestic Abuse](#) (2022), p. 2. Migrant women are less likely to leave abusive environments for fear of losing their immigration status due to their residence permission being tied to an abusive spouse; Akidwa, Stamp-3-Association, Ruhama, Nasc and Sexual Violence Centre Cork, [Joint Submission to Citizens' Assembly on Gender Equality: Violence against women](#) (2020), pp. 4-5. Disabled women experience additional barriers to reporting of crimes; Disabled Women's Group, [Submission to Third National Strategy on Domestic, Sexual and Gender-Based Violence](#) (2020), pp. 8-9. Disabled children may not be in a position to avail of legal advice, may not be afforded an intermediary during the investigatory stage, and judges involved in questioning may lack specialist training; Tom O'Malley BL, [Review of Protections for Vulnerable Witnesses in the Investigations and Prosecution of Sexual Offences](#) (2020).

165 In this context, the Commission welcomes the review of the response to children as victims of sexual crime within the justice system, the preparation of guidelines on children's rights in court settings, the inclusion of training on child-friendly communication, and the progressing and implementing of the Family Court Bill, as announced in the Third National Strategy on Domestic, Sexual and Gender-Based Violence: Department of Justice, [Third National Strategy on Domestic, Sexual and Gender-Based Violence](#) (2022), p. 28.

- » **The Commission recommends that the State amend the *Domestic Violence Act 2018* to enable children to make applications for protection and safety orders in their own right.**
- » **The Commission recommends that the State fully implement the commitments in the Third National Strategy on Domestic, Sexual, and Gender-Based Violence to review procedures and train professionals throughout the justice system, in line with the rights and needs of child victims/survivors of violence.**

Data collection

Disaggregated data on violence against children in Ireland is essential for the implementation of the Convention;¹⁶⁶ however such data is limited in practice.¹⁶⁷ A robust system of administrative and survey data recording the prevalence, dynamics, and impacts of violence against children is needed.¹⁶⁸ The Commission welcomes the State's commitment to creating a statutory domestic, sexual and gender-based violence agency, which will oversee greater inter-agency coordination of data collection strategies.¹⁶⁹ It also welcomes the ongoing national survey on the prevalence of sexual violence, but is concerned about its approach to recording the data of structurally vulnerable groups.¹⁷⁰

166 In its 2016 Concluding Observations, the Committee recommended that Ireland should establish a comprehensive, disaggregated data collection system to monitor all aspects of the Convention, including violence against children: Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#) CRC/C/IRL/CO/3-4 (29 January 2016), para 18.

167 Inaccuracies in the recording of domestic violence by An Garda Síochána and under-reporting of domestic violence incidents are among the main concerns in this area. Data from An Garda Síochána on recorded crimes has been categorised by the CSO as 'Statistics Under Reservation', which means it does not currently meet the CSO's standards for the completeness and accuracy required of official statistics. See CSO, [Recorded Crime Q4 2021](#) (29 March 2022); IHREC, [Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2019), p. 2; IHREC, [Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women](#) (2017), p. 59. The Committee on the Elimination of Discrimination Against Women has also raised concerns about data collection; Committee on the Elimination of Discrimination against Women, [Concluding observations on the combined sixth and seventh periodic reports of Ireland](#) (2017), p. 7.

168 Data collection should monitor statistics on complaints, prosecutions, and sentences regarding violence against children and should collect 'special category' information such as race and ethnicity. The Commission has highlighted the shortcomings in Ireland's collection of disaggregated data elsewhere; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), pp. 10-11. The Equality Data Strategy, currently in development, should prioritise the collection of disaggregated data on violence against children.

169 Further information on the implementation of this goal will not be disseminated until the Agency is established; Department of Justice, [Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan](#) (2022), p. 45. The Commission also notes the recent harmonisation of data collection on sexual violence against children in Ireland, and that similar shared approaches to data collection should be agreed for other types of violence against children: The Terminology Guidelines for Data Collection on Sexual Violence Against Children was compiled by Rape Crisis Network Ireland with support from the Department of Children, Equality, Disability, Integration and Youth; [Breaking the Silence: Terminology Guidelines for Data Collection on Sexual Violence Against Children](#), (January 2022).

170 The State has confirmed that in addition to the ongoing national survey on the prevalence of sexual

- » **The Commission recommends that the State prioritises the improvement of the collection and use of disaggregated administrative and survey data on violence against children, with booster samples of children from structurally vulnerable populations.**

Historical child abuse

Investigations into historical child abuse

The State has repeatedly failed to ensure independent, effective investigations, in line with international human rights standards, into allegations of human rights abuses in respect of Magdalene Laundries,¹⁷¹ Mother and Baby Homes, reformatory and industrial schools,¹⁷² foster care settings,¹⁷³ and Scouting Ireland.¹⁷⁴ The Special Rapporteur on Child Protection has called for a State inquiry, following the truth commission model, into the practice of illegal adoption.¹⁷⁵ Although the Ryan Report, published in 2009,¹⁷⁶ highlighted the abuse experienced

violence, there is a survey in development to include data from migrant populations, Traveller communities and people with intellectual disabilities; however, there is no specified timeline for the start or completion of this survey; Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#), CCPR/C/IRL/RQ/5 (13 April 2022), para. 79. The Commission has elsewhere recommended that the State should not wait until the end of the current phase of the survey on the prevalence of sexual violence in Ireland to undertake survey research with structurally vulnerable groups; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), p. 42.

171 The Committee against Torture has found that it has full jurisdiction to decide Elizabeth Coppin's complaint alleging that Ireland has failed to investigate or to ensure accountability or comprehensive redress for the abuse that she suffered in three Magdalene Laundries: Committee Against Torture, [Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 879/2018](#) (14 January 2020) CAT/C/68/D/879/2018.

172 The Special Rapporteur remarked that 'past systemic abuses, such as those committed in institutions and in the area of adoption, are yet to be fully examined, with accountability and redress remaining elusive for victims'. United Nations 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](#), A/HRC/40/51/Add.2 (15 November 2019), para 75.

173 The Farrelly Commission of Investigation was established in 2017 to examine the culture and treatment of individuals with intellectual disabilities in a foster care setting in the South East. It was due to submit its final report by May 2018 but there have been ongoing delays and it has been granted an extension until July 2022 to complete the final phase one report into the case. IHREC, [Commission Calls for 'Grace' Investigation to Respect Human Rights and Equality Obligations for People with Intellectual Disabilities](#) (press release, 7 March 2017); [Department of Health, Written Answers – Departmental Investigations](#) (29 March 2022).

174 A recent 'learning review' in relation to sexual abuse in scouting revealed that 'sex abuse was known about and tolerated within scouting in some situations. Known offenders were protected, and there are examples of those individuals being replaced in those roles by others against whom we now hold allegations of sexual abuse'. See IHREC, [Submission to the UN Committee on the Rights of the Child on the list of issues prior to reporting for the fourth periodic examination of Ireland](#) (2020), p. 19.

175 Special Rapporteur on Child Protection, [Proposals for a State response to illegal birth registrations in Ireland](#) (2022).

176 The report contained 20 recommendations and 99 actions. The Implementation Plan to address the recommendations, categorised the 99 actions under 6 categories including 'Addressing the effects of past abuse'. The [fourth and final report](#) of the monitoring group was approved by Government and was laid before the Houses of the Oireachtas on 13 March 2015.

by disabled children in residential institutions,¹⁷⁷ investigations into historical abuse did not adequately address issues relating to ableism and racism.¹⁷⁸ The continued failure of the State to effectively investigate historical abuse has also directly impacted the identification, prosecution and conviction of perpetrators.¹⁷⁹

- » **The Commission calls for the State to overhaul the existing investigative approach to ensure that all allegations are afforded timely, independent, transparent, thorough, intersectional, and effective survivor-centred investigations, in line with international human rights standards.**
- » **The Commission recommends that identified perpetrators should be prosecuted and punished with penalties proportionate to the gravity of the offence.**¹⁸⁰

Provision of an effective remedy

The implementation of redress schemes has been marked by inadequacies and limitations which have created barriers in accessing effective redress for child rights violations.¹⁸¹ Despite agreeing in 2002 to provide the cost of redress

177 See Ryan Report: [Chapter 13 – Special needs schools and residential services](#) (2009). The experience of disabled children has also been highlighted in other inquiries into the abuse and exploitation of children; Carole Holohan, [In plain sight: responding to the Ferns, Ryan, Murphy and Cloyne reports](#) (Amnesty International, 2016) pp. 193–195.

178 The Commission is concerned about the failure to address the historic abuse of children with physical, sensory, intellectual or mental health impairments in institutional settings. Furthermore, ‘race’ has been excluded as a specific theme from the Terms of Reference of a number of investigations into historic abuses in Irish institutions, including the Commission to Inquire into Child Abuse. While ‘race’ was included in the final Terms of Reference of the Mother and Baby Homes Commission of Investigation, the finding in the final report that there was no evidence of discrimination against mixed race children, disabled children and Traveller children in decisions around adoption has been contested. See IHREC, [Submission to the Third Universal Periodic Review Cycle for Ireland](#) (March 2021), p. 19.

179 There were only eleven cases referred for prosecution based on the Ryan Report regarding abuse in child residential institutions. There has been no recent criminal prosecutions related to Magdalene Laundries. See James Gallen, ‘Transitional justice and Ireland’s legacy of historical abuse’ (2020) 55 Éire-Ireland 35, p. 60. To date, there have been 86 complaints to AGS in relation to alleged crimes in Mother and Baby Homes; however 54 of these cases have been closed and only 32 remain open for further investigation. See, Human Rights Committee, [Replies of Ireland to the list of issues in relation to its fifth periodic report](#) (2022) CCPR/C/IRL/RQ/5, paras 26–27. See also, monthly reports of the Garda Commissioner to the Policing Authority for February, March and April 2022. Cases have been closed due to failure to identify or contact victims, victims declining to engage, and An Garda Síochána being unable to identify criminal behaviour.

180 For example, the Commission noted in its 2020 report to the Committee that the State’s 2019 report sets out that no individuals claiming to be victims of the Magdalene laundries have made any complaints to the Department of Justice and Equality seeking further inquiries or criminal investigations. However, victims may not be aware of the complaints mechanism or have the physical or psychological ability to present to law enforcement officials. The Commission has stated that the initiation of a criminal investigation does not require a victim to make a complaint. IHREC, [Submission to the United Nations Human Rights Committee on the List of Issues for the Fifth Periodic Examination of Ireland](#) (2020), pp. 18–19.

181 The State has established a range of redress schemes to address historical abuse including the Magdalene Restorative Justice Scheme, the Residential Institutions Redress Scheme and the O’Keeffe

in exchange for indemnity from legal action,¹⁸² religious congregations have continually failed to meet the costs of the redress schemes for child abuse since the publication of the Ryan Report.¹⁸³ The Commission has also consistently set out that the O’Keeffe scheme for survivors of abuse in schools continues to fall short,¹⁸⁴ and notes the emphasis placed on the implementation of judgments by the European Court of Human Rights during the Irish Presidency of the Council of Europe.¹⁸⁵

The Government recently announced proposals for a statutory payment scheme for survivors of Mother and Baby Homes and related institutions.¹⁸⁶ The Commission is of the view that the scheme cannot be bound by the significant limitations of the Commission of Investigation’s findings and recommendations, and notes that the Government proposals for a payment scheme are wider in scope than the recommendations made by the Commission of Investigation.¹⁸⁷

Scheme. Shortcomings identified in the operation of these redress schemes include an adversarial approach to the provision of redress; an unduly restrictive and narrow approach to the category of ‘victim’; a short timeframe to apply to the scheme; overly burdensome standards of proof; low levels of award in comparison to violations suffered; difficulties accessing personal records held in archives; over reliance on the records of religious congregations in making assessments for eligibility; ambiguity about the weight being afforded to the testimony of individuals and/or their relatives; the ex gratia nature of the scheme meaning there is no acknowledgement of the violation of rights; and a requirement to sign a waiver against further legal recourse against state and non-state actors through the judicial process. IHREC, [Submission to the UN Committee against Torture on the List of Issues for the Third Examination of Ireland](#) (2020), pp. 26, 29–30; IHREC, [Submission to the United Nations Committee on the Elimination of Discrimination Against Women on the follow-up procedure to Ireland’s combined sixth and seventh periodic report](#) (2020), pp. 2, 4–5, 7.

182 In 2002, the State indemnified 18 congregations from any legal actions which former residents might take against them in return for their contribution to the cost of the redress scheme. The congregations agreed to contribute €128 million; following the publication of the Ryan Report the congregations made a further voluntary offer. The amounts offered total €480.6 million, contributions received to date are €236.5 million; Department of Education, [Parliamentary Question: Residential Institutions](#) (26 April 2022). See also Comptroller and Auditor General, [Cost of Child Abuse Inquiry and Redress](#) (2017), pp. 37–39.

183 Despite a Government policy for a sharing of the costs on a 50:50 basis between the taxpayer and the congregations, by the end of 2015, contributions received from the congregations represented only 13% of the cost of the redress and the offered amount was only 23% of the overall cost; Comptroller and Auditor General, [Cost of Child Abuse Inquiry and Redress](#) (2017), pp. 37–39. See also Patsy McGarry, [Redress for abuse in religious institutions falls short of 2009 commitments](#).

184 In *O’Keeffe v Ireland* the ECtHR found that Ireland failed to fulfil its obligation to protect Louise O’Keeffe from inhuman and degrading treatment, and had failed to provide her with an effective remedy. See IHREC, [New Redress Scheme for Victims of Historic Schools Abuses Continues to Fail Victims](#) (press release, 19 December 2021). In July 2021, the scheme was amended but continues to fall short, by restricting compensation to those survivors who began legal proceedings prior to July 2021 and refusing to pay survivors’ legal costs. See Emma O’Kelly, [Dept to pay around €31m to survivors of sexual abuse in primary schools](#) (2021).

185 Government of Ireland, [Presidency Priorities](#) (2022).

186 The purpose of the Mother and Baby Institutions Payment Scheme is to provide financial payments based on length of stay, a work-related payment, and an enhanced medical card to defined groups in acknowledgement of suffering experienced while resident in Mother and Baby and County Home Institutions. Department of Children, Equality, Disability, Integration and Youth, [Mother and Baby Institutions Payment Scheme: Government Proposals](#) (November 2021); *General Scheme of a Mother and Baby Institutions Payment Scheme Bill*.

187 The Commission previously raised concerns on the narrowness of the Commission of Investigation’s remit in terms of the institutions, types of abuses, and persons under investigation. In April 2021, the Commission provided an advisory paper to the Government on the human rights and equality components

The Commission has called for the design and implementation of the scheme to be human rights and equality compliant,¹⁸⁸ and for the legislation to form part of a larger transitional justice response.¹⁸⁹

- » **The Commission recommends that the State overhaul existing redress schemes to ensure access to an effective remedy for victims and survivors, based on the right to truth, justice, reparation, non-recurrence and memory processes and in line with children's rights principles.**
- » **The Commission recommends that the State provides a detailed update on the financial contributions of religious congregations to redress.**

Child trafficking

For the second year in a row no child victims of trafficking were identified in 2021, and recently Ireland's low rate of identification of child victims has been criticised by the Human Rights Committee.¹⁹⁰ Over the period 2013-2020, 34 minor victims of trafficking were identified in the State (9% of all victims). This proportion is significantly lower than the EU average (22%).¹⁹¹ Past examples of suspected child trafficking situations in Ireland include: domestic servitude; labour exploitation in high-risk sectors (for example, car-washing); forced criminality, and sexual exploitation through prostitution.

Children are among the most vulnerable victims of trafficking.¹⁹² The most

of the redress scheme needed for survivors of Mother and Baby Homes and related institutions. The Commission's submission was informed by a series of one-to-one listening sessions in March 2021 with survivors and key stakeholders to get their personal views on redress. The participants all expressed concern about the findings of the Commission of Investigation. IHREC, [Advisory Paper to the Interdepartmental Group on the Government's Planned Development of a 'Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes'](#) (April 2021).

188 The Commission notes communication from eight United Nations Special Procedures to the Irish Government in relation to the human rights concerns with the proposed redress scheme for former residents of Mother and Baby Homes and County Homes. In the correspondence, the UN experts set out the international legal obligations which the State should comply with it in designing and implementing the scheme. See United Nations, [Communication from UN Special Procedures to Ireland](#), IRL 2/2021 (5 November 2021).

189 IHREC, [Advisory Paper to the Interdepartmental Group on the Government's Planned Development of a 'Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes'](#) (April 2021).

190 Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), paras 31-32.

191 European Commission (2020) *Data Collection on Trafficking in Human Beings in the EU*. Luxembourg: Publications Office of the European Union, p. 6.

192 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee raised its concerns about reports on the disappearance of unaccompanied children in Ireland, making them vulnerable to many forms of exploitation as well as human trafficking. It recommended that the State

concerning aspects in the State's response to child trafficking remain:¹⁹³ the inadequate identification, classification and data collection of child trafficking cases, due to delays in progressing the establishment of a new National Referral Mechanism;¹⁹⁴ limited and delayed legal assistance and representation afforded to child victims of trafficking, and; inadequate procedures for 'age assessments' in general and for victims of trafficking in particular.¹⁹⁵

As Ireland's Independent National Rapporteur on the Trafficking of Human Beings, the Commission has detailed a number of recommendations specifically intended to tackle child trafficking in its first Monitoring Report on the implementation of the EU Anti-Trafficking Directive (2022).¹⁹⁶

» **The Commission recommends that the State and the relevant State agencies responsible for children examine and promptly implement the recommendations on child trafficking in its first Monitoring Report as National Rapporteur. In particular, by ensuring that the new National Referral Mechanism adopt a child-specific identification procedure that addresses the specific individual situation of a child.**¹⁹⁷

consider conducting an independent review of child protection measures for unaccompanied children in order to identify the necessary measures to uphold their rights and to prevent the disappearance of children: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), paras 37-38.

193 The Commission notes that Ireland has been upgraded to Tier 2 in the TIP report, and has been taken off the watch list by the US Department of State: [Trafficking in Persons Report](#) (July 2022), pp. 298-302. Despite this, the Report identifies continuing concerns. The Report recommended that Ireland increase efforts to identify and protect all victims, especially Irish citizens, victims of labour trafficking and forced criminality, and vulnerable populations like children, sea fishers, and asylum-seekers. In relation to children, the Report noted that the lack of child-trafficking victims identified in Ireland could be a result of insufficient expertise among social workers. In addition, the 2018 decision to reclassify child trafficking victims as victims of sexual exploitation consequently excluded children from trafficking statistics.

194 The Commission has welcomed the proposals for a new National Referral Mechanism, which will give this mechanism a statutory basis and incorporate several State agencies as well as involving civil society organisations as 'trusted partners': Department of Justice, '[Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports](#)' (11 May 2021). On 27 July 2022, the Government approved the publication of the General Scheme of the Criminal Justice (Sexual Offences and Human Trafficking) Bill 2022 which proposed to put the National Referral Mechanism on statutory footing: Department of Justice, [Government approves publication of General Scheme of Bill which will strengthen law on consent in rape cases and support victims in sexual violence and human trafficking cases](#) (press release, 27 July 2022). The Department has committed to reconvening a working group of NGOs and other stakeholders in order to get their advice on the details of the new proposals.

195 For further information, see the child trafficking section in IHREC, *Trafficking in Human Beings in Ireland: Evaluation of the Implementation of the EU Anti-Trafficking Directive* (21 June 2022). See also, Section 11 of this report. These concerns were echoed in the Report from the US: USA Department of State, [Trafficking in Persons Report](#) (July 2022), pp. 298-302.

196 IHREC, *Trafficking in Human Beings in Ireland: Evaluation of the Implementation of the EU Anti-Trafficking Directive* (21 June 2022).

197 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee recommended that the State take necessary steps to improve the identification of child victims of trafficking, inter alia, through the adoption of a child-specific identification procedure. It also recommended the swift implementation of a nationwide new National Referral Mechanism with a clear timeline and explicit provisions to guarantee early identification and gender, child and exploitation-specific assistance: Human Rights Committee, [Concluding](#)

- » **The Commission recommends that the Child and Family Agency develops child-trafficking specific policies and procedures; that trafficking, as a form of child abuse, is specifically included in Children First Guidelines; and that all people working with child victims of trafficking (including guardians ad litem, social workers, guardians, intermediaries) undertake mandatory child-trafficking training.**
- » **The Commission recommends that all child victims of trafficking have prompt access to comprehensive legal advice at the earliest possible stage.**

Female Genital Mutilation

It is estimated that 6,000 girls under the age of 15 and living in Ireland are at risk of female genital mutilation ('FGM').¹⁹⁸ FGM continues to be a hidden issue in this country, with Ireland's first prosecution relating to FGM only occurring in 2020.¹⁹⁹ FGM has psychological, physical, social and sexual consequences, and a lack of culturally appropriate services for victims of FGM in Ireland continues to have a negative impact, which is exacerbated by a lack of targeted supports.²⁰⁰ There is an urgent need for the State to invest more in preventative and coordinated measures by engaging the practicing community and by adopting a National Action Plan on FGM.²⁰¹

- » **The Commission recommends that, in collaboration with affected children, the State take measures to raise awareness about FGM, implement and support access to specialist services, and adopt a National Action Plan on FGM, including a focus on prevention measures.**

[Observations on the fifth periodic report of Ireland](#) (2022), paras 31–32.

198 Akidwa, [Statement to the Joint Oireachtas Committee on Gender Equality](#) (April 2022), p. 8.

199 The first people to be convicted of FGM in the Republic of Ireland were convicted in January 2020; See, [Parents jailed over female genital mutilation of daughter](#) (Irish Times, 27 January 2020).

200 Akidwa, [Statement to the Joint Oireachtas Committee on Gender Equality](#) (April 2022). The Commission notes that in the Citizens' Assembly, [Report on Gender Equality](#) (June 2021), the Report recommended that the State recognise FGM as a ground for seeking asylum, and provide culturally sensitive specialised services for victims/survivors.

201 The Commission notes that FGM is recognised as a form of gender-based violence in the State's [Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022–2026](#) (2022). Contained in the Strategy's Implementation Plan are a number of actions to be implemented from 2022–2023, including to put in place special report services required by victims/survivors of FGM. See Government of Ireland, [Third National Strategy on Domestic, Sexual & Gender-Based Violence: Implementation Plan](#) (2022), p. 27.

Bullying and cyberbullying

Bullying continues to be widely experienced by children at school, in other youth settings, and online.²⁰² Current anti-bullying policies lack an intersectional approach, resulting in high levels of identity-based bullying experienced by children from ethnic minorities,²⁰³ LGBTIQ+ children,²⁰⁴ and children with disabilities.²⁰⁵ The Commission welcomes the recent establishment of a Steering Committee to develop a new National Action Plan on Bullying,²⁰⁶ and looks forward to the timely introduction of the action plan, centring the experiences of ethnic minority and LGBTIQ+ children, as well as disabled children, informed by their active participation.²⁰⁷

Significant growth of online communications among young people has occurred since the publication of the National Action Plan in 2013,²⁰⁸ necessitating an updated cyberbullying policy which responds dynamically to technological advances.²⁰⁹

202 Children's Rights Alliance, [Report Card 2022](#) (2022); Anti-Bullying Working Group, [Action Plan on Bullying](#) (January 2013); CyberSafeKids, [Annual Report 2020](#) (2021); IHREC, Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area, 31 March 2021; BeLonG To Youth Services, [The 2019 School Climate Survey: The experience of lesbian, gay, bisexual and trans young people in Ireland's schools](#) (2019).

203 In conversation with the Commission, young African leaders noted that current anti-bullying policies are too broad to deal adequately with racist bullying. They cited the need for targeted anti-racism policies to co-exist with general anti-bullying policies, and for a zero-tolerance approach to racism and discrimination in the Irish education system: IHREC, Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area, 31 March 2021.

204 In 2019, exclusion, verbal, physical and sexual harassment was experienced by 86%, 77%, 38% and 43% of respondents respectively. While the 2013 Action Plan on Bullying had homophobic bullying as its specific focus, it failed to adequately differentiate between homophobic, biphobic, and transphobic bullying, choosing to consider these experiences collectively. The policies targeted towards young transgender people in particular were lacking in detail as a result. See BeLonG To Youth Services, [The 2019 School Climate Survey: The experience of lesbian, gay, bisexual and trans young people in Ireland's schools](#) (2019), p. 7. Anti-Bullying Working Group, [Action Plan on Bullying](#) (January 2013).

205 Disabled children are up to three times more likely to be bullied and up to six times more likely to experience violence or abuse when compared with their peers; Inclusion Ireland, [Opening Statement to the Oireachtas Joint Committee on Education, Further and Higher Education, Research, Innovation & Science](#) (2021), p. 2.

206 Department of Education, [Minister Foley establishes Steering Committee to develop new Action Plan on Bullying](#) (February 2022).

207 A survey given to 8000 children across Europe, including over 900 Irish children, recorded frustration over the lack of action on preventing bullying. The report recommended the rights-based, meaningful and inclusive participation of children, including their involvement in the implementation of the EU Strategy on the Rights of the Child. See European Commission, [Our Europe, Our Rights Our Future](#) (2021), pp. 12, 16.

208 The Commission is concerned that instances of cyberbullying, recorded at 4% of children between 9 and 16 in the 2013 National Action Plan, have grown to 29% in the intervening period. See Anti-Bullying Working Group, [Action Plan on Bullying](#) (January 2013); CyberSafeKids, [Annual Report 2020](#) (2021). 39% of LGBTI+ students surveyed by BeLonG To in 2019 experienced cyberbullying via social media, telephone and email. See BeLonG To Youth Services, [The 2019 School Climate Survey: The experience of lesbian, gay, bisexual and trans young people in Ireland's schools](#) (2019), p. 7.

209 The updated policy should recognise cyberbullying as an issue of growing concern and have regard for the intersection between cyber- and identity based-bullying. See BeLonG To Youth Services, [The 2019 School](#)

- » **The Commission recommends that a clear timeline be set out for the publication and implementation of the new Action Plan on Bullying and Cyberbullying,²¹⁰ informed by the meaningful and inclusive participation of children.**

Harmful practices

Intersex children

In its July 2022 Concluding Observations on Ireland the Human Rights Committee recommended that the State take all steps necessary to ensure that all acts relating to the assignment of a sex to intersex children performed without their free and informed consent are specifically prohibited, except in cases where interventions are absolutely necessary for medical reasons and the best interests of the child have been duly considered.²¹¹

Despite the Committee's recommendation in 2016,²¹² Ireland has yet to introduce a formal approach to the treatment of intersex children in Ireland.²¹³ Under the National Model of Care for Paediatric Healthcare Services, children presenting with what it terms 'disorders of sex development' at birth are referred to a multidisciplinary team for specialised care.²¹⁴ The National Model is silent on the participation of intersex children or their families in any decision-making processes that directly affect them. Recent research gives some further information on how intersex variations in new-borns are medically managed in Ireland with clinicians indicating that only very small numbers of children present with ambiguous genitalia and that there is no typical trajectory of treatment.²¹⁵

This research also considered the experience of adult intersex people and highlights the prevalence of trauma, linked to early childhood medical treatment, as well as the absence of fully-informed consent to unnecessary surgical and

[Climate Survey: The experience of lesbian, gay, bisexual and trans young people in Ireland's schools](#) (2019), pp. 55-57.

210 See Department of Education, [Minister Foley invites views on the Action Plan on Bullying](#) (press release, 26 May 2022).

211 Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 20.

212 UN Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) CRC/C/IRL/CO/3-4 (2016), para. 40.

213 T. Ní Mhuirthile, M. Feeney, M. Duffy and A. Staines, [Mapping the lived experiences of intersex/variations of sex characteristics in Ireland: contextualising lay and professional knowledge to enable development of appropriate law and policy](#). Project Report. Dublin City University (2022), p. 68.

214 HSE, [A National Model of Care for Paediatric Healthcare Services in Ireland Chapter 28: Paediatric Gynaecology](#) (2015), p. 4.

215 T. Ní Mhuirthile, M. Feeney, M. Duffy and A. Staines, [Mapping the lived experiences of intersex/variations of sex characteristics in Ireland: contextualising lay and professional knowledge to enable development of appropriate law and policy](#). Project Report. Dublin City University (2022), Chapters .

medical interventions.²¹⁶ There are also concerns about the lack of legal remedies available to intersex persons, with research demonstrating how the current legislative framework continues to fail to adequately support intersex people in accessing justice and effective redress.²¹⁷

- » **The Commission recommends that the State takes active measures to progress the Committee's recommendations in 2016 to prevent unnecessary medical or surgical treatment of intersex children, investigate related cases and provide adequate counselling, support and access to effective remedies for the children affected**

Gender identity

Under the *Gender Recognition Act 2015*, an application may be made by a parent or guardian for a Gender Recognition Certificate for children aged 16 and 17 years, provided a court order has first been obtained, which also requires parental or guardian consent and certification by two medical practitioners.²¹⁸ In 2020, 10 people aged 16 and 17 had been granted a Gender Recognition Certificate, compared with 258 people aged 18 and older.²¹⁹ While the Government committed to introducing legislation to allow for a self-declaration model for children aged 16 and 17 years in 2020, this has not been progressed.²²⁰ The Commission also notes the Committee's focus on measures to provide children under 16 years of age with legal pathways to recognising their preferred gender.²²¹ In 2018, a Review of the *Gender Recognition Act 2015*²²² recommended that a 'system of gender recognition should be introduced for children of any age' subject to certain key principles.²²³ While the Government has recently commissioned research on measures to

216 T. Ní Mhuirthile, M. Feeney, M. Duffy and A. Staines, [Mapping the lived experiences of intersex/variations of sex characteristics in Ireland: contextualising lay and professional knowledge to enable development of appropriate law and policy](#). Project Report. Dublin City University (2022), p. 140.

217 T. Ní Mhuirthile, M. Feeney, M. Duffy and A. Staines, [Mapping the lived experiences of intersex/variations of sex characteristics in Ireland: contextualising lay and professional knowledge to enable development of appropriate law and policy](#). Project Report. Dublin City University (2022), pp. 35-59.

218 See Sections 8, 9 and 12 of the *Gender Recognition Act 2015*.

219 See Department of Social Protection, [Annual Report for 2020 under section 6 of the Gender Recognition Act 2015](#) (2021): p. 3.

220 Department of the Taoiseach, [Programme for Government: Our Shared Future](#) (2020), p. 77. The most recent Legislation Programme in Summer 2022 makes no reference to any legislative proposals in this area. See Department of the Taoiseach, [Summer 2022 Legislation Programme published by Government Chief Whip Jack Chambers](#) (2022).

221 Committee on the Rights of the Child, [List of issues prior to submission of the combined fifth and sixth reports of Ireland](#) (2020), para. 19(b).

222 In November 2017, a Review Group was established to review the operation of the *Gender Recognition Act 2015* (as provided for in section 7 of the Act). See Minister for Employment Affairs and Social Protection, [Report on the Review of the Gender Recognition Act](#) (2019), p. 3.

223 Key principles include: the requirement for parental consent (with an appropriate legal process to address cases where there is not consent from both parents, or it is not possible or safe to obtain same); administrative process; straightforward revocation process; third party support for the child and family involved. See Minister for Employment Affairs and Social Protection, [Report on the Review of the Gender Recognition Act](#) (November 2019), p. 4.

extend gender recognition pathways to children under 16 years of age, no specific plans for amending the legislation have been announced.²²⁴

- » **The Commission recommends that the State prioritises legislation to simplify the procedure for gender recognition for 16 and 17 year olds.**
- » **The Commission recommends that the *Gender Recognition Act 2015* be amended to enable applications to be made by a parent or guardian on behalf of children under the age of 16 years, subject to appropriate safeguards and in line with children's rights principles.**

224 The Government considers that further research is needed to examine the issues relating to children aged under 16 years. See Houses of the Oireachtas, [Gender Recognition Dáil Éireann Debate](#)– (21 September 2021).

7.

Family environment and alternative care

**(Articles 5, 9-11, 18(1-2), 20-21, 25
and 27(4))**

Family law system

The State has committed to reform of the family law system, including through the development of a national Family Justice Strategy and the adoption of the *Family Court Bill 2020* ('2020 Bill').²²⁵ The Commission has emphasised that the current system in place falls short of children's rights standards,²²⁶ including due to chronic delays, crowded lists, inconsistent approaches to hearing the views of children, adversarial approaches, inconsistency in decisions, unsuitable physical facilities, and a lack of specialist training for judges and legal practitioners.²²⁷ In light of the disproportionate representation of structurally vulnerable groups in child and family law proceedings and the barriers faced by these groups in accessing proceedings,²²⁸ these reforms should include a focus on the creation of supports and procedures to address this over-representation. The Commission notes with concern the delay in progressing the 2020 Bill,²²⁹ and emphasises that the State must ensure that family law cases involving children are prioritised in the interim period.²³⁰

The Commission also notes the enactment of the *Child Care (Amendment) Act 2022*,²³¹ which aims to reform the previously largely unregulated Guardian ad litem ('GAL') system.²³² The Commission welcomes the Act's presumption in favour of

225 The General Scheme of the Family Court Bill provides for the establishment of a District Family Court, a Circuit Family Court and a Family High Court as divisions within the existing court structures. Department of Justice, [Reform of Family Justice System announced by Minister McEntee](#) (press release, 30 September 2020). See also Department of Justice, [Justice Plan 2022](#) (2022), pp. 18, 21. The Bill is set to be published 'as soon as possible in 2022'. See Dáil Debates – Written Answers (14 July 2022).

226 The Commission notes with concern that the current family law system is not compliant with the Convention, highlighting in particular Articles 3, 12 and 40.

227 IHREC, [Submission on the General Scheme of the Family Court Bill](#) (2021).

228 For example, disabled people, one parent families, and minority ethnic groups: IHREC, [Submission on the General Scheme of the Family Court Bill](#) (2021) pp. 4–5; C. M. Corbett and C. Coulter, 'Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings' (2021), Child Care Law Reporting Project; HIQA, Overview Report: Monitoring and Regulation of Children's Services in 2021 (2022). Throughout 2021, HIQA continued to highlight cases whereby children were not provided with the right placement at the right time, or where there were delays in providing the appropriate placements for them. FLAC noted that in 2021, demand for its services outstripped its resources. A third of queries received related to family law matters: FLAC, [Annual Report 2021](#) (2022).

229 The General Scheme of the 2020 Bill was published in September 2020. The Commission notes that the Bill is listed on the [Summer Legislative Programme 2022](#) as priority legislation for drafting this session.

230 The Commission notes that one of the key actions included in the Government of Ireland, *Zero Tolerance: Third National Strategy on Domestic, Sexual & Gender-Based Violence 2022-2026* is to progress and implement the new Family Court Bill. In the [Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan](#) (2022), the Department aims to publish the *Family Court Bill* in Q3 2022.

231 Department of Children, Equality, Disability, Integration and Youth, *Child Care (Amendment) Act 2022* signed into law to strengthen the voice of children in child-care proceedings (press release, 22 July 2022).

232 The appointment of a Guardian ad litem is one of the mechanisms used by the courts to ensure that the best interests, and the views of the child, are heard in public family law proceedings. See generally A. Parkes, C. Shore, C. O'Mahony and K. Burns, 'The Right of the Child to be Heard? Professional Experiences of Child Care Proceedings in the Irish District Court' (2015) 27(4) *Child and Family Law Quarterly* 423–444. The authors state that the GAL system was 'replete with difficulties surrounding a lack of clarity on key issues such as function, criteria for appointment and qualifications, as well as inconsistency in rates of and reasons for appointment'.

appointment of a GAL in child-care proceedings, and urges the State to prioritise the enactment and implementation of this legislation, taking full account of stakeholder views on the reforms required.²³³

- » **The Commission recommends that reform of the family law system is progressed as a matter of priority, and addresses the disproportionate representation of structurally vulnerable groups in child and family law proceedings, including disabled people, one parent families and minority ethnic groups.**
- » **The Commission recommends the allocation of adequate resources for the full and prompt implementation of the *Child Care (Amendment) Act 2022*, to establish a child-centred, rights-based, independent, accessible and sustainable Guardian ad litem service and ensure that children's views and best interests are fully considered in child care proceedings.**²³⁴

Childcare services

The Commission has repeatedly raised concerns over systemic shortcomings in the childcare infrastructure in Ireland,²³⁵ with Commission-supported research demonstrating that State support for caring remains relatively low compared to other European countries.²³⁶ The cost of formal childcare for pre-school children in Ireland continues to be among the highest in the OECD,²³⁷ despite Government investment and reform in this area.²³⁸ Long-standing issues with the availability of

The Commission notes that the [Child Care \(Amendment\) Act 2022](#), enacted in July 2022, provides welcome clarifications on these issues.

233 See, for example OCO, [Submission to the Joint Committee on Children and Youth Affairs in relation to the General Scheme of the Child Care \(Amendment\) Bill 2017](#) (2017); Barnardos, [Submission to the Joint Oireachtas Committee on Children and Youth Affairs Re: General Scheme of the Child Care \(Amendment\) Bill](#) (2017); and Children's Rights Alliance, [Response to the Department of Children and Youth Affairs' Consultation on the Reform of the Guardian Ad Litem Services](#) (2016).

234 The Commission notes that the Government has announced its intention to establish a working group by Q3 2022 to review the effectiveness of the current arrangements for hearing the voice of the child in private family law cases and alternative dispute resolution (if appropriate) and if required, commence development and pilot the mechanisms in Q3 2023 to enhance hearing the voice of the child in all family justice matters, ensuring children's welfare and best interests are considered in conjunction with their constitutional rights. See Government of Ireland, [Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan](#) (2022).

235 See, for example: IHREC, [Submission to the Department of the Taoiseach on the European Semester](#) (2022); IHREC, [Ireland and the Convention on the Elimination of all forms of Discrimination against Women](#) (2017); IHREC, [Submission to Citizens' Assembly on Gender Equality](#) (2020); IHREC, [Submission to the UN Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland's Fourth Periodic Report](#) (2021), p. 11.

236 IHREC/ESRI, [Caring and Unpaid Work in Ireland](#), (2019), p. 74.

237 K. Doorley, A. McTague, M. Regan & D. Tuda, [Childcare in Ireland: usage, affordability and incentives to work](#) (2021). See also IHREC/ESRI, [Caring and Unpaid Work in Ireland](#), (2019), p. 12.

238 See Department of Children, Equality, Disability, Integration and Youth, [National Childcare Scheme](#)

childcare services in Ireland were exacerbated by the Covid-19 pandemic, due to the closure of schools and care services placing additional pressure on families seeking to balance work and family life.²³⁹

Both the Joint Committee on Gender Equality and the Citizens' Assembly on Gender Equality recommended that the State should increase the share of GDP spent on childcare,²⁴⁰ and move to a publicly funded model of childcare²⁴¹ to ensure affordability for lower income parents and provide high quality early childhood education for all children, including those from disadvantaged backgrounds.²⁴² Furthermore, the Commission welcomes the recent recommendation from the Joint Committee on Gender Equality, which proposed amending Article 41.2 of the Constitution²⁴³ to support both care within the home and wider community.²⁴⁴

» **The Commission recommends that the State develops and fully implements a National Action Plan for Care,²⁴⁵ based on the participation of children and their primary caregivers,²⁴⁶ including commitments to transition to a publicly funded model of childcare in line with the recommendations from the Citizens' Assembly.**

(2019).

239 See for example P. Redmond and S. McGuinness, [Essential Employees During The Covid-19 Crisis](#), Dublin: Economic and Social Research Institute (April 2020).

240 Recommendation 8 (b) from the [Citizens' Assembly Report](#) (2021): 'Ireland should: increase the State share of GDP spent on childcare, from the current 0.37% of GDP to at least 1% by no later than 2030 in line with the UNICEF target.' The report also notes the following: 'our recommendations call for better public services and improved social protection in order to advance gender equality. These should be funded firstly through greater efficiency and accountability for public funding and reprioritisation between current spending and revenue raising. If necessary, we are also prepared to support and pay higher taxes based on the principle of ability to pay, to make a reality of our recommendations' at p. 10.

241 Recommendation 8 (a) from the [Citizens' Assembly Report](#) (2021): 'Ireland should: Over the next decade move to a publicly funded, accessible and regulated model of quality, affordable early years and out of hours childcare'.

242 [Citizens' Assembly Report on Gender Equality](#), (2021), p. 64: Recommendation 8 on childcare reflects Ireland's comparatively low spend on childcare and relatively high dependence on private sector provision. Members called for a move to a public model to improve terms and conditions for workers in the sector, ensure affordability for lower income parents and provide high quality early childhood education for all children including those from disadvantaged backgrounds.

243 Article 41.2 of the Constitution of Ireland: 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved; 2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

244 Joint Committee on Gender Equality, [Interim Report on Constitutional Change](#) (July 2022).

This reflects previous recommendations by the Commission, see for example: IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), pp. 33-34.

245 IHREC, [Strategy Statement 2022-2024](#), p. 11.

246 The Commission notes the publication of [Interim Report on Constitutional Change](#) from the Joint Committee on Gender Equality (July 2022), which recommends that a constitutional referendum is held in 2023 in relation to Article 41 of the Constitution. The Commission emphasises that any amendment to the text should consider a child-centred approach.

- » **The Commission recommends that the State accepts Article 27(1) of the European Social Charter on the provision of childcare services.²⁴⁷**
- » **The Commission recommends that Article 41.2 of the Constitution is amended to oblige the State to take reasonable measures to support care within the home and wider community.**

Children deprived of a family environment

The Commission welcomes the ongoing review of the *Child Care Act 1991*, but is concerned about the significant delay in progressing this legislative reform as there is a pressing need to improve the provision of care services in Ireland.²⁴⁸ At the end of April 2022, there were 5,869 children in care, with 3,737 children in general foster care, 1,509 in relative foster care, 439 in residential care and 184 in 'other' care placements.²⁴⁹ The Commission is concerned by the high number of children in care waiting to be allocated a social worker by the Child and Family Agency, with 694 children awaiting an allocated social worker at the end of April 2022.²⁵⁰

The Commission has ongoing concerns about the lack of availability of appropriate placements for children in State care and the use of informal arrangements,²⁵¹ with children being placed at risk due to inadequate services.²⁵² Children in

247 See also IHREC, [Comments on Ireland's 19th National Report on the implementation of the European Social Charter](#) (July 2022).

248 In [Better Outcomes Brighter Futures – The National Policy Framework for Children and Young People 2014-2020](#), the Government committed to reviewing the 1991 Act. However, progress on this was not started until 2017 when an Open Policy Debate was held by the Government in relation to implementation of the Act. An online consultation was [launched in July 2020](#) on the review of the Act, but this review is still ongoing as of 2022. The Commission notes with concern that in 2021, HIQA received 30 notifications relating to serious incidents involving children who are known to Tusla's child protection and welfare services: three related to serious incidents, and 27 related to the deaths of children in care or deaths of children known to the child protection and welfare service. See of HIQA, [Overview Report: Monitoring and Regulation of Children's Services in 2021](#) (2022).

249 Tusla, [Monthly Service Performance and Activity Report](#) (April 2022), p. 16.

250 See Tusla, [Monthly Service Performance and Activity Report](#) (April 2022), p. 3.

251 IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#) (2020), p. 22. The Commission highlights the finding from the [Voluntary Care in Ireland Study](#), that informal kinship placements or 'private family arrangements' are facilitated by State authorities in lieu of a care order or voluntary care agreement. K. Burns et al. note that 'they provide a source of placements in cases where regulatory requirements and a lack of resources would otherwise make the placement challenging or impossible. However, this strategy carries significant risks. Private family arrangements receive less support and oversight from State authorities than formal care placements, and family members providing care under this model have no legal rights or responsibilities in respect of the child(ren). This places the child(ren) in a precarious position and raises concerns regarding a lack of equity of care.' See generally K. Burns, C. O'Mahony and R. Brennan, ['Private Family Arrangements' for Children in Ireland: The Informal Grey Space In-Between State Care and the Family Home](#) (2021).

252 See in particular M. Corbett and C. Coulter, ['Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings'](#) (2021), Child Care Law Reporting Project. See also HIQA, [Overview Report: Monitoring and Regulation of Children's Services in 2021](#) (2022). Throughout 2021, HIQA continued to highlight cases whereby children were not provided with the right placement at the right time, or

voluntary care placements do not have the same protections as those under court ordered placements,²⁵³ and children's views are not being acknowledged within the process.²⁵⁴ Findings by the Ombudsman for Children's Office also demonstrate that disabled children have faced discriminatory treatment in care and have received inadequate services tailored to their needs, which has placed them at an increased risk of harm.²⁵⁵ Furthermore, minority ethnic children in care face additional challenges, particularly due to cultural differences.²⁵⁶ The Covid-19 pandemic has exacerbated children's vulnerabilities in care, creating difficulties in maintaining contact with families due to the lack of face-to-face contact.²⁵⁷

Furthermore, the Commission is concerned that those leaving care are not being provided with adequate aftercare services,²⁵⁸ and there is an overall dearth of data on children with care experience.²⁵⁹ Following a recommendation in the Ryan Report in 2009, the State announced a longitudinal study on children in care and their long term outcomes in January 2022.²⁶⁰

where there were delays in providing the appropriate placements for them.

253 Problems identified with voluntary care placements include an absence of independent oversight, unlimited duration, potential instability since parents can withdraw consent at any time, weak mechanisms for child participation and inferior resource allocation compared to court-ordered placements. See R. Brennan, C. O'Mahony & K. Burns, '[The Rights of the Child in Voluntary Care in Ireland: A Call for Reform in Law, Policy and Practice](#)' (2021) Children and Youth services Review, vol. 125.

254 See generally R. Brennan, C. O'Mahony & K. Burns, '[The Rights of the Child in Voluntary Care in Ireland: A Call for Reform in Law, Policy and Practice](#)' (2021) Children and Youth services Review, vol. 125. See also the [Voluntary Care in Ireland Study](#) 2018-2021, which the above article is part of.

255 Ombudsman for Children's Office, [Jack's Case: How the HSE and Tusla, the Child and Family Agency, provided for and managed the care of a child with profound disabilities](#) (November 2020).

256 The Child Care Law Reporting Project found that ethnic minority children faced specific challenges when being placed in care. Being placed in trans-national and trans-ethnic placements was a culture shock for these children, who were used to different parenting styles and rules. A shortage of suitable foster carers also contributed to these difficulties. See M. Corbett and C. Coulter, 'Ripe for Reform: An Analytical Review of Three Years of Court Reporting on Child Care Proceedings' (2021), Child Care Law Reporting Project.

257 Professor Conor O'Mahony, [Annual Report of the Special Rapporteur on Child Protection](#) (2021), pp.56-58.

258 See A. Palmer, M. Norris & J. Kelleher, '[Accelerated Adulthood, Extended Adolescence and the Care Cliff: Supporting Care Leavers' Transition from Care to Independent Living](#)' (2022) Child and Family Social Work 3: The authors illustrate the problems associated with aftercare, stating that '...several criticisms have been raised of continuing gaps and inadequacies in the supports provided to care leavers in Ireland. Some of these relate to the ad hoc nature of aftercare services whereby allocation is discretionary, reliant on staff goodwill and prefaced on the engagement of the young person. In addition, aftercare plans are often initiated too late, and as a result, services are rushed and under-resourced, and variations in provision has also been noted between geographical regions'.

259 EPIC, [United Nations Committee on the Rights of the Child United Nations Day of General Discussions on Children's Rights and Alternative Care: Submission](#) (2021). The Commission notes that the Commission has awarded a grant to EPIC under the [Human Rights and Equality Grants Scheme 2021-22](#) to carry out a research project (forthcoming) related to progressing the rights of disabled children and youth in the care system and aftercare. The aim of this project is to improve awareness and understanding of disabled children and young people in care, to ensure their rights are upheld in policy and practice and in line with the provisions of the UNCRPD. See also IHREC, [Annual Report 2021](#) (2022), p. 59.

260 Department of Children, Equality, Disability, Integration and Youth, [Minister O'Gorman launches largest ever examination of the lives of children in care and adults who were in care as children](#) (January 2022).

- » The Commission recommends that the State finalise its review of the *Child Care Act 1991*, and ensure full incorporation of Convention rights in the legislative framework.
- » The Commission recommends that legislative reform is accompanied by appropriate investment to ensure individual needs assessments, care planning, placement reviews and record keeping for all children in care; the increased and timely allocation of social workers; the availability of appropriate placements for structurally vulnerable children; and the provision of adequate aftercare²⁶¹ support and services for children leaving care.²⁶²
- » The Commission recommends that the State monitors the use of voluntary care arrangements to ensure children's rights are being upheld and protected.
- » The Commission recommends that the longitudinal study on children in care examines the particular experiences of structurally vulnerable groups of children, including disabled children and children from minority ethnic communities.

261 The Commission notes that as of the end of Q1 2022, Tusla reported that there were 3,118 young people/adults in receipt of aftercare services, showing an increase from the previous quarter. 222 people were awaiting an aftercare worker at this time and 533 people were awaiting aftercare plan. See Tusla, [Quarterly Service Performance and Activity Report: Quarter 1 2022](#) (2022).

262 Minister O'Gorman stated in November 2021 that his department is currently [progressing an audit of aftercare provision](#) in conjunction with Tusla.

8.

Disabled children

(Article 23)

Legislative and policy reform

As of 2020, there were 8,010 disabled children in Ireland,²⁶³ and the Commission is concerned that disabled children continue to face ableism²⁶⁴ and rights violations.²⁶⁵ For example, disabled children are separated into different laws and policies, and are largely invisible within both these measures and general data regarding children.²⁶⁶ In 2020, a mid-term review of the *National Disability Inclusion Strategy 2017-2021*²⁶⁷ was carried out²⁶⁸ which reported that although progress has been made in some areas,²⁶⁹ the failure by the State to meet the needs of disabled children is still ongoing.²⁷⁰

The Commission welcomed the ratification of the CRPD in 2018,²⁷¹ and highlights the need to promote CRPD and Convention compliant legislative reform, in order to examine and eradicate ableism across public and private bodies.²⁷² The definition of 'disability' included in the *Equality Acts* is based on the medical model,²⁷³ and

263 Department of Children, Equality, Disability, Integration and Youth, [State of the Nation's Children Report-Key Findings](#) (2021). In 2020, there were 5,205 children registered as having an intellectual disability and there were 2,805 children registered as having a physical and/or sensory disability. See also data contained in: A. Whelan, A. Bergin, A. Devlin, A. Garcia Rodriguez, S. McGuinness, I. Privalko & H. Russell, [Measuring Childhood Disability and AIM Programme Provision in Ireland](#) (ESRI: 2021). This study estimated both data from the Growing Up in Ireland Study and data from the 2016 Census. The Growing up in Ireland study reported that 8.82% of children aged between 3 and 5 years had a disability. Census data from 2016 reported that 4.54% of children aged between 3 and 5 years had a disability. Discrepancies in these data comparisons are due to differing definitions of disability, with the Growing Up in Ireland Study taking into account teachers' assessments of children.

264 IHREC, [Strategy Statement 2022-2024](#).

265 See, for example IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights Submission to the UN Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland's Fourth Periodic Report](#) (2021); Centre for Disability Law and Policy and the Ombudsman for Children's Office, [Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland](#) (2021).

266 See Centre for Disability Law and Policy and the Ombudsman for Children's Office, [Mind the Gap: Barriers to the realisation of the rights of children with disabilities in Ireland](#) (2021), p. 120.

267 [NDA Independent Assessment of Progress under NDIS 2017-2018](#), (2019).

268 Department of Justice and Equality, [Mid-Term Review of the National Disability Inclusion Strategy 2017-2021](#), (2020).

269 In relation to children, the [Mid-Term Review](#) highlighted progress in areas such as: the ratification of the UNCRPD in 2018, the implementation of AIM supports for children accessing ECCE and the enactment of the Irish Sign Language Act 2017 (p. 4).

270 In the [Mid-Term Review](#), the Department noted that during the consultation process, stakeholders noted issues relating to disabled children such as mental health, education, challenges with implementation and lack of awareness of the Strategy itself (p. 35).

271 Article 7 UNCRPD specifically recognises the rights of disabled children.

272 IHREC, [Strategy Statement 2022-2024](#), p. 15. The Commission aims to eradicate ableism by strengthening legislation and addressing gaps, including securing the adoption of the Optional Protocol to UNCRPD independent of other reform legislative timelines and promoting UNCRPD compliant legislative reform. The Commission notes that the Government is open to earlier ratification of the Optional Protocol due to the delay in Ireland's appearing before the UNCRPD Committee. The DCEDIY is currently examining the requirements for ratification of the Optional Protocol, and Department officials have had engagement with internal legal advisors on the steps required. This work is being progressed as part of the development of the UNCRPD Implementation Plan which is a priority for the second half of 2022: See Dáil Debates-Written Answers (14 June 2022).

273 See IHREC, [Submission on the Review of the Equality Acts Irish Human Rights and Equality Commission](#)

does not provide for the human rights concept of disability included in the CRPD.²⁷⁴ Furthermore, the definition of 'disability' provided for in the *Disability Act 2005* ('2005 Act') is limited,²⁷⁵ and is also not in line with the wide-ranging model of disability provided for by the CRPD.

- » **The Commission recommends that the definition of disability in the Equality Acts should be brought into compliance with the human rights model,²⁷⁶ based on close consultations with, and the active involvement of, disabled children and their representative organisations.²⁷⁷**
- » **The Commission recommends that the human rights model of disability should be fully integrated across all other relevant legislation, including the *Disability Act 2005* and the *Education for Persons with Special Educational Needs Act 2004*, to ensure harmonisation.**

Provision of services and supports

Overall, the Commission is increasingly concerned about the State's litigious and defensive approach to the provision of disability services and supports, with families required to undertake long and costly legal battles to secure the rights of their disabled children.²⁷⁸

(2021), p. 23: '...the conceptual approach is currently based on the medical model of disability and fails to recognise the existence of barriers that hinder the full participation of disabled people in society on an equal basis with others.'

274 The UNCRPD defines persons with disabilities as 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others' (Article 1).

275 The 2005 Act defines disability as 'a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment' (Section 2).

276 The Commission notes that a review of the Equality Acts is currently being undertaken by the Government, and on the 24th March 2022, Minister O'Gorman stated that [submissions from various stakeholders are now being examined](#). See also Section 4 of this Report.

277 See art. 4(3) of the UNCRPD. See also Committee on the Rights of Persons with Disabilities, [General comment No. 7 on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention](#), CRPD/C/GC/7 (2018), para 4.

278 See Arthur Cox, [High Court confirms that the statutory obligation to provide disability services and mental health services rests with the HSE](#) (11 November 2021); [HSE spent over €1.2m in legal costs related to child disability care cases from 2018 to 2021](#) (RTE, 12 April 2022); IHREC, [HSE's Interpretation of Disability Act Undermines Rather Than Upholds Disability Rights](#) (press release, 25 January 2022); [Assessment of Needs for Children with Special Education Requirements](#) (Dáil Éireann Debate, 8 March 2022): "The State has been brought to court in hundreds of cases because it has not met its obligations under the Disability Act. It is disgraceful that parents are forced to take this action in the first place but it is more incomprehensible that these cases are even defended in court. Instead of taking measures to address the problem, the HSE has spent hundreds of thousands of euro defending the indefensible. It is now trying to shirk its responsibility through

In particular, the Commission is concerned with the Assessment of Needs ('AON') process provided for in the 2005 Act,²⁷⁹ noting that 212 legal actions were taken against the HSE between 2018 and 2020 in relation to overdue AON and 4,000 disabled children were on the waiting list for an assessment in 2021.²⁸⁰ As an *amicus curiae* in the recent *OB* case,²⁸¹ the Commission also brought attention to the HSE's interpretation of the Act, which potentially deprives children of their fundamental rights under international law and Article 42A of the Constitution.²⁸² When carrying out an AON, the HSE determines whether the child has a disability, but does not provide a diagnosis of the disability, leading to difficulties accessing essential services.²⁸³ The HSE's approach is in line with the Standard Operating Procedure, in operation since 2020,²⁸⁴ but the Court held that this Procedure does not comply with the 2005 Act.²⁸⁵

» **The Commission recommends that the HSE reassess both its interpretation of the Assessment of Needs process under the *Disability Act 2005*, and their Standard Operating Procedure, in order to ensure the timely provision of services and supports to disabled children.**

Reports of abuse of disabled children in the care system have been well documented,²⁸⁶ with a lack of interagency collaboration leading to children waiting for placements and receiving inadequate care.²⁸⁷ The Commission also notes with

the introduction of the preliminary team assessment." 212 legal actions were taken against the Health Service Executive between 2018 and 2020 in relation to overdue AON, amounting to €701,000 in legal costs for the State.

279 See Section 10 of the *Disability Act 2005*.

280 Dáil Éireann Debate, [Assessment of Needs for Children with Special Education Requirements: Motion \(Resumed\) \[Private Members\]](#) (8 March 2022) and OCO, [4000 children with disabilities in waiting list limbo](#) (press release, 15 December 2021).

281 IHREC, [Amicus Curiae Submission](#) (2022) and IHREC, [HSE's Interpretation of Disability Act Undermines Rather Than Upholds Disability Rights](#) (press release, 15 January 2022).

282 IHREC, [HSE's Interpretation of Disability Act Undermines Rather Than Upholds Disability Rights](#) (press release, 15 January 2022).

283 IHREC, [HSE's Interpretation of Disability Act Undermines Rather Than Upholds Disability Rights](#) (press release, 15 January 2022). See also, OCO, [Unmet Needs: A Report by the Ombudsman for Children's Office on the Challenges Faced by Children in Ireland who require an Assessment of their Needs](#), (2020).

284 This Standard Operating Procedure was introduced in order to remedy delays associated with the AON process. However, the procedure treats the question of whether a person has a disability under the 2005 Act as separate to the question of whether their presenting behaviours meet the criteria for a particular diagnosis: IHREC, [HSE's Interpretation of Disability Act Undermines Rather Than Upholds Disability Rights](#) (press release, 15 January 2022)).

285 IHREC, [HSE's Interpretation of Disability Act Undermines Rather Than Upholds Disability Rights](#) (press release, 15 January 2022).

286 The Farrelly Commission of Investigation was established in 2017 to examine the culture and treatment of individuals with intellectual disabilities in a foster care setting in the South East. The Commission released its [first interim reports in 2021](#). The substantive reports describe "systemic failings and shortcomings" in the care of individuals with intellectual disabilities. Following ongoing delays, the Commission has been granted an extension until July 2022 to complete the final phase one report into the case. See [Department of Health, Written Answers – Departmental Investigations](#) (29 March 2022).

287 See generally: OCO, [Jack's Case: How the HSE and Tusla, the Child and Family Agency, provided for and](#)

concern the challenges associated with caring for disabled children in the home, highlighted by the recent *Donnelly* case in which the parents of a disabled child were refused access to the Domiciliary Care Allowance.²⁸⁸

- » **The Commission recommends that the State promptly investigate reports of abuse of disabled children in the care system.²⁸⁹ The State should ensure children are supported in making complaints, are provided with independent advocacy, legal representation, and any investigation conducted is in compliance with the principles of the CRC.²⁹⁰**
- » **The Commission recommends that the State supports the care of disabled children in the home, including through the development of a National Action Plan for Care, based on the participation of disabled children and their primary caregivers.²⁹¹**

Education

The impact of the pandemic on services for disabled children is an area of concern, specifically in relation to education.²⁹² The pandemic disrupted education for all children,²⁹³ but it had a disproportionate effect on disabled children, who were unable to access therapeutic supports or accessible technology.²⁹⁴ Regression in

[managed the care of a child with profound disabilities](#) (2020) and OCO, [Molly's case: How Tusla and the HSE provided and coordinated supports for a child with a disability in the care of the State](#) (2018). Note that the OCO has published updates on both of these cases: OCO, [Jack's Case: One Year On](#) (2022) and OCO, [Molly Two Years On](#) (2020).

288 See IHREC, [Amicus Curiae Submission](#) (2022). The Commission appeared as amicus curiae in the *Donnelly* case, arguing that refusing access to the Domiciliary Care Allowance for parents of a child with a disability, based on time the child has spent in hospital, is discriminatory. The Commission notes that this case was dismissed by the Supreme Court: IHREC, [Commission Notes Supreme Court Decision to Dismiss Case Focused on Access to Care Allowance](#) (press release, 4 July 2022).

289 The Commission notes that as of June 2022, Tusla introduced a new procedure called the [Child Abuse Substantiation Procedure](#). It is a tool for social workers to assess whether child abuse has occurred or not, applying to both current and retrospective allegations of child abuse.

290 As held in the case of *PDP v A Secondary School* [2010] IEHC 189, any investigation conducted into an abuse allegation must be independent and impartial. See also EPIC, [Advocacy Report](#) (2020) in which EPIC emphasises the importance of independent advocacy in Ireland's child protection and welfare system.

291 Included in the Commission's [Strategy Statement 2022-2024](#) is a commitment to seek the development of a National Action Plan for Care, and support this through promoting recognition of care, socially and economically, as a central value in Irish society.

292 Inclusion Ireland's survey of 733 parents found there are huge barriers to educating at home for parents, identifying issues of access to educational materials, technology and broadband; inconsistent supports from schools; and an absence of State education support for working parents. See Inclusion Ireland, [The Implications of COVID-19 on the Education of Pupils with Intellectual Disabilities and Autism](#) (2020).

293 See Section 10 of this report.

294 See IHREC, [The Impact of COVID-19 on People with Disabilities](#), (2020), p. 10 and [Special Committee on COVID-19 Response](#) (25 June 2020), p. 39. See also, Inclusion Ireland, [The Implications of COVID-19 on the Education of Children with Intellectual disabilities and Autism](#) (2020).

terms of behaviour and social skills were also documented.²⁹⁵ The Commission raised its concerns in May 2022 about the State's proposal to set up 'Special Educational Needs' centres for disabled children,²⁹⁶ which would exacerbate their exclusion from mainstream school and deny their need for consistency and routine.²⁹⁷ The Commission notes recent proposed legislative reform to provide school places for disabled children,²⁹⁸ and emphasises that all measures must be in line with the model of inclusive education provided for in the CRPD.²⁹⁹ The Commission also highlights the issues associated with the current provision of early childhood education.³⁰⁰

The Commission regrets that the *Education for Persons with Special Educational Needs Act 2004* ('EPSEN Act') has still not been fully commenced,³⁰¹ leading to significant barriers to education for disabled children.³⁰² A review of the *EPSEN Act* was announced in 2021.³⁰³ The societal view of disability has undergone many changes since the *EPSEN Act* was enacted,³⁰⁴ and the Commission notes

295 See generally IHREC, [The Impact of COVID-19 on People with Disabilities](#), (2020).

296 IHREC, [Proposed Special Education Needs Centres Not Mainstream, Not Inclusive and Not Rights Compliant](#) (press release, 26 May 2022).

297 IHREC, [Proposed Special Education Needs Centres Not Mainstream, Not Inclusive and Not Rights Compliant](#) (press release, 26 May 2022).

298 Department of Education, [Ministers Foley and Madigan announce legislation to ensure sufficient provision of placements for children with special educational needs](#) (press release, 29 June 2022) and OCO, [Emergency legislation to provide school places for children with Special Educational Needs is positive but not perfect](#) (press release, 6 July 2022).

299 Article 24 UNCRPD. See also Articles 2 and 23 of the Convention.

300 The Commission notes that the [AIM model](#) was introduced in 2016, in order to ensure that children with a disability can access and meaningfully participate in the Early Childhood Care and Education (ECCE) programme. See generally, ESRI, [Measuring Childhood Disability and AIM Programme Provision in Ireland](#) (2021). However, it has been found that receiving the approved levels of support from AIM can be a difficult and lengthy process and may delay early intervention for disabled children with specific educational needs. Problems such as infrequent visits from AIM Early Years Specialists, refusal of supports, insufficient resources and a lack of training for practitioners have been identified. See J. Roberts & P. Callaghan, [Inclusion is the ideal, but what is the reality? Early years practitioner's perceptions of the access and inclusion model in preschools in Ireland](#) (2021).

301 The EPSEN Act was signed into law on 19 of July 2004, with certain sections being commenced in July and October 2005 respectively. However, as of 2022, Articles 3 to 13 of the EPSEN Act have not been commenced, which relate to individual education plans, the delivery of education supports within this plan and an independent appeals process. See also AsIAM, [Opening Statement to Oireachtas Committee on Education, Further and Higher Education, Research, Innovation and Science – Implementation of the EPSEN Act](#) (20th April 2021); ESRI/IHREC, J. Banks, R. Grotti, E. Fahey & D. Watson, [Disability and Discrimination in Ireland: Evidence from the QNHS Equality Modules 2004, 2010, 2014](#) (2018).

302 Barr J., *C.M. (a minor) v Health Service Executive* [2020] IEHC 406, at [110]: 'Due to the non-commencement of ss. 3 and 4 of the 2004 Act, parents or school principals cannot make a referral directly to the Council. If the parents of a child make an application to the respondent for an Assessment of Needs under the 2005 Act, and if the assessment identifies the need for the provision of education services to the child, the respondent also cannot make a referral to the Council, due to the non-commencement of ss. 3 and 4 of the 2004 Act. When one considers that the Council has been in existence since 1 October 2005, that is an extraordinary state of affairs.'

303 [Minister Josepha Madigan launches review of the Education for Persons with Special Educational Needs \(EPSEN\) Act 2004](#) (press release, 20 December 2021).

304 The Commission notes that UNCRPD has been ratified in Ireland in 2018, and provides for a wide ranging definition of disability, and calls for inclusive education to be provided for without exception. If the EPSEN Act

that any review of the legislation must reflect this and the standards of both the Convention and the CRPD.³⁰⁵

- » **The Commission recommends that the State ensure access to early childhood education, early development programmes and inclusive education for disabled children, including through adequate planning and the provision of rehabilitation programmes, assistive devices and reasonable accommodation.**³⁰⁶
- » **The Commission recommends that the review of the *Education for Persons with Special Educational Needs Act 2004* is progressed as a matter of priority. The review should ensure the participation of disabled children and be accompanied by adequate resourcing, to ensure the implementation of recommendations.**

Irish Sign Language

Irish Sign Language became a national language in 2020,³⁰⁷ and steps must continue to be taken to ensure the full realisation of its status. As of March 2022, a new Scheme has been announced to provide in-school support for students who are Deaf and whose primary means of communication is Irish Sign Language ('ISL').³⁰⁸ The Commission welcomes this development, but recognises the need for the State to support the training and supply of sign language interpreters.³⁰⁹

is to be reformed, a rights based model of disability, as provided for in the UNCRPD, needs to take priority over the medical model of disability that is included in the *Disability Act 2005*.

305 See the [Provision of Special Needs Education: Discussion](#) (20 April 2021); [Reforming the Education for Persons with Special Educational Needs Act 2004 - A Green Paper from AslAm](#) (May 2021).

306 See also OCO, [Plan for Places: Forward Planning for the Provision of Schools Places for Children with Special Educational Needs: A Children's Rights Issue](#) (June 2022). According to correspondence received by the OCO from the NCSE, current unmet need for school places is derived from the following: Children on Home Tuition or otherwise out of school due to a lack of specialist education placement; and children with recommendations for special school or special class placements currently in other school settings as communicated to the local Special Educational Needs Organiser by the children's parents/guardians or current school placement.

307 The commencement of the *Irish Sign Language Act 2017*, recognising Irish Sign Language as a native language of the State, was delayed until December 2020. See Department of Children, Equality, Disability, Integration and Youth, [Minister Rabbitte announces commencement of the Irish Sign Language Act 2017](#) (press release, 23 December 2020).

308 Under Section 5 of the ISL Act 2017, the Minister for Education is required to establish a scheme to provide ISL support for children who are attending school and whose primary language is ISL. This new scheme proposed aims to fulfil this obligation: [Ministers Foley and Madigan announce establishment of a scheme to provide Irish Sign Language Support for children whose primary language is Irish Sign Language \(ISL\) and who are attending recognised schools](#) (press release, 2 March 2022)). See also Department of Education, [Irish Sign Language \(ISL\) Scheme](#) (2022).

309 See Section 5 of the ISL Act 2017. The Commission also notes that The Department of Education still runs the ISL Home Tuition scheme for these families of Deaf children who wish to learn ISL. However, concerns have been raised with the Commission that there is proactive discouragement from many professionals for families learning ISL. See T. Humphries, P. Kushalnagar, G. Mathur, DJ. Napoli, C. Padden, C. Rathmann

The new Scheme introduced will require a dedicated stream of sign language interpreters,³¹⁰ and the Commission is concerned about the current availability of such interpreters.³¹¹ Concerns have also been raised with the Commission that there is insufficient awareness among staff members working in child protection services concerning Deaf children's welfare as they tend to overlook the importance of these children's linguistic and cultural needs.

- » **The Commission recommends that the State undertakes a comprehensive modelling exercise to identify the actions required to fully implement the *Irish Sign Language Act 2017*, to realise Irish Sign Language as a native language of the State, and to fulfil the rights of Deaf children and children with Deaf parents or guardians.**

& S. Smith, [Discourses of prejudice in the professions: the case of sign languages](#) (2017). Under Section 5, the Minister for Education is required to ensure there is a sufficient number of placements for the training of teachers of children who are Deaf or Hard of Hearing. The Commission notes that in September 2019, a new pilot Bachelor of Education (Irish Sign Language) (ISL) programme for primary ITE commenced in DCU. Depending on its outcome, the Department will decide to continue the programme in 2023.

310 Concerns have been raised with the Commission that given the requirements for qualifications for two posts, as mentioned in the new Scheme, that it would encourage the crowding out of interpreters from other fields into the educational field, reducing the availability of interpreters for health and legal work.

311 In September 2019, a new pilot Bachelor of Education (Irish Sign Language) (ISL) programme for primary ITE commenced in DCU. This is a separate CAO entry pathway into primary teaching specifically for Deaf and hard of hearing students who communicate through ISL and has been accredited by the Teaching Council. The approval was given for one intake only, of up to 6 students, with a plan to evaluate at the end of that period, before deciding on whether the approval might be extended to further cohorts. There are currently 4 students completing the programme to be primary teachers, whose language of communication is ISL. This cohort of students will graduate in 2023. The Department is currently considering a request by DCU to allow a second cohort of students to enter the Bachelor of Education (Irish Sign Language Pathway). The Commission also notes with concern that in the [Comprehensive Review of the Special Needs Assistants Scheme](#) (2018), there has been no action to date on the recommendations of setting up a separate role of ISL communicators as distant from SNAs. In addition, the concerns have been raised with the Commission that there is an assumption included in the review report (Key Finding no. 3) that ISL communicators are only ideal for those Deaf children without cochlear implants, as children with them still need access to ISL.

9.

Basic health and welfare

**(Articles 6, 18(3), 24, 26, 27(1-3)
and 33)**

Health and health services

Children continue to face barriers to accessing essential health services, particularly children from structurally vulnerable groups.³¹² The Commission notes with concern that key public health nurse development checks for babies have recently been withdrawn.³¹³ There is divided access to healthcare services between public and private patients generally in Ireland,³¹⁴ which has resulted in significant health inequalities between families with private health insurance or financial means and families dependent on the oversubscribed, under-resourced public health system.³¹⁵ The Commission further notes that children experiencing homelessness and/or socioeconomic disadvantage, especially those living in emergency accommodation, are most likely to experience nutritional deprivation.³¹⁶

The Commission is particularly concerned about the health outcomes of Traveller and Roma children, noting that the infant mortality rate for Travellers is 3.6 times the rate of the general population³¹⁷ and over 1 in 3 (38.9%) of Roma do not have a general practitioner.³¹⁸ Despite repeated commitments by the State to implement a National Action Plan on Traveller Health, the Commission regrets that it has yet to be published as of August 2022.³¹⁹

312 See [IHREC, Submission to the Committee on the Elimination of Racial Discrimination \(2019\)](#); [IHREC, Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's Combined Sixth and Seventh Periodic Report](#) (2017), pp.16, 99; and CSO, '[Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion](#)'. The Committee has also raised this concern: see Committee on the Rights of a Child (2016), [Concluding Observations on the combined third and fourth period of Ireland](#), CRC/C/IRL/CO/3-4, paras. 49-50.

313 See Dáil Debates – [Questions on Policy or Legislation](#) (14 July 2022).

314 Approximately 43% of the population (mainly higher income groups) are covered by private health insurance, and there is a growing body of evidence that some people are experiencing difficulties in accessing healthcare due to cost. See Sheelah Connolly and Maev-Ann Wrenn, [Universal Health Care in Ireland—What Are the Prospects for Reform?](#) (2019).

315 European Anti-Poverty Network (EAPN) Ireland, [Giving Health Inequality a Voice](#) (2020), p. 13 and Mental Health Commission, [2021 Annual Report](#) (2022). Longitudinal research in Ireland has also identified differential health outcomes between children in high and low income families, with a higher percentage of mothers in the top income bracket reporting their children as 'very healthy' (83 per cent) than mothers in the lowest income bracket (72 per cent). See TCD/ESRI, Growing up in Ireland: National Longitudinal Study of Children, '[Key Findings: Cohort '08 at 9 years old](#)' (2018), p. 2. Ireland's two-tier health system also disproportionately impacts minority ethnic groups, who are over-represented in poverty and unemployment: IHREC, [Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee](#) (2021).

316 According to research conducted in Tallaght, a mixed community of approximately 76,000 residents, income poverty was associated with deprivation in material well-being, food poverty, housing, access to health services and education. Following focus group discussions (FGD), children living in low-income households were found to be more likely to experience poor mental health and socio-emotional outcomes. See Shumba, J., Quinn, M., Nic Carthaigh, C., and Leitao, C., (2021). Over the Fence: Perspectives on and experiences of child poverty in Tallaght, 2021. Dublin: Childhood Development Initiative: p. viii. Available here: <https://www.cdi.ie/wp-content/uploads/2021/10/CDI-Child-Poverty-Report-min.pdf>

317 Houses of the Oireachtas, [Final Report of the Joint Committee on Key Issues Affecting the Traveller Community](#) (2021), p. 24.

318 Roma in Ireland, [A National Needs Assessment](#) (2018). See also, Values Lab, Impact of Covid-19 on the Roma Community Equality and Human Rights Issues (unpublished).

319 The commitment to develop a National Action Plan on Traveller Health was a key action (Recommendation 73) within the *National Traveller and Roma Inclusion Strategy 2017-2021*. Consultations with Traveller

- » **The Commission recommends that the State address, as a matter of priority, the barriers to accessing healthcare due to the two tier system in place, including long waiting lists exacerbated by the pandemic.**
- » **The Commission recommends that the State introduces ethnic identifiers and effective linkages in data across the health system,³²⁰ to address inequalities in health outcomes experienced by structurally vulnerable children.**
- » **The Commission recommends that the State ensures the immediate publication of a National Action Plan on Traveller Health, which includes clear targets on ensuring access to healthcare services in the forthcoming successor equality strategies on Travellers, Roma and migrants.³²¹**

The current *Breastfeeding in Ireland National Action Plan 2016-2021* will conclude at the end of 2022,³²² and the Commission notes concerns over its limited impact due to inadequate budgetary allocation and the lack of clear timeframes around implementation.³²³ The State has also failed to incorporate the International Code of Marketing of Breastmilk Substitutes into domestic law.³²⁴

organisations were held in 2018 to inform the development of the NAP, although the NAP has yet to be published as of July 2022. Houses of the Oireachtas, [Dáil Éireann Debate, Wednesday - 4 May 2022](#) (2022); See also Department of the Taoiseach, [Programme for Government: Our Shared Future](#) (2020), p. 77.

320 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee recommended that the State should develop and fully implement a system of ethnic equality monitoring in line with international standards across all relevant State Departments and public bodies: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 16.

321 These national equality strategies include the *National Traveller and Roma Inclusion Strategy 2017-2021* and the *Migrant Integration Strategy 2017-2020*, both of which have concluded. For further information, see Section 4 of this report.

322 The HSE has extended the Breastfeeding in Ireland Action Plan until the end of 2022. See Houses of the Oireachtas, [Healthcare Policy Dáil Éireann Debate, Wednesday - 11 May 2022](#) (2022). The National Women's Council of Ireland has called for a time-bound and properly-funded implementation plan for the current Breastfeeding in Ireland Action Plan. See National Women's Council of Ireland (NWC), [Healthy babies are the country's future wealth and their mothers need government support](#) (2021). See also Department of Health, [National Women & Infants Health Programme's Annual Report for 2021](#) (2022). Revised Baby Friendly Initiative standards in Ireland have been developed and are due for publication in 2022. The Standards describe the optimum infant feeding practices and management process required within maternity services in order to implement the HSE infant Feeding Policy for Maternity and Neonatal services. Building upon the achievements of 2021, the National Breastfeeding Implementation Group's objectives for 2022 include but are not limited to: supporting the recruitment and integrated working of new infant feeding posts across maternity and community services; supporting the implementation of the HSE Policy on the Marketing of Breast-milk Substitutes; the publication of revised standards and tools to support the implementation of the Baby Friendly Initiative; and commencing the roll out of a national blended breastfeeding education programme.

323 It is estimated that less than 6 per cent of babies are exclusively breastfed at 6 months in Ireland, compared to the European average of 25 per cent. This is also significantly behind the WHO's global target of reaching 50 per cent by 2025. See National Women's Council of Ireland (NWC), [Healthy babies are the country's future wealth and their mothers need government support](#) (2021); World Health Organization. [Global nutrition targets 2025: breastfeeding policy brief. World Health Organization](#) (2014).

324 The Minister of State for Health has recently indicated that there are no proposals to incorporate the

- » **The Commission recommends that the State develop a successor National Action Plan on Breastfeeding, with dedicated budgetary resources and clear timeframes, and implement the International Code of Marketing of Breastmilk Substitutes.³²⁵**

Adolescent health

Abortion services

Following the enactment of the *Health (Regulation of Termination of Pregnancy) Act 2018* ('2018 Act'),³²⁶ abortion services in Ireland commenced in January 2019.³²⁷ As of April 2022, 7% of general practitioners and ten maternity units had signed up to provide abortion services.³²⁸ Access to comprehensive, accessible and reliable health information is vital to ensure universality and equality of access to abortion services,³²⁹ particularly given the 12-week gestational limit. Ireland's current framework on abortion must be implemented in a manner that meets the needs of adolescents, including through the development of age-appropriate procedures for their consent to treatment and the adaptation of the clinical assessment,

International Code into domestic law. Houses of the Oireachtas, [Dáil Éireann Debate, Tuesday - 29 March 2022](#) (2022). See Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland, CRC/C/IRL/CO/3-4](#) (2016), at para 52 (c); WHO Code of Marketing of Breast milk Substitutes, [Fact sheet for Health care professionals](#); and HSE, [Policy on the Marketing of Breast Milk Substitutes for the Public Health Services](#) (2021).

325 In its Status Report 2022, the WHO recently outlined significant legislative gaps across European and Asian countries on implementing the International Code, noting ongoing vulnerability to unethical marketing of breastmilk substitutes. The WHO recommends that countries that have not yet enacted legal measures on the Code should recognise their obligations, both under international human rights law and international agreements, to eliminate inappropriate marketing practices through regulatory action. See WHO, [Marketing of breast-milk substitutes: National implementation of the International Code, status report 2022- Europe and Central Asian Region](#) (2022), p. 3.

326 The *Health (Regulation of Termination of Pregnancy) Act 2018* provides for a termination of pregnancy where it has been certified by a medical practitioner that the pregnancy has not exceeded 12 weeks and at least 3 days have elapsed following this certification. It also provides for terminations in later stages of pregnancy where there is a fatal foetal abnormality or risk to the health or the life of the mother. See the *Health (Regulation of Termination of Pregnancy) Act 2018*.

327 Government of Ireland, ['Minister for Health commences Phase one of the Review of the Health \(Regulation of Termination of Pregnancy\) Act 2018'](#) (press release, 8 December 2021).

328 NWCI, Press Release, *'Significant challenges remain in accessing abortion care in Ireland'*, April 2022.

329 The Committee urges States to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions. See Committee on the Rights of the Child, [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20 (2016), para. 60. In its July 2022 Concluding Observations on Ireland, the Human Rights Committee recommended that the State implement the necessary measures to guarantee the universality and equal access to abortion services for all women and girls, especially for rural women, women living in poverty, women with disabilities, asylum seekers, victims of domestic violence, and women from ethnic or religious minorities: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 26. See also: Dr C. Conlon, Dr K. Antosik-Parsons and Dr É. Butler, *Unplanned Pregnancy and Abortion Care (UnPAC) Study* (July 2022).

referral and certification processes.³³⁰ As of August 2022, the HSE's targeted website for teenagers on relationships and sex does not have information on how to access abortion services.³³¹

In December 2021, the Minister for Health initiated a review of the operation of the 2018 Act,³³² to be completed in 2022.³³³ While the review does not specifically refer to adolescent service users, due regard should be given to their views and experiences throughout the remainder of the process.³³⁴

- » **The Commission recommends that the State ensure comprehensive, accessible and reliable information on abortion services, and age-appropriate procedures for adolescents.**
- » **The Commission recommends that the particular needs of adolescents are considered throughout the abortion review process, based on their direct participation, and that there is no delay in the publication of the review and the anonymised evidence on which it is based.**

330 IHREC, [Observations on General Scheme of a Bill Entitled Health \(Regulation of Termination of Pregnancy\) 2018](#) (2018), pp. 5-6. International evidence suggests that they are less aware of their rights concerning abortion and post-abortion care, and can take longer than adult women to realise they are pregnant, leading to later term abortions which carry more risk. See M.F. Fathalla (2020) "Safe abortion: The public health rationale" *Best Practice & Research Clinical Obstetrics and Gynaecology* 63.

331 The website was launched as part of a campaign by the HSE Crisis Pregnancy Programme. Under the 'Teachers and Youth Workers' section, it states that that the campaign was developed 'because evidence strongly suggests that young people who have sex at an early age are more likely to have crisis pregnancies and sexually transmitted infections in their lifetime.' <https://b4udecide.ie> accessed on 27 July 2022.

332 The review is required no later than three years after the Act's commencement. See Section 7 of the *Health (Regulation of Termination of Pregnancy) Act 2018*. The review is intended to provide an opportunity to assess the degree to which universality and equality of access to services are achieved. It comprises two main phases; the first phase has three elements: a public consultation, finalised on 1 April 2022; and separate research on the perspectives of service users and service providers. The qualitative research study on the experiences of pregnant women who have accessed unplanned pregnancy support and abortion services since 2019 was published in July 2022: Dr C. Conlon, Dr K. Antosik-Parsons and Dr É. Butler, [Unplanned Pregnancy and Abortion Care \(UnPAC\) Study](#) (July 2022). Marie O'Shea BL was appointed the independent Chair of the review in January 2022. The three strands of information in the first phase of the review will be analysed by the Chair in the second phase. Department of Health, [Review of the operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018 Appointment of Independent Chair](#), (press release, 26 January 2022).

333 Houses of the Oireachtas, Dáil Éireann Debate, [Wednesday - 2 February 2022](#).

334 In accordance with Article 12 of the Convention, States should introduce measures to guarantee adolescents the right to express views on all matters of concern to them, in accordance with their age and maturity, and ensure they are given due weight, for example, in decisions relating to their health, sexuality, and family life. States should ensure that adolescents are involved in the development, implementation and monitoring of all relevant legislation, policies, services and programmes affecting their lives, and at the community, local, national and international levels. Committee on the Rights of the Child, [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20 (2016), para. 23. However, the recently published qualitative research study on the experiences of pregnant women who have accessed unplanned pregnancy support and abortion services since 2019 took the following approach: 'For research purposes people under 18 are considered a vulnerable group in relation to consent, and therefore the study only recruited participants over the age of 18.' See Dr C. Conlon, Dr K. Antosik-Parsons and Dr É. Butler, [Unplanned Pregnancy and Abortion Care \(UnPAC\) Study](#) (July 2022), p. 14.

Safe access zones

The Commission welcomes the Government's 2020 commitment³³⁵ to legislate for the establishment of 'exclusion zones' around medical facilities,³³⁶ and notes that as of July 2022, the Government has approved the Heads of Bill for draft legislation to be developed.³³⁷ The Commission is concerned about the negative mental and physical impacts of witnessing protest activities, which may amount to hostility and intimidation for adolescents.³³⁸ The Commission recognises the need to balance rights such as freedom of assembly and association, but is of the view that such access zones are essential in order to vindicate the right of adolescents to access health care in private and without discrimination.

» **The Commission recommends that the Government urgently draft and enact legislation to provide for the establishment of safe access zones³³⁹**

Sexual and reproductive health education

Despite the Committee's recommendation in 2016,³⁴⁰ Ireland has yet to address the severe lack of access to sexual and reproductive health education for children in Ireland.³⁴¹ The Commission further notes wider efforts at the European level to ensure that all primary and secondary children, including children out of school, have universal access to scientifically accurate, evidence-based, age-appropriate, non-judgemental and comprehensive sexuality education and information.³⁴² The Department of Education committed to advancing work on redeveloping

335 Government of Ireland, [Programme for Government: Our Shared Future](#) (2020), p. 47.

336 Exclusion or safe zones help to ensure that patients, service providers, healthcare staff and members of the public can access premises in which abortion services may be provided without fear of intimidation or harassment. See Dáil Éireann Debate, [Abortion Services Provision-5 February 2019](#).

337 Department of Health, [Minister Donnelly announces government approval of the heads of bill to legislate for termination of pregnancy safe access zones](#) (press release, 27 July 2022).

338 Abortion Rights Coalition of Canada, [Citations of studies/court evidence that abortion clinic picketing raises the risk of medical complications for women](#) (2018). See also a summary account of medical research conducted in this area in; Sifris, R. and Penovic, T. (2018) Anti-Abortion Protest and the Effectiveness of Victoria's Safe Access Zones: An Analysis, *Monash University Law Review* 44(2) 317-340, 325-328. See also: Committee on the Rights of the Child, [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20 (2016), para. 59.

339 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee recommended that the State strengthen efforts to prevent the stigmatization and trauma of women and girls who seek abortion, including through the provision of "safe access zones" in all concerned health services in a timely manner: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 26.

340 Committee on the Rights of the Child, [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20 (2016), para. 61.

341 The Commission has repeatedly raised its concerns about the limited access to comprehensive relationship and sexuality education for children in Ireland, including education that raises awareness of and fosters responsible sexual behaviour. See IHREC, [Statement on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2019), p. 11.

342 See European Parliament [Resolution 2020/2215\(INI\)](#) (2020), paras 26-29.

relationships and sexuality education in primary and secondary schools in 2020.³⁴³ However, this work is still ongoing and any revisions to the curriculum are not scheduled to be rolled out until 2023.³⁴⁴ The Commission stresses that the design of such education must include a gender-sensitive and intersectional approach to meet the diverse needs of all children.³⁴⁵

» **The Commission recommends that there are no further delays in the introduction of scientifically accurate, evidence-based, age-appropriate, non-judgemental and comprehensive sexual and reproductive health education in Irish schools.**³⁴⁶

Mental health

The Commission has serious concerns about the significant lack of appropriate children's mental health services in Ireland. As of February 2022, 3,914 children were on the waiting list for Child and Adolescent Mental Health Services ('CAMHS'), with 9% of those waiting longer than 12 months for an appointment.³⁴⁷ The Commission notes the publication of the national mental health policy 'Sharing the Vision' in 2020.³⁴⁸ However, mental health services for children

343 IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#) (2020), p. 36. The Commission notes that in July 2022 a consultation has been opened on the draft SPHE curriculum: Department of Education, [Minister Foley welcomes opening of the consultation phase on the draft SPHE curriculum \(including Relationships and Sexuality Education\) for Junior Cycle](#) (press release, 18 July 2022).

344 See Dáil Debates, [Legislative Programme](#), 12 May 2022. The Commission notes the commitment in the Third National Strategy on Domestic, Sexual and Gender-Based Violence to an 'overhaul of the relationships and sexuality educational curriculum' and the breakdown of the steps to be taken by Department of Education and National Council on Curriculum and Assessment between 2022 and 2024: Department of Justice, *Third National Strategy on Domestic, Sexual and Gender-Based Violence* (2022); Department of Justice, [Third National Strategy on Domestic, Sexual & Gender-Based Violence Implementation Plan](#) (2022).

345 National Women's Council of Ireland (NWC), [NCCA Consultation: Background paper and brief for the redevelopment of Junior Cycle SPHE \(2021\)](#), p. 5.

346 This is in line with the Committee's position: Committee on the Rights of the Child, [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#) CRC/C/GC/20 (2016), para. 61 and Committee on the Rights of the Child (CRC Committee), [General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health \(art. 24\)](#), CRC/C/GC/15 (2013), paras. 53-54.

347 See [CAMHS waiting list grows by more than a quarter](#) (RTE press release, 23 May 2022). The Mental Health Commission reported that the total number of admissions of young people to approved inpatient mental health service centres in 2021 was 504. This compares with a total of 486 admissions in 2020 and 497 in 2019. See Mental Health Commission, [Annual Report 2021](#) (2022), p. 32.

348 Department of Health, [Sharing the Vision: A Mental Health Policy for Everyone](#) (2020). The Commission notes that the Department of Health has launched the [Sharing the Vision Implementation Plan](#) 2022-2024 as of March 2022. The Commission emphasises the repeated failure to implement mental health policies in Ireland. A Vision for Change was first launched in 2006 and was marked by incomplete and uneven implementation: see [Mental Health Reform submission on review of A Vision for Change](#) (2017), p. 3. In Mental Health Reform's [Pre-Budget 2022 Submission](#) (2021), they note that they want to see a clear focus on the implementation of Sharing the Vision, as implementation of policy commitments has progressed slowly to date. Concerns have also been raised about deficits in the availability of key mental health staff across the

continue to be wholly inadequate,³⁴⁹ with available funding insufficient to meet current needs,³⁵⁰ and gaps in care between private and publicly funded services.³⁵¹ The Commission's concerns have been further exacerbated by the recent findings from the South Kerry CAMHS review.³⁵²

The pandemic has had a negative impact on children's mental health and their access to services,³⁵³ with problems such as depression, anxiety and social isolation worsening due to Covid-19 restrictions.³⁵⁴ Evidence shows that minority ethnic children have also experienced the pandemic more acutely, negatively impacting their mental health.³⁵⁵

» **The Commission recommends that the State urgently addresses the mental health needs of children in Ireland, through full implementation of national policies to improve the capacity**

health service, which could act as a barrier to implementation: see NIMC Quarterly Report Analysis, [Sharing the Vision Implementation Status Report: Quarter 3](#) (2021).

349 Note that in the Children's Rights Alliance, [Report Card](#) (2022), p. 110, Ireland received an 'E' Grade in relation to Children in Adult Psychiatric Facilities, identifying a number of issues in relation to CAMHS such as long waiting lists for treatment, poor investment and workforce recruitment, and retention issues.

The Mental Health Commission's [Annual Report 2021](#) (2022) found that there were 32 children admitted to nine adult units in 2021. All of the 10 services inspected on the admission of children to adult services in 2021 were found to be non-compliant with the code of practice. Reasons for non-compliance included services not providing age-appropriate facilities and a programme of activities appropriate to age and ability.

350 In 2021, Ireland's national mental health budget represented only 5.1% of the total health budget, despite Sláintecare's target of ring fencing 'at least 10% of the health budget to mental health': See Committee on the Future of Healthcare, ['Sláintecare Report'](#) (2017), p. 142. See generally, Mental Health Reform, [Pre-Budget Submission 2022](#) (2021).

351 Mental Health Commission, [Annual Report 2021](#) (2022).

352 HSE, [Report on the look-back review into child and adolescent mental health services county MHS area A](#) (2022). This Report found that a doctor caused significant harm to children he had treated by prescribing them inappropriate medication. The Committee has previously cautioned against over-medicalisation and institutionalisation. See Committee on the Rights of the Child, [General comment No. 15 \(2013\) on the right of the child to the enjoyment of the highest attainable standard of health \(art. 24\)](#), CRC/C/GC/15 (2013), para. 38.

353 See Chapter 2 of Professor C. O'Mahony, *Fourteenth Report of the Special Rapporteur on Child Protection* (2022). See also K. O'Sullivan, S. Clark, A McGrane, N. Rock, L. Burke, N. Boyle, N. Joksimovic and K. Marshall, [A Qualitative Study of Child and Adolescent Mental Health during the COVID-19 Pandemic in Ireland](#) (2021); H. Cowie and C. Myers, ["The impact of the COVID-19 pandemic on the mental health and well-being of children and young people"](#) (2021); and YoungMinds, [Coronavirus: Impact on young people with mental health needs](#) (Survey 4: February 2021).

354 The Growing Up in Ireland study reported in March 2021 that one in five 12 year olds scored in the low mood range: ESRI, [Growing Up in Ireland: Key findings from the special COVID-19 survey of Cohorts '98 and '08](#) (2021), p. 6. Mental Health Reform has published a number of recommendations in relation to mental health and Covid-19, noting a need for adequate resourcing to ensure high quality mental health services, increased staffing, ensure timely access to mental health services and supports, and deliver legislation that protects mental health, human rights and public health: See Mental Health Reform, [Mental Health and Covid-19: The Opportunity to Resource, Rebuild, and Reform Ireland's Mental Health System](#) (2021), pp. 12-14.

355 See Pavee Point, [Annual Report](#) (2020).

and quality of services,³⁵⁶ increased funding provision³⁵⁷ and by responding to emerging needs due to the impact of the pandemic.

- » The Commission recommends that the State establishes an accessible and independent child specific mental health advocacy and information service.³⁵⁸
- » The Commission recommends that those working with children within mental health services, in particular children from structurally vulnerable groups,³⁵⁹ should receive adequate training, underpinned by the principles of both the Convention and the UNCPRD.

Legislative updates

The Commission has called for the *Mental Health (Amendment) Bill* to be revised in several areas.³⁶⁰ In particular, the continued admission of children to adult mental health services is of serious concern,³⁶¹ and the Human Rights Committee called on the State to eliminate this practice in July 2022.³⁶² There were 32 child

356 The Commission notes that the Mental Health Commission, in collaboration with the Health Information and Quality Authority, is developing National Standards for the Care and Support of Children using Health and Social Care Services. These will be the first such standards developed in Ireland to apply to both health and social care settings and will be published in 2022, following Ministerial approval. See Mental Health Commission, [Annual Report 2021](#) (2022), p. 36.

357 The Commission notes that in July 2022 additional funding has been allocated for mental health services for women and girls: Department of health, [Ministers Donnelly and Butler announce additional €1.9m in funding for women's mental health services through the Women's Health Fund](#) (press release, 15 July 2022).

358 In 2016, the Committee on the Rights of the Child called on the State to consider establishing a mental health advocacy and information service that is specifically for children, and accordingly accessible and child-friendly. See Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4 (2016), p. 12.

359 See for example, Mental Health Reform, [A Mixed Methods Exploration of the Views and Experiences of LGBTI+ Mental Health Service Users](#) (2022). This Report found that LGBTI+ people are more likely than heterosexual cisgender people to report unfavourable experiences of healthcare generally and higher levels of dissatisfaction with mental health services specifically. In particular, these individuals reported issues relating to competence and sensitivity of healthcare professionals as contributing to their dissatisfaction. See also Mental Health Reform, [Ethnic minorities and mental health](#) (2021). The Commission also notes that Autistic people have been excluded from a nationwide CAMHS Audit: [AsIAm Calls on Minister for Mental Health to Include all Autistic People in Nationwide CAMHS Audit](#) (press release, 19 July 2022).

360 IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022).

361 See IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#) (2020), pp. 26-27. The Commission also highlights that the Committee has expressed concern to Ireland that children are being admitted to adult mental health services due to inadequate mental health services for children, long waiting lists for access to mental health support and insufficient out-of-hours services for children and adolescents with mental health needs: Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4 (2016), para. 53(b).

362 The Committee urged the State party to implement the necessary measures with a view to guaranteeing age-appropriate treatment, eliminating the practice of admitting children into adult psychiatric facilities: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 34.

admissions to eleven adult mental health units in 2021.³⁶³ The Mental Health Commission reports that children in crisis are left with the unacceptable 'choice' between an emergency department, general hospital, children's hospital, or an adult inpatient unit.³⁶⁴

The Commission welcomes that the *Mental Health (Amendment) Bill 2021* will provide for the presumption of capacity for 16 and 17 year olds to consent to mental health treatment.³⁶⁵ However, the *Assisted Decision-Making (Capacity) (Amendment) Bill*³⁶⁶ does not provide for this. The Commission is of the view that both of these Bills should be aligned to provide for children to participate in decisions about their mental health treatment.³⁶⁷ For children under 16 years of age, the *Mental Health (Amendment) Bill* provides that their views, wills or preferences must be given due consideration at each stage of diagnosis and treatment.³⁶⁸

- » **The Commission recommends that the *Mental Health (Amendment) Bill* should explicitly prohibit children from being admitted to an adult approved inpatient facility.³⁶⁹**
- » **The Commission recommends that both the *Mental Health (Amendment) Bill* and the *Assisted Decision-Making (Capacity) (Amendment) Bill* are aligned and amended, without delay, to recognise children's right to participate in healthcare decision-making and to the assistance of an independent advocate, as required.³⁷⁰**

363 Mental Health Commission, [Annual Report 2021](#) (2022), p. 7. The Commission also notes that the Mental Health Commission reported that there was 0% compliance with the code of practice on the admission of children to approved centres. This reflects the unsuitability of adult mental health inpatient units to provide appropriate child centred care. This included lack of appropriate facilities and lack of appropriate therapeutic services and programmes.

364 Mental Health Commission, [Annual Report 2021](#) (2022), p. 32.

365 This is in line with Section 23 of the *Non-Fatal Offences Against the Person Act 1997*.

366 The Commission notes that the Government committed to commence the 2015 Act by June 2022 and the Bill is currently before Seanad Éireann in the second stage. However, the Commission has been informed that the commencement of the 2015 Act has been delayed until autumn 2022.

367 See also Joint Committee on Children, Equality, Disability, Integration and Youth, [Report on Pre-legislative Scrutiny of the General Scheme of the Assisted Decision-Making \(Capacity\) \(Amendment\) Bill 2021](#) (April 2022); The importance of children being involved in healthcare decision-making has been highlighted by academics: U. Kilkelly and M. Donnelly, *Participation in Healthcare: The Views and Experiences of Children and Young People* (2010).

368 IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022), p. 64.

369 IHREC, [Submission on the General Scheme of the Mental Health \(Amendment\) Bill](#) (2022), p. 72.

370 See United Nations Committee on the Rights of the Child, [General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health](#) (art. 24), CRC/C/GC/15 (17 April 2013).

Suicide

The Commission notes with concern that Ireland continues to have a high rate of teen suicide.³⁷¹ Furthermore, Travellers experience a suicide rate six times higher than the general population, and 11% of all Traveller deaths are by suicide.³⁷² However, the State has yet to meet its commitment to publish a Traveller and Roma Mental Health Action Plan.³⁷³

» **The Commission recommends that the State ensures full implementation of the *National Strategy to Reduce Suicide 2015-2024*,³⁷⁴ and publishes a Traveller and Roma Mental Health Action Plan, without any further delay.**

Racism

The Commission has previously highlighted the significant impact of racial discrimination and prejudice on the mental health of minority ethnic communities.³⁷⁵ Racist incidents, discrimination, micro-aggressions and a lack of accurate representation have been highlighted by minority ethnic young people as having the most detrimental impact on their mental wellbeing, leading to constant alertness, anxiety, depression, and low self-esteem.³⁷⁶

Furthermore, stigma and exclusion from society have been identified as challenging barriers faced by people from minority ethnic communities in reaching out to mental health services and continuing with their treatment.³⁷⁷ The Commission has heard directly how mental health problems among minority ethnic children and young people are 'not taken seriously enough'.³⁷⁸

371 See HSE National Office for Suicide Prevention, [Briefing on Eurostat Suicide Comparisons](#) (June 2022); UNICEF, [Innocenti Report Card 14: Building the Future Children and the Sustainable Development Goals in Rich Countries](#) (2017).

372 See Pavee Point, [Submission to the Oireachtas Sub-Committee on Mental Health](#) (July 2021).

373 The Commission notes that the Government committed to developing this plan in the Department of the Taoiseach, [Programme for Government: Our Shared Future](#) (2020). The Plan is expected to be published in September 2022: See [Dáil Debates](#) (31 May 2022) and [Seanad Éireann Debate](#) (12 July 2022).

See also Pavee Point, [Submission to the Special Committee on Covid-19 Response](#) (2020).

374 The Commission notes that in 2020, the [Minister for Health and the Minister for Mental Health extended Ireland's suicide reduction plan by 4 years](#), as it was due to end in 2020 (press release, 25 November 2020).

375 IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (2019).

376 These experiences were also found to lead to imposter syndrome, internalised self-loathing and shame, being upset, angry and powerless. For instance, young people felt that they need to be 'always on guard', attentive to peoples' reactions to their presence, always waiting for 'that' moment. Constant alertness made young people feel anxious, depressed or insecure about their own identity. See M. Machowska-Kosiack and M. Barry, A report on issues facing second-generation ethnic minority young people in Ireland (forthcoming).

377 Cairde (2015), [Ethnic Minorities and Mental Health in Ireland: Barriers and Recommendations](#), p. 13 and Mental Health Reform, [Ethnic Minorities and Mental Health](#), p. 9.

378 Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area, 31 March 2021.

- » **The Commission recommends that the State develop a designated mental health support service for minority ethnic groups, including children, with a focus on supporting those who have experienced racist or discriminatory trauma and abuse.**

Standard of living

Child poverty and economic inequality

The Commission continues to be concerned about child poverty in Ireland. As of May 2022, 13.6% of children are currently at risk of poverty in Ireland, 5.2% are living in consistent poverty,³⁷⁹ and 17% are experiencing deprivation.³⁸⁰ In addition, 22.8% of one parent families are at risk of poverty,³⁸¹ 13.1% are living in consistent poverty, and 44.9% are experiencing deprivation.³⁸² The Government set a child poverty target in 2014 to lift 70,000 children out of poverty by 2020.³⁸³ However, as of 2022, this has not been achieved.³⁸⁴ The Government has committed to setting a new target in its *Roadmap for Social Inclusion 2020-2025*, for reducing the number of children experiencing consistent poverty for the period to the end of 2025.³⁸⁵ The Commission notes with concern the delay in developing this new target. The Commission welcomes the publication of the *National Action Plan for the EU Child*

379 The consistent poverty rate represents children who are both at risk of poverty and experiencing enforced deprivation.

380 See the [Survey on Income and Living Conditions \(SILC\) Poverty Statistics](#) released in May 2022. The Commission notes that the [SILC statistics](#) published highlight that Covid-19 income supports had a greater impact on the at risk of poverty rate of younger respondents. The rate for those aged 0-17 was reduced by almost 11 percentage points from 24.2% without Covid-19 income supports to 13.6%. However, some of the Covid-19 support measures in place have recently come to an end. The Commission notes that the [PUP](#) was closed for applications from the 22nd January 2022, and the [Employment Wage Subsidy Scheme](#) has ended as of April 2022. Therefore, the number of children at risk of poverty is likely to increase. See also, [Children's Rights Alliance Statement on SILC Poverty Statistics](#) (press release, 6 May 2022).

381 Without Covid-19 income supports this would have been 37.2%.

382 See the [Survey on Income and Living Conditions \(SILC\) Poverty Statistics](#) (May 2022). The ESRI has reported that lone parents and their children, and working-age adults with disabilities and their children experience distinctively high rates of income poverty, deprivation and consistent poverty: ESRI: Headline Poverty Target Reduction in Ireland and the Role of Work and Social Welfare (June 2022).

383 See [National Policy Framework for Children and Young People \(Better Outcomes Brighter Futures\)](#) (2014).

384 See the [Better Outcomes Brighter Future Indicator Set Report 2022](#) and the latest [SILC data](#) released in May 2022. The % of 0-14 year olds and 15-24 year olds experiencing consistent poverty was 8% and 6% respectively in 2020. The national child poverty target has not been achieved although the numbers of children living in consistent poverty have been reduced by 54,000 since the highest number recorded in 2013 (150,000).

385 The Commission notes that the Minister for Children, Equality, Disability, Integration and Youth, Roderic O'Gorman, has spoken about the *Roadmap for Social Inclusion* in the Dáil as recently as March 2022, and has stated that a new child poverty target is being agreed. The upcoming mid-term review on this *Roadmap* should provide more clarity on the issue. There is also a second progress report on the *Roadmap* due to be published this year: Department of Employment Affairs and Social Protection, [Departmental Policies](#) (14 June 2022).

Guarantee,³⁸⁶ and notes the focus on the reduction of child poverty in this Plan.³⁸⁷

Given the multiple policy initiatives in the area of child poverty, the Commission recommends that all measures, targets and monitoring and evaluation structures are consolidated, aligned, focused on impact measurement, and communicated to children in an accessible manner, to facilitate their participation.

The increased cost of living in Ireland is an ongoing challenge, with consumer prices in 2022 9.1% higher on average than reported in 2021.³⁸⁸ The Commission notes with concern that the rate of Child Benefit will have decreased 7.5% in real terms (i.e. taking account of inflation) since 2011, 5.3% since 2017 and 2.4% between 2021 and 2022 alone.³⁸⁹ Taking into account the issue of rising inflation,³⁹⁰ the Commission recognises the need to index Child Benefit payments in conjunction with other welfare payments, as social welfare payments play a key role in reducing poverty levels.³⁹¹

The Commission also notes that the Habitual Residence Condition ('HRC'), has to be satisfied to qualify for some social welfare payments including Child Benefit.³⁹² While the HRC is applied to all applicants for benefits regardless of their nationality,³⁹³ in practice it is not neutral in its application and has a discriminatory

386 [Minister O’Gorman publishes Ireland’s EU Child Guarantee National Action Plan](#) (press release, 15th June 2022).

387 See Department of Children, Equality, Disability, Integration and Youth, [National Action Plan for the EU Child Guarantee](#) (2022). The Plan details child poverty reduction interventions including: Local Area Child Poverty Action Plans and Raising Awareness of Services Covered by EU Child Guarantee.

388 Central Statistics Office, [Statistical release](#), 14 July 2022. Economic equality is included in the Commission’s *Strategic Priorities 2022-2024*, including challenging and changing policies and laws that exacerbate income and wealth inequalities in Ireland.

389 The rate of Child Benefit in 2022 has decreased 7.5% since 2011, 5.3% since 2017 and 2.4% between 2021 and 2022. See Parliamentary Budget Office, [“Social Welfare Rate Changes 2011 – 2022”](#), p. 1.

390 According to the European Commission, inflation in Ireland is projected to amount to 6.1% in 2022 and decline to 3.1% in 2023. See European Commission, [Country Report for Ireland](#) (2022), p. 4.

391 See IHREC, [“Ireland’s Emergency Powers During the Covid-19 Pandemic”](#) (2021), p. 78; NESC, [The Future of the Irish Social Welfare System: Participation and Protection](#) (2020), pp. 8-9; Social Justice Ireland [“Indexation of Social Welfare Rates Review and further proposals”](#) (2019), pp. 4-5; and National Women’s Council of Ireland, [“Supporting One Parent Families During and After the COVID-19 Crisis”](#) (2020), p. 14. [Survey on Income and Living Conditions \(SILC\) Poverty Statistics](#) (May 2022) demonstrate that 15.9% of one parent families experienced ‘great difficulty’ in making ends meet in 2021. The ESRI reported that findings from various simulation exercises on social transfers reforms show that transfers targeting children and their families (Qualified Child Increase, Working Family Payment) produce the largest reduction in child poverty, as well as for the overall population and people living in rented accommodation: ESRI: [Headline Poverty Target Reduction in Ireland and the Role of Work and Social Welfare](#) (June 2022), p. 93.

392 Both the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Rights of the Child have emphasised their reservations in relation to the Habitual Residence Condition in Ireland. See Committee on Economic, Social and Cultural Rights, [List of issues in relation to the fourth periodic report of Ireland](#), para 15, and Committee on the Rights of the Child, [List of issues prior to submission of the combined fifth and sixth reports of Ireland](#), paras 26, 30.

393 Government of Ireland, [16th National Report on the implementation of the European Social Charter](#), pp. 80–81.

effect on minority ethnic children and their families,³⁹⁴ including children of African descent³⁹⁵ and Roma children.³⁹⁶ It has been reported that 49.2% of Roma households with children are not successful in their application for social protection payments.³⁹⁷

- » **The Commission recommends that the State conducts a comprehensive children's rights impact assessment of the upcoming budget to address the cost of living crisis, and progresses the index-linking of all welfare payments.**³⁹⁸
- » **The Commission recommends that the State should review the Habitual Residence Condition and its impact on minority ethnic communities in practice.**

Access to adequate housing

As previously highlighted by the Commission,³⁹⁹ Ireland is experiencing an ongoing acute housing crisis,⁴⁰⁰ characterised by escalating rents, insecurity

394 See for example, IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021), p. 20 and IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), (2019), pp. 62, 79. See also, [Joint Alternative Report by a Coalition of Traveller and Roma Organisations on the International Covenant on Civil and Political Rights](#) (2022).

395 The discriminatory effect the Habitual Residence Commission can have on children and families of African descent is highlighted in the recent case taken by the Commission, whereby a single mother of two was unable to access the One Parent Family Payment due to the fact that she didn't satisfy the Habitual Residence Condition: See IHREC, [Single Mother Allowed One Parent Payment Following Successful Review](#), (press release, 17th August 2021).

396 Pavee Point has raised concerns about the Habitual Residence Condition's effect on Traveller and Roma families: Pavee Point, [Annual Report 2020](#), p. 22. Overall, Roma families and their children can face particular challenges in satisfying the conditions of the HRC due to their nomadic way of life, employment patterns, absence of family ties, or overall length of time spent in the country: See FLAC, [FLAC Briefing for Nils Muižnieks: Council of Europe Commission for Human Rights](#) (2016), p. 8.

397 IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#), (2019), p. 62 and [Joint Alternative Report by a Coalition of Traveller and Roma Organisations on the International Covenant on Civil and Political Rights](#) (2022). Roma children can face barriers to their education because they may not be eligible for supports such as the Back to School Clothing and Footwear Allowance, due to this condition.

398 The Commission notes that as of July 2022, the Back-to-school clothing allowance has increased by €100: Department of Social Protection, Ministers Foley, Humphreys, and McGrath announce initiatives to assist families with Back to School costs (press release, 5 July 2022).

399 See for example IHREC, [Submission to the Third Universal Periodic Review Cycle for Ireland](#), (2021), p. 15. See also, IHREC, [Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the Fourth Periodic Examination of Ireland](#), (2020), p. 8. In 2016, the Committee asked that the State 'undertake measures to increase the availability of social housing and emergency housing support. In doing so, the State party should ensure that the housing and support provided through those measures are appropriate to the needs of the children affected and subject to adequate safeguards, reviews and evaluations': Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#), CRC/C/IRL/CO/3-4 (2016), para. 62.

400 Data published from Q1 2022 highlight that market rents are 11.7% higher than twelve months

of tenure, a severe shortage of affordable housing,⁴⁰¹ and an inadequate legal framework.⁴⁰² As of May 2022, there were 1,366 families accessing emergency accommodation in Ireland, including 3,028 children.⁴⁰³ Commission-supported research demonstrates the affordability issues faced by families, including due to their reliance on the private rental sector, and the negative impact on children's rights.⁴⁰⁴ The Commission is concerned that one parent families and their children are disproportionately represented among the homeless population.⁴⁰⁵ The European Committee of Social Rights has repeatedly found that the State is not in compliance with Article 16 of the European Social Charter, due to its failure to provide adequate social housing for children and families.⁴⁰⁶ The Commission notes that Ireland has not accepted Article 31 of the Charter on the right to housing.⁴⁰⁷

Commission-supported research has found that tenants face multiple discrimination in accessing, or maintaining, a rented home in Ireland because of their use of the Housing Assistance Payment ('HAP').⁴⁰⁸ The majority of households entering into a HAP tenancy are those with children,⁴⁰⁹ placing them in

previously, the highest year-on-year increase in market rents since late 2016 See: Daft (2022) [The Daft.ie Rental Price Report: An analysis of recent trends in the Irish rental market](#) 2022 Q1.

401 V. Lima. (2021) [Trends in Social Housing Supports: Housing Assistance Payment](#) (UCD Geary Institute: 2021).

402 IHREC, [Council of Europe Finds Ireland Remains in Breach of Human Rights Obligations](#) (press release, 24 March 2022).

403 See the Department of Housing, Local Government and Heritage, [Monthly Homelessness Report](#), May 2022. IHREC has previously raised concerns about family hubs, believing they have the potential to normalise family homelessness: See IHREC, [Human Rights and Equality Commission Challenges Normalisation of Family Homelessness](#), (press release, 12th July 2017). See also: OCO, [No Place Like Home](#) (2019). OCO, [No Place Like Home](#) (2019) and Children's Rights Alliance, [Report Card 2022](#) (2022).

404 As well as their right to an adequate standard of living, children's rights to the highest attainable standard of health and development are affected. See H. Russell, I. Privalko, F. McGinnity & S. Enright, '[Monitoring adequate housing in Ireland](#)', (IHREC and the ESRI: 2021), p. xi. See also: OHCHR's [Fact Sheet on the Human Right to Adequate Housing](#) (2009), p. 20 and Threshold, '[The Impact of Homelessness on Children: A Submission to the Joint Oireachtas Committee on Children and Youth Affairs](#)', (2019).

405 H. Russell, I. Privalko, F. McGinnity & S. Enright, '[Monitoring adequate housing in Ireland](#)', (IHREC and the ESRI: 2021), p. 56.

406 See generally IHREC, [Comments on Ireland's 18th National Report on the Implementation of the European Social Charter](#) (2021). The Commission notes with concern the Council of Europe's findings that the State continues to be in breach of its human rights obligations under the Revised European Social Charter to provide appropriate accommodation to Travellers and to social housing tenants in Ireland. IHREC, [Council of Europe Finds Ireland Remains in Breach of Human Rights Obligations](#) (press release, 24 March 2022).

407 IHREC, [Comments on Ireland's 18th National Report on the Implementation of the European Social Charter](#), (2021).

408 See generally R. Hearne and J. Walsh, '[Housing Assistance and Discrimination: Scoping Study on the Housing Assistance Ground under the Equal Status Acts 2000-2018](#)', (IHREC: 2022). See also IHREC, [New Report Shows Housing Assistance Discrimination Continues to be Prevalent Despite Being Illegal](#) (press release, 27th April 2022). As of 2021, there are 16,188 households on the waiting list for social housing: See [Summary of Social Housing Assessments 2021- Key Findings](#). Also of note in this report is the number of HAP tenancies. At the time of the 2020 Assessment, there were a total of 58,802 active HAP tenancies, this increased by 3,486, to a total number of 62,288 by November 2021.

409 R. Hearne and J. Walsh, '[Housing Assistance and Discrimination: Scoping Study on the Housing Assistance Ground under the Equal Status Acts 2000-2018](#)', (IHREC: 2022), p. 52 and UCD Geary Institute for Public Policy, '[Trends in Social Housing Supports: Housing Assistance Payment](#)', (2021), p. 1.

a particularly vulnerable position and compounding the difficulties they face due to the housing crisis and competitive private rental market.⁴¹⁰

- » **The Commission recommends that the State takes active measures to address the underlying causes of child homelessness, including by increasing the availability of adequate social housing with security of tenure and prioritising the development of a Youth Homelessness Strategy.**⁴¹¹
- » **The Commission recommends that the State accepts Article 31 of the European Social Charter on the right to housing.**⁴¹²
- » **The Commission recommends that a right to housing is incorporated into the Irish Constitution in a justiciable, standalone provision, and accompanied by appropriate policy measures.**⁴¹³

410 UCD Geary Institute for Public Policy, [Trends in Social Housing Supports: Housing Assistance Payment](#), (2021), p. 1.

411 A report commissioned by the Commission found that an increased focus is needed on younger people in relation to housing, noting they are consistently overrepresented in homelessness data. See R. Grotti, H. Russell, É. Fahey & B. Maître, [Discrimination and Inequality in Housing in Ireland](#) (IHREC and the ESRI: 2018), pp. 74, 78. See also H. Russell, I. Privalko, F. McGinnity & S. Enright, [Monitoring adequate housing in Ireland](#), (IHREC and the ESRI: 2021). The [Youth Homeless Strategy](#) is due to be launched in 2022. The Commission also highlights the housing policy objective contained in [‘Housing for All - A new Housing Plan for Ireland’](#), which aims to prevent and address family, child and youth homelessness.

412 See also IHREC, [Comments on Ireland’s 19th National Report on the implementation of the European Social Charter](#) (July 2022).

413 The Commission has welcomed the planned Commission on Housing, which would be working to bring forward proposals on a referendum on a constitutional right to housing: IHREC, [Submission to the UN Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland’s Fourth Periodic Report](#) (2021), p. 10. On the 12 January 2022, the [Housing Commission held its first meeting](#) and on the 10th May 2022, the Housing Commission [hosted a conference on a referendum on Housing in Ireland](#). In July 2022, the Housing Commission launched a [public consultation on a referendum on housing in Ireland](#), which will remain open until 2 September 2022.

10.

Education

(Articles 28-29)

Past pupil criterion

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. The Commission notes that the Committee referred to this as a discriminatory policy in 2016,⁴¹⁴ and the Commission has also repeatedly called on the State to ensure equity of access to publicly funded schools.⁴¹⁵ The Commission continues to be concerned that the application of this 'past pupil' criterion will act as a barrier to accessing education, particularly for children of Travellers, children whose parents are of migrant origin, and disabled children, and may result in their segregation in specific schools.⁴¹⁶

- » **The Commission recommends that legislation on school admissions should prohibit the use of a connection with a former student of the school as a criterion in the admission of a student.**

Access to and participation in education

The Commission continues to be concerned about the significant inequalities and exclusion experienced by Traveller and Roma children from early childhood education and throughout schools, including due to the lack of specialised supports.⁴¹⁷ However, none of the mainstream educational strategies contain actions at early years, primary or post-primary levels, aimed at directly increasing Traveller or Roma participation.⁴¹⁸ The absence of adequate disaggregated data on engagement, attendance and completion rates also impedes the development of effective, targeted measures.⁴¹⁹

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

415 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). See also, Irish Human Rights and Equality Commission, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2021), p. 15.

416 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)

417 Irish Human Rights and Equality Commission, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021), p. 36. See also: Children's Rights Alliance, [Report Card 2019 \(February 2019\)](#) at pp. 120-121 and Children's Rights Alliance, [Report Card 2022 \(February 2022\)](#), at pp. 96-99.

418 Pavee Point, National Traveller Women's Forum, Galway Traveller Movement, Donegal Travellers Project and Minceirs Whiden, [Submission to 70th Pre-Sessional Working Group \(07 Mar 2022 - 11 Mar 2022\) of the Committee on Economic, Social and Cultural Rights](#) (2021), pp. 6-7.

419 Available data does demonstrated that 70% of Travellers aged 18-24 years finished lower secondary education (the junior second level cycle up to junior certificate), and are not in further education or training, compared to 5% of young Irish people generally: see EU FRA, [Travellers in Ireland: Key Results from the Roma and Traveller Survey](#) (2019). See also: Irish Human Rights and Equality Commission, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2021), p. 16; The ITAJ Report found that compared to one per cent of the general population, 28% of Travellers leave school before the age of 13; just 8% of Travellers complete education to Leaving Certificate level, compared to 73 per cent of non-Travellers;

The Commission has previously expressed concern regarding the disproportionate impact of reduced timetables on Traveller children,⁴²⁰ and disabled children.⁴²¹ In this context, it welcomes the Guidelines for the Use of Reduced School Days in Schools.⁴²² The guidelines provide for data collection; however, there is no indication that this data will be disaggregated to monitor disproportionate effects on structurally vulnerable groups.⁴²³

Barriers to education for asylum-seeking and refugee children include inadequate resourcing of English language supports,⁴²⁴ limited access to afterschool activities, insufficient IT resources,⁴²⁵ the remote geographic locations of some accommodation, including Direct Provision centres and emergency accommodation⁴²⁶, and a lack of information provided to families about registering for a school place.⁴²⁷ While the Commission welcomes the establishment of 'Regional Education and Language Teams' to support Ukrainian children in securing schools places,⁴²⁸ it notes the need for teachers to be provided with adequate resources and training to ensure the delivery of education in a trauma-informed manner and through cross-cultural communication.⁴²⁹

and only one per cent of Travellers aged between 25-64 have a degree, compared to 30 per cent of non-Travellers. See S. Joyce, O. O'Reilly, M. O'Brien, D. Joyce, J. Schweppe, and A. Haynes, [Irish Travellers' Access to Justice](#) (European Centre for the Study of Hate, (2022)), p. 24.

420 The Irish Traveller Movement has documented a rising trend in the use of reduced timetables for Traveller children; Irish Traveller Movement, *Presentation to the Joint Committee on Education and Skills* (26 March 2019). See also IHREC, [Submission to the UN Committee on the Rights of the Child on the list of issues prior to reporting for the fourth periodic examination of Ireland](#), (July 2020), p. 37.

421 Joint Oireachtas Committee on Education and Skills, *Interim Report on the Committee's Examination on the Current Use of Reduced Timetables*, June 2019; Inclusion Ireland, *Education, Behaviour and Exclusion: The experience and impact of short school days on children with disabilities and their families in the Republic of Ireland*. See also IHREC, [Submission to the UN Committee on the Rights of the Child on the list of issues prior to reporting for the fourth periodic examination of Ireland](#), (July 2020), p. 37.

422 Department of Education, [Guidelines for the use of Reduced School Days in Schools](#) (2021).

423 Department of Education, [Guidelines for schools on recording and notification of the use of Reduced School Days](#) (2021).

424 M. Ni Raghallaigh, K. Smith, and J. Scholtz (September 2019), [Safe Haven: The needs of refugee children arriving in Ireland through the Irish Refugee Protection Programme – An Exploratory Study](#), pp. 46–48. See also, Ombudsman for Children's Office, [Direct Division: Children's views and experiences of living in Direct Provision](#), 2020, pp. 27, 31.

425 OCO, [Direct Division: Children's views and experiences of living in Direct Provision](#), 2020, pp. 4, 31.

426 The Government is now accommodating Ukrainian refugees at the Gormanston Camp: See Department of the Taoiseach, [Update on provision of accommodation for those fleeing Ukraine and applying for international protection](#) (press release, 14 July 2022).

427 IHREC CERD Report (2019) pp. 63-64 and Irish Refugee Council (July 2019), [The Reception Conditions Directive: One Year On](#), pp. 58–59.

428 Gov.ie, ["Information for schools – Ukraine"](#), 28 March 2022. "REALT will also support schools in the area to meet the needs of these children as they emerge, to advise and support the Department of Education in developing new capacity where required, and to co-ordinate the provision of education services to schools and families across their defined area." As of July 2022, 7,285 Ukrainian children are enrolled in Irish schools: Department of Education, [Department of Education confirms 7,285 Ukrainian pupils currently enrolled in Irish schools](#) (press release, 4 July 2022).

429 United Nations News, [Ukraine: UNESCO's response to children's education needs and Children's Rights Alliance, Initial submission on the reception and integration of Ukrainian children and young people arriving in Ireland](#) (2022), p. 6. The Commission notes the publication of the Joint Committee on Education, Further

- » **The Commission recommends that the State puts in place independently evaluated, sustainably-funded, mainstream programmes to improve educational outcomes for Traveller and Roma children from early years education and throughout school, based on comprehensive, disaggregated data.**⁴³⁰
- » **The Commission recommends that the root causes underpinning the use of reduced timetables are addressed, including through engagement with children and their families.**⁴³¹ **Schools should be mandated to include disaggregated equality data when discharging their reporting duties.**
- » **The Commission recommends that the State urgently address educational issues for children seeking international and temporary protection in Ireland. This includes: the provision of adequate resourcing for English language supports; IT equipment; transport to ensure access to after-school activities; information resources to families about registering for a school place; and culturally inclusive and trauma-informed training for teachers.**

Inclusive curriculum

The Committee on the Elimination of Racial Discrimination has noted the need for the educational curriculum to teach diverse cultural histories and address racist stereotypes.⁴³² The Commission welcomes the recent audit of Traveller culture and history in the curriculum,⁴³³ and the proposed amendments to the *Education Act 1998* set out in the *Traveller Culture and History in Education Bill 2018*.⁴³⁴

and Higher Education, Research, Innovation and Science, [Education and Supports Provision for Displaced Ukrainian Students](#) (July 2022) which included recommendations in relation to funding, placements, language assessments, translators and therapeutic supports.

430 The Commission notes the Government's commitment in 2020 to develop a National Traveller Education Strategy but this has yet to be realised: Government of Ireland, [Programme for Government: Our Shared Future](#) (2020), p. 100.

431 See also Children's Rights Alliance, [Government's Long-Promised Guidelines on Reduced Timetables Published – Children's Rights Alliance Response](#) (2021).

432 Committee on the Elimination of Racial Discrimination, [Concluding Observations](#) (2019), paras 24, 33. See also IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021), p. 40; Advisory Committee on the Framework Convention for the Protection of National Minorities, [Fourth Opinion on Ireland](#) (10 October 2018), p. 20.

433 The audit observed a limited understanding of Traveller culture and history among teachers and early childhood practitioners, which results in disaffection and disengagement by some students from the Traveller community. National Council for Curriculum and Assessment, [Traveller culture and history in the curriculum: a curriculum audit](#) (2019) p. 16.

434 *Traveller Culture and History in Education Bill 2018*. The Bill requires schools to use resources to promote a knowledge and understanding of the culture and history of the Traveller community and is currently before Dáil Éireann, Third Stage.

- » **The Commission recommends that the *Traveller Culture and History in Education Bill* is passed without delay, supported by implementation measures and adequate resources.**

References to African history in the school curriculum are notably absent, and children have reported negative representations of migrant communities in school textbooks.⁴³⁵ The Commission is concerned that current educational approaches produce racist stereotypes which result in disadvantage and discrimination.⁴³⁶

- » **The Commission recommends the establishment of an expert advisory group within the National Council for Curriculum and Assessment to identify areas across the curriculum where African and Black studies can be taught.**⁴³⁷

Impact of Covid-19 on the right to education

While social inequality in education is a long-standing concern in Ireland, the Covid-19 pandemic and measures taken in response to it, further exacerbated unequal educational experiences and outcomes for Irish children.⁴³⁸ School closures and the move to remote learning resulted in 'learning loss' and the widening of the 'learning gap' among students, with a particularly negative impact on children from socio-economically disadvantaged backgrounds, asylum-seeking, refugee and migrant children, Traveller and Roma children and disabled children with complex needs.⁴³⁹ While many children did not have the appropriate environment, equipment, connectivity and support for their online studies,⁴⁴⁰ research demonstrates that students from socio-economically disadvantaged backgrounds were more likely to have inadequate space in which to work and to

435 IHREC, [Developing a National Action Plan Against Racism: Submission to the Anti-Racism Committee](#) (2021), p. 40; Commission Conversation on Racism and Racial Discrimination with Young People of African Descent in the Greater Dublin Area (31 March 2021).

436 See also Committee on the Elimination of Racial Discrimination, [Concluding Observations](#) (2019), paras 23-24.

437 A similar expert advisory group was set up prior to the National Council for Curriculum and Assessment's audit of Traveller culture and history in the curriculum. See Minister for Education and Skills, [Written Answers 10 March 2022](#) [13452/22].

438 IHREC, '[Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#)' (July 2020), p. 39 and E. Carroll and S. McCoy, [All in This Together? New and enduring forms of inequality post-pandemic](#), Ireland's Education Yearbook 2021, p. 176.

439 E. Carroll and S. McCoy, [All in This Together? New and enduring forms of inequality post-pandemic](#), Ireland's Education Yearbook 2021, p. 177; M. Darmody, E. Smyth and H. Russell, "Impacts of the COVID-19 Control Measures on Widening Educational Inequalities" 29(4) (2021) *Young* 366 and Pavee Point, National Traveller Women's Forum, Galway Traveller Movement, Donegal Travellers Project and Minceirs Whiden, [Submission to 70th Pre-Sessional Working Group \(07 Mar 2022 - 11 Mar 2022\) of the Committee on Economic, Social and Cultural Rights](#) (2021), p. 6. See also, Section 8 of this report.

440 OCO, [No Filter: A survey of children's experiences of the Covid Pandemic](#) (April 2022), p. 5.

be in a stressed house, including due to precarious housing situations.⁴⁴¹ These students also faced challenges in relation to the system of calculated grades during the pandemic, with the Commission raising concerns that they were more likely to receive more pessimistic grade predictions than students from more advantaged backgrounds.⁴⁴²

With regard to Leaving Certificate reform,⁴⁴³ a recent Parliamentary report made a number of wide-ranging recommendations, including that the Department of Education should develop a National Online Learning Programme, school-based emotional counselling and therapeutic support services should be provided, and digital literacy classes should be implemented.⁴⁴⁴ The Commission is of the view that the planned reforms must respond to the evidence on the pandemic impact on children's right to education, and focus on addressing systemic educational inequality in Ireland.

- » **The Commission recommends that a comprehensive inquiry into the pandemic response should include a rights-based examination of the impact of the restrictions on children's access to, and participation in education, to inform the protective measures required to mitigate the disproportionate impact of future crises on children.**
- » **The Commission recommends that the State prioritises the reform of the Leaving Certificate, with a particular focus on addressing inequality and improving educational outcomes for structurally vulnerable children.**

441 E. Carroll and S. McCoy, [All in This Together? New and enduring forms of inequality post-pandemic](#), Ireland's Education Yearbook 2021, p. 177 and M. Darmody, E. Smyth and H. Russell, "Impacts of the COVID-19 Control Measures on Widening Educational Inequalities" 29(4) (2021) *Young* 366, p. 370.

442 IHREC, [Letter to Minister for Education and Skills, Joe McHugh T.D. on Calculated Grade System](#), May 2020.

443 IHREC, '[Submission to the UN Committee on the Rights of the Child on the List of Issues Prior to Reporting for the fourth periodic examination of Ireland](#)' (July 2020), p. 40.

444 Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, [Leaving Certificate Reform: the Need for a New Senior Cycle](#) (May 2022), pp. 8-10.

11.

Special protection measures

**(Articles 22, 30, 32-33, 35-36,
37(b)-(d) and 38-40)**

Asylum-seeking, refugee and migrant children

The Commission has repeatedly expressed concern over the long-term impact of the Direct Provision system on children,⁴⁴⁵ and is of the view that it is fundamentally incompatible with the State's obligation to provide adequate accommodation for children seeking asylum and to protect their rights to family life, physical and mental health.⁴⁴⁶ These issues were exacerbated during the Covid-19 pandemic due to the congregated nature of the settings.⁴⁴⁷ As of 2022, there are nearly 2,800 children residing in Direct Provision centres, an increase of nearly 60 per cent when compared with 2020.⁴⁴⁸ Further to the Committee's recommendation in 2016,⁴⁴⁹ the Health Information and Quality Authority is currently preparing for its proposed new function to monitor permanent international protection accommodation services.⁴⁵⁰

445 IHREC, *Submission on the White paper on Direct Provision* (December 2020). See also, IHREC, *Ireland and the Convention on the Elimination of Racial Discrimination*, (October 2019).

446 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee raised its ongoing concern about the reception conditions for asylum seekers in Ireland, exacerbated by the pandemic and including overcrowding, difficulty in accessing medical services and social protection payments, feelings of lack of safety due to sharing of communal areas, at times, of bedrooms with non-family members, as well as harassment and threats experienced by LGBTI asylum seekers: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), paras 37-38. See also Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#) (2016), CRC/C/IRL/CO/3-4, para. 64; Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland \(2020\) CERD/C/IRL/CO/5-9](#), paras 37-38.

447 Many residents of direct provision centres were not able to self-isolate when they became infected with the virus or when they displayed symptoms prior to diagnosis. These conditions facilitated the spread of Covid-19: [Oireachtas Special Committee on Covid-19 Response Final Report](#) (2020), para. 18; IHREC, [Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision](#) (2020) and IHREC, [Statement from the Irish Human Rights and Equality Commission In Respect of Direct Provision](#) (2020). The Irish Refugee Council stated that the pandemic has highlighted the need to end Direct Provision and that the issues faced included overcrowding and an inability to social distance, difficulty accessing medical services and social protection payments, difficulties for health and social care workers living in direct provision, and the impact on children: Irish Refugee Council, [Submission to the Oireachtas Special Committee on COVID-19, 26 May 2020](#) (2020), p. 5. The Commission notes that the State did introduce some measures to mitigate the impact of the pandemic in Direct Provision centres: Department of Children, Equality, Disability, Integration and Youth, [COVID-19 Guidelines for IPAS Accommodation Centres - 17 May 2021](#) (2021).

448 According to a recent press release by the Irish Refugee Council, a record 11,689 people, including nearly 2,800 children, are currently living in Direct Provision. In March 2020, figures provided to the Office of the Ombudsman for Children by the International Protection Accommodation Service (IPAS) identified 6,035 living in Direct Provision accommodation, of which 1,789 (30 per cent) were children. Ombudsman of Children (OCO), [Direct Provision Report 2020](#): p. 14. The Commission notes that at the end of April 2022, 2,873 people with immigration status were still living within International Protection Accommodation Services (IPAS) because they were unable to find private housing: Irish Times, [More than 11,600 people in direct provision as numbers rise to record levels](#) (2022), accessed on 9 June 2022.

449 Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#) (2016), CRC/C/IRL/CO/3-4, para. 66.

450 The Health Information and Quality Authority has been invited by the Minister for Children, Equality, Disability, Integration and Youth to monitor the quality of International Protection Accommodation Services (IPAS). Legislative amendments needed to enable HIQA to commence this monitoring are being progressed by the Department of Children, Equality, Disability, Integration and Youth. HIQA is undertaking preparatory work for monitoring, which is planned to commence in Quarter 3 2022 subject to the finalisation of the legislation to enable this. HIQA's monitoring remit will not apply to emergency direct provision centres. See Minister for

In February 2021, the Government committed to replacing Direct Provision with a 'human rights and equality based' model by December 2024,⁴⁵¹ which the Commission regrets is a significantly longer timeframe than mid-2023, as recommended by the Advisory Group.⁴⁵² The Commission is concerned that the implementation of the White Paper is already behind schedule and now faces greater resource challenges.⁴⁵³ It is essential that it is progressed in a timely manner, and that pressures such as the pandemic and the increase in Ukrainian people seeking temporary protection do not result in further targets being missed and a regression in standards.⁴⁵⁴ In particular, the Commission notes the increased use of emergency accommodation,⁴⁵⁵ which in its view does not adequately protect the rights of international protection applicants, including children's rights.⁴⁵⁶

The Commission is also concerned by the State's announcement in July 2022 to temporarily require refugees travelling to Ireland to hold visas.⁴⁵⁷ This decision has an immediate negative impact on refugees, due to their limited means and

Children, Equality, Disability, Integration and Youth, [Legislative Measures - Dáil Éireann Debate, Wednesday - 13 July 2022](#).

451 Measures proposed include: ending the 'for profit' approach to reception of international protection applicants; earlier access to the labour market; provision of own-door community-based accommodation; provision of support payments; improved legal, health, education, childcare, and employment activation supports. See Department of Children, Equality, Disability, Integration and Youth, *A White Paper to End Direct Provision and to Establish a New International Protection Support Service*, (February 2021). The White Paper was drafted following the publication of recommendations by an Advisory Group: See Department of Justice, [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (October 2020).

452 See Department of Justice, [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (October 2020).

453 The resources directed towards Ireland's total international protection efforts are finite, and when channelled into any one area, such as the current Ukraine refugee crisis, there is naturally a knock-on effect on the rest of the system. We are currently witnessing application backlogs, delays getting longer, and a decline in the already dire direct provision accommodation standards, resulting from an already creaking system coming under great strain. See IHREC Chief Commissioner Op-ed in: Irish Times, [We welcome refugees from Ukraine, but why is there less sympathy for those coming from elsewhere?](#) (2022).

454 See [Coalition to end Direct Provision in Ireland launched by leading not-for-profit groups](#) (January 2022). The Immigrant Council of Ireland has also highlighted the significance of the current housing crisis in the context of accommodating applicants for international and temporary protection. As of 13 February 2022, 8,792 persons resided in accommodation provided by the International Protection Accommodation Service. In addition, approximately 2,000 people can, in theory, leave Direct Provision but, in practice, cannot because of the wider housing crisis. There are also more than 60,000 households on the social housing waiting list nationally and the supply of private rented accommodation is at its lowest in years. These figures demonstrate that the challenge of helping Ukrainian people move on from hotel or other emergency accommodation is considerable. See Immigrant Council of Ireland (ICI) [Policy paper on housing and accommodation of Ukrainian refugees](#) (2022), p. 3. See also Department of the Taoiseach, [Update on provision of accommodation for those fleeing Ukraine and applying for international protection](#) (press release, 14 July 2022).

455 Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), paras 37-38.

456 Irish Human Rights and Equality Commission, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report](#) (October 2019), pp. 114-115.

457 Department of the Taoiseach, [Government agrees to temporarily require refugees travelling to Ireland from safe European countries to hold visas](#) (press release, 18 July 2022).

resources, and the State has provided no evidence for their reasoning behind the decision. The Commission is concerned that this step widens the gap in provision between Ukrainian refugees arriving in the EU under the Temporary Protection Directive, and those who seek and are granted international protection.

- » **The Commission recommends that the State takes active measures to progress the planned phasing out of Direct Provision by 2024,⁴⁵⁸ with clearly defined targets and regular, accessible updates on the timeline for implementation.⁴⁵⁹**
- » **The Commission recommends that the State provide clarification on their decision to require refugees to hold visas, taking into account the impact on families, and should review the timing of this reservation to ensure that the suspension is for a very limited period.**

Vulnerability assessments

Irish law stipulates that vulnerability assessments to identify special reception needs must be carried out within 30 days of an applicant lodging an international protection claim.⁴⁶⁰ As part of the current vulnerability assessment pilot programme,⁴⁶¹ from February 2021 to December 2021, 30% of applicants identified as having special reception needs were children.⁴⁶² While the pilot programme is welcome, the Commission notes ongoing concerns with the manner in which assessments are currently being carried out.⁴⁶³ The Commission further notes the absence of any approved internal guidelines for determining the age of unaccompanied and separated children.⁴⁶⁴

458 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee recommended that the State ensure that living conditions and treatment in accommodation centres for asylum seekers are in conformity with international standards, including by taking the necessary measures to swiftly implement the new model of accommodation and supports for applicants of international protection, ensuring its procedures and protections are in line with international standards. It also called on the State to develop a contingency planning framework for their accommodation: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), paras 37–38.

459 The Commission notes that a website has been launched to provide updated information and reports on the progress of transitioning to the new model of accommodation. See Department of Children, Equality, Disability, Integration and Youth, [International Protection Support Services](#).

460 Section 8, [S.I. No. 230/2018 – European Communities \(Reception Conditions\) Regulations 2018](#). This is in line with Article 22, [DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 laying down standards for the reception of applicants for international protection \(recast\)](#).

461 Houses of the Oireachtas, [Dáil Éireann Debate–International Protection](#), 3 February 2022.

462 Houses of the Oireachtas, [Dáil Éireann Debate–International Protection](#), 3 February 2022.

463 Such concerns include inconsistencies between the two-step and one-step assessments, delays, the lack of a disability focus, as well as the refusal to facilitate further assessments on an on-going basis and when new information is provided by applicants: Asylum Information Database (AIDA), [Identification: Republic of Ireland](#), Last updated on 20 April 2022. See also, K. Barry, [Assessing Vulnerability: Asylum Seekers with Disabilities in Direct Provision in Ireland](#) (October 2021).

464 Despite the importance of such assessments, it was recently observed that the Child and Family Agency does not currently have approved internal guidelines on age-assessments for use in determining the age of unaccompanied minors or separated children referred to their service by the International Protection

- » **The Commission recommends that the State takes active measures to ensure vulnerability assessments are carried out by specialised professionals trained in trauma-informed practice and communication with children, within 30 days of an international protection claim, and on an ongoing basis.**⁴⁶⁵
- » **The Commission recommends that the Child and Family Agency develops a national policy or approved national guidelines on age-assessments for use in determining the age of unaccompanied and separated children.**
- » **The Commission recommends that the State provides sufficient supports to all children applying for international protection, including immediate access to education,⁴⁶⁶ health services, reasonable accommodation for disabled children and gender and age-sensitive supports.**

Family reunification

Research highlights the unique challenges faced by unaccompanied and separated children seeking family reunification in Ireland,⁴⁶⁷ including the complex and lengthy application process,⁴⁶⁸ the restrictive timeframe in which applications for family reunification must be made,⁴⁶⁹ and the burdensome financial costs of arranging

Office (IPO). 115 unaccompanied children were referred by the IPO to the Child and Family Agency for age assessment between 2016 and 2020, just 48 were deemed to be children. This is of significance because young people assessed as over 18 year of age are assigned to adult accommodation and deprived of child-specific services. While a young person can request a review of an initial negative age assessment, in practice such reviews can take months to determine, during which time the young person remains in adult accommodation exposed to risk and contrary to the principle of the benefit of the doubt underpinning the procedure of age assessment. See IHREC, [Trafficking in Human Beings in Ireland](#) (2022): pp. 129-130.

465 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee recommended that the State establish a robust system of vulnerability assessments for international protection applicants: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), paras 37-38.

466 See also, Section 10 of this report.

467 There is also no statutory right for aged-out unaccompanied and separated children, who applied for international protection before turning 18, to apply for family reunification with their parents on receiving status: See S. Groarke and S. Arnold (December 2018), [Approaches to Unaccompanied Minors Following Status Determination in Ireland](#) (ESRI and European Migration Network), pp. 84-85. See also: NASC, [Invisible People: the Integration Support Needs of Refugee Families Reunified in Ireland](#) (2020), p. 35.

468 Legal professionals noted the particular complexity and necessity for legal support for refugee sponsors who had come to Ireland as unaccompanied children. See NASC, [Invisible People: the Integration Support Needs of Refugee Families Reunified in Ireland](#) (2020): p. 48.

469 The *International Protection Act 2015* requires applications for family reunification to be made within 12 months of the grant of subsidiary or refugee status. For unaccompanied children, delays in granting refugee or subsidiary status can have a considerable impact: if unaccompanied children 'age out' before receiving recognition status or the completion of the family reunification process, they may no longer be entitled to have their family reunified with them. See S. Groarke and S. Arnold, [Approaches To Unaccompanied Minors Following Status Determination in Ireland](#) (2018). See also: NASC, [Invisible People: the Integration Support Needs of Refugee Families Reunified in Ireland](#) (2020), p. 35; IHREC, *Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the United Nations Committee on the Elimination of Racial*

accommodation for family members in advance of their arrival.⁴⁷⁰ Refugees seeking to bring their children to Ireland have also been refused on the basis that their children were aged over 18 by the time the refugee declaration was made and the family reunification application submitted.⁴⁷¹ The Commission has repeatedly emphasised the need for more expansive family reunification policies,⁴⁷² and notes that a broader definition of 'family' is in line with Ireland's obligations under the Convention.⁴⁷³

- » **The Commission recommends that the State undertake a comprehensive review of the current statutory and policy framework on family reunification for unaccompanied and separated children, with a view to addressing the various barriers specific to this group and ensuring that children's best interests are upheld within the process.**
- » **The Commission recommends the amendment of the *International Protection Act 2015* to more broadly define 'family member' in line with Ireland's obligations under the Convention.**

State's response to the war in Ukraine

The Commission welcomes the solidarity of Ireland's national response, including the State's proactive welcome and support to incoming Ukrainians seeking temporary protection.⁴⁷⁴ As of June 2022, children aged 14 years and under accounted for 29% of all arrivals to Ireland.⁴⁷⁵ The Commission stresses the need

Discrimination on Ireland's Combined 5th to 9th Report (October 2019), p. 11. The Commission has committed in its [Strategy Statement 2022–2024](#) to propose changes to the International Protection legislation relating to family reunification.

470 Stakeholders working in roles relevant to family reunification noted how challenging it would be for a young person to find and pay for suitable accommodation with the result that it is seen as almost inevitable that family members will be presenting to homeless services on arrival. NASC, [Invisible People: the Integration Support Needs of Refugee Families Reunited in Ireland](#) (2020), p. 71.

471 See for example, *SH v Minister for Justice & Ors* and *AJ v Minister for Justice and Ors* [2022] IEHC 392.

472 See Commission's call for the State to *expand and strengthen the policies on family reunification*: IHREC, [Crisis in Afghanistan Underscores Need for Wider Family Reunification in Ireland's Refugee Policy](#) (29 September 2021).

473 The 2015 Act limits the statutory right to family reunification to members of the nuclear family and removes the 'dependent family members' category provided for in the (predecessor) *Refugee Act 1996*, which had included grandparents, parents, brothers and sisters who were financially dependent on the applicant. Under Section 56 of the 2015 Act, the following family members are eligible for family reunification: spouses; civil partners and their children (under 18 and unmarried) if the sponsor was under 18 and unmarried on date of application; a child of the sponsor, who is under the age of 18 and unmarried at date of application. As enshrined in the Convention, the right of the child to family life is protected under the Article 16. The term 'family' must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5). See Committee on the Rights of the Child [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)*](#) (2013), para. 59.

474 IHREC, Press Release, '*Statement on Ukraine*' (2022).

475 Central Statistics Office, [Arrivals from Ukraine in Ireland Series 2](#) (June 2022)

for a particular focus on children seeking refuge, including unaccompanied and separated children,⁴⁷⁶ disabled children, who may face additional blockages to fleeing the conflict,⁴⁷⁷ as well as LGBTI+ children who are on the move or remain in Ukraine.⁴⁷⁸

- » **The Commission recommends that the State prevents the establishment of a two-tier system and applies the learning from Ireland's provision of temporary protection to Ukrainians to improve and streamline the response to children seeking international protection and family reunification.**
- » **The Commission recommends that the State ensures the provision of immediate accommodation and trauma-informed services to Ukrainian children, with attention to their gender, age, and disability.**

Children belonging to minority groups

Traveller housing rights

The Commission has emphasised that Traveller children and families continue to face egregious violations of their housing rights, with many living in severe levels of deprivation due to structural racism and discrimination, policy failures and inconsistencies, and a siloed approach by State actors.⁴⁷⁹ The Commission is concerned that the cumulative impact of structural racism and discrimination is to deny Traveller children their rights to Traveller culture and ways of life, which over generations risks systematically eroding the Traveller community.

476 The UNHCR has called on charities and volunteers seeking to help children fleeing Ukraine to work with the Child and Family Agency and national child protection systems in Ireland to ensure that the best interests of children are fully protected, cautioning that moving children without parental care opens them to heightened risk of exploitation. See UNHCR, [UNHCR statement on protecting children fleeing Ukraine](#) (2022). The Commission notes that 386 young people have been referred to Tusla's services so far in 2022, and this can be attributed to the high level of unaccompanied children arriving from the Ukraine and other countries: [Unprecedented numbers of children seeking protection – Tusla](#) (RTE news, 20 July 2022).

477 IHREC, '[Statement on Ukraine](#)' (press release, 11 March 2022); Houses of the Oireachtas, [IHREC Opening Statement to the Joint Committee on Disability Matters- 5 May 2022](#) (2022); Disabled children should be provided with individualised support to ensure they are not separated from their families and are protected from institutionalisation and other harmful practices, such as trafficking. See Committee on the Rights of Persons with Disabilities, Press Statement, '[Ukraine: 2.7 million people with disabilities at risk, UN Committee warns](#)' (2022).

478 According to IGLA Europe, 'existing discrimination and violence against LGBTI people can put them in disadvantageous position and heightens their risk to be left in the blind spot of international protection and humanitarian relief programmes. Therefore, it is important that international and European institutions, governments and the humanitarian sector carefully consider the specific vulnerabilities and needs of the community and to ensure humanitarian assistance is LGBTI inclusive and appropriate, addresses specific practical and strategic needs': [Briefing Note: Ukraine war: LGBTI people in the context of armed conflict and mass displacement](#) (April 2022).

479 IHREC, [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#) (2021), pp. 7-8.

Several pieces of legislation used to target Travellers serve to weaken the legislative and policy framework regarding Traveller-specific accommodation and reform is required.⁴⁸⁰ Inadequate conditions in existing Traveller accommodation persist, with severe overcrowding,⁴⁸¹ and a large number of families continuing to live on unauthorised sites.⁴⁸² Poor conditions reported in existing halting sites include: a lack of cooking facilities; damp and poorly heated living areas; inadequate sanitation; infestations; a lack of play areas; structural hazards such as insecure and unsafe electricity; and inadequate refuse collection.⁴⁸³ These conditions have been found to adversely affect the mental and physical health of children.⁴⁸⁴ The Commission notes that the State's provision of Traveller accommodation continues to be the subject of significant criticism by the European Commission against Racism and Intolerance⁴⁸⁵ and the European Committee of Social Rights.⁴⁸⁶ Furthermore, a recent Commission review into the provision of Traveller-specific accommodation across all local authorities uncovered a lack of appropriate consultation with Travellers and a significant underspend of funds available.⁴⁸⁷ An independent Traveller Accommodation

480 Legislation cited as being used by AGS and local authorities to target Travellers include: *Housing (Traveller Accommodation) Act 1998*, Section 32; *Housing (Miscellaneous Provisions) Act 1992*, Section 10; *Criminal Justice (Public Order) Act 1994*, Part 11A; *Roads Act 1993*, Section 69; *Control of Horses Act 1996*; *Planning and Development Act 2000*. See: IHREC (2021) [Submission to the Anti-Racism Committee](#), p. 52.

481 IHREC, [Comments on Ireland's 18th National Report on the implementation of the European Social Charter](#) (2021), pp. 7-8.

482 See: Department of Housing, Local Government and Heritage's [Traveller Accommodation Statistics](#); Department of Housing, Local Government and Heritage, [2019 Estimate – All Categories of Traveller Accommodation](#) (2021); Department of Housing, Local Government and Heritage, [2020 Estimate – All Local Authority, Local Authority Assisted and Unauthorised Halting Sites](#) (2022).

483 IHREC, [Comments on Ireland's 17th National Report on the Implementation of the European Social Charter](#) (2020), pp. 11-12; Dáil Éireann debate – [Traveller Accommodation](#) (3 June 2021). See generally: Ombudsman for Children, [No End in Site: An investigation into the living conditions of children on a local authority halting site](#) (2021).

484 Ombudsman for Children, [No End in Site: An investigation into the living conditions of children on a local authority halting site](#) (2021), pp. 16-17.

485 European Commission against Racism and Intolerance, [Conclusions on the Implementation of the Recommendations in Respect of Ireland](#) (2022), p. 4: 'ECRI regrets that little has been done to address the structural shortcomings in the identification of the housing needs of Travellers and to ensure greater accountability in the use of the Traveller accommodation funds.'

486 In 2015, the Committee found the State in violation of Article 16 (the right of the family to social, legal and economic protection) of the Charter due to the failure to provide sufficient accommodation for Travellers, the inadequate conditions of existing Traveller sites and the inadequate safeguards governing Traveller evictions. See: [European Roma Rights Centre \(ERRC\) v Ireland, Complaint No. 100/2013](#); The Committee has reiterated this finding in [2018](#), [2019](#) and [2020](#) and in its most recent comments on the matter has continued to maintain its conclusion that the State is not complying with Article 16 in its provision of Traveller accommodation. See: European Committee of Social Rights, [Follow-Up to Decisions on the Merits of Collective Complaints](#) (2022), pp. 100-105.

487 The Commission used statutory legal powers under Section 32 of the *Irish Human Rights and Equality Commission Act 2014* to initiate equality reviews of the provision of Traveller-specific accommodation of all 31 local authorities in the State. From 2008-2018 only two thirds of the funding available for provision was drawn down. The review also uncovered evidence of poor information gathering and failures to identify the true accommodation preferences of Travellers. See: IHREC, [Accounts of First Council-by-Council Equality Review on Traveller Accommodation in History of State Published \(2021\)](#).

Expert Group published its report in July 2019,⁴⁸⁸ but its recommendations have yet to be fully implemented.⁴⁸⁹

The Commission is concerned by recent research findings on the frequency with which Traveller dwellings are entered by An Garda Síochána without permission,⁴⁹⁰ and that these searches appear to have often been carried out in the absence of search warrants.⁴⁹¹ First hand testimonies report that these Garda 'raids' on homes are particularly impactful for children, and result in trauma and increased stigmatisation.⁴⁹²

- » **The Commission recommends that local authorities who fail to provide new Traveller-specific and culturally appropriate accommodation,⁴⁹³ in areas where there is a stated need, should be subject to dissuasive sanctions, as necessary.**
- » **The Commission recommends that the State fulfils its obligation under the Convention by providing accommodation to Traveller children and families that fully respects their cultural rights, including nomadism, living in extended family groups, keeping horses and other social activities.⁴⁹⁴**
- » **The Commission recommends that the State carries out an independent and human rights informed investigation into the circumstances in which Traveller homes are entered by An Garda Síochána, particularly in the presence of children and in the absence of a search warrant; and the impact of these raids on children.**

488 Traveller Accommodation Expert Group, [Traveller Accommodation Expert Review](#) (July 2019). The Expert Group recommended that Travellers should be able to express their first, second, and third preferences in terms of accommodation when applying for social housing; that local authorities should introduce an ethnic identifier in assessing the housing needs of applicants for social housing, so that Traveller applicants can be identified and progress in meeting their needs be monitored more effectively; and that a new in-depth study into the characteristics of the Traveller population should be carried out, so as to help assess their accommodation needs.

489 See for example, European Committee of Social Rights, [Follow-up to Decisions on the Merits of Collective Complaints: Findings 2021](#) (March 2022), p. 100.

490 S. Joyce, O. O'Reilly, M. O'Brien, D. Joyce, J. Schweppe and A. Haynes, [Irish Travellers' Access to Justice](#) (European Centre for the Study of Hate, 2022). 50% of respondents to the survey stated they had been present in a home when AGS entered without permission, 57% reported this occurring on 2-5 occasions and 24% stated 6 or more occurrences. A number of Travellers discussed Gardaí searching children's school bags while the children were on their way out to school during the course of a search of their home.

491 S. Joyce, O. O'Reilly, M. O'Brien, D. Joyce, J. Schweppe and A. Haynes, [Irish Travellers' Access to Justice](#) (European Centre for the Study of Hate, 2022), pp. 94-95. In 82% of cases where AGS entered the home without permission no search warrant was shown to the occupants.

492 S. Joyce, O. O'Reilly, M. O'Brien, D. Joyce, J. Schweppe and A. Haynes, [Irish Travellers' Access to Justice](#) (European Centre for the Study of Hate, 2022).

493 The *Housing (Traveller Accommodation) Act 1998* provides housing authorities with the powers to construct and provide halting sites, including sites that may not be permanent places of residence for those pursuing a nomadic lifestyle.

494 Anna Visser, [Traveller Accommodation: The challenges of implementation](#) (2018), pp. 9, 40. See also, IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (2019), pp. 98-99.

Roma housing rights

The Commission notes that despite serious ongoing concerns about access to housing and living conditions for Roma children and families,⁴⁹⁵ there were no specific actions included in the *National Traveller and Roma Inclusion Strategy 2017-2021* to address these issues and the calls for such actions to be added during the lifetime of the Strategy were not progressed.⁴⁹⁶ Furthermore, the majority of recommendations in the National Roma Needs Assessment, a 2018 study conducted with Roma in Ireland, have not been implemented.⁴⁹⁷ The Commission notes the need for additional administrative and survey data to document the impact of policies on housing outcomes and the reliance on private sector accommodation on Roma children and families, as well as any progress achieved in the provision of housing.⁴⁹⁸

- » **The Commission recommends that the successor to the *National Traveller and Roma Inclusion Strategy 2017-2021*⁴⁹⁹ should have a clear focus on actions to improve access to adequate housing for Roma children and their families, developed in consultation with the community, and include a commitment on the introduction of an ethnic identifier across the housing sector.**

Administration of child justice

Age of criminal responsibility

In 2016, the Committee urged the State to increase the minimum age of criminal responsibility for all offences.⁵⁰⁰ However, the age of criminal responsibility remains unchanged in Ireland,⁵⁰¹ and is not in-conformity with Article 17(1) of the European

495 Pavee Point Traveller and Roma Centre & Department of Justice and Equality, [Roma in Ireland – A National Needs Assessment](#) (2018), pp. 85–92; Roma children and families face discrimination in accessing accommodation, severe overcrowding, dangerous conditions, homelessness, and a lack of access to social services.

496 See for example, IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (2019), p. 100.

497 Joint Alternative Report by a Coalition of Traveller and Roma Organisations, [International Covenant on Civil and Political Rights: Ireland](#) (2022), p. 10.

498 IHREC, [Ireland and the Convention on the Elimination of Racial Discrimination](#) (2019), p. 100.

499 For further information on the development of a new strategy on Traveller and Roma inclusion, see Section 3 of this report.

500 The Committee urged Ireland to increase the minimum age to 14 years for all offences in 2016, but taking into account documented evidence in the fields of child development and neuroscience, the Committee also commends States that have a higher minimum age such as 15 or 16: Committee on the Rights of the Child, [Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland](#) (1 March 2016), p. 17 and Committee on the Rights of the Child, [General comment No. 24 on children's rights in the child justice system](#) (2019), p. 6.

501 The age of criminal responsibility in Ireland is 12 years, but there is also provision for 10 and 11 year old children charged with serious offences including murder, manslaughter, rape or aggravated sexual assault to

Social Charter.⁵⁰² The Commission notes the lack of any commitment or timeline from the State on raising the age of criminal responsibility,⁵⁰³ including in the *Youth Justice Strategy 2021-2027*⁵⁰⁴ and Justice Plan 2022.⁵⁰⁵

- » **The Commission recommends that the State raises the age of criminal responsibility to 14 years for all offences as an absolute minimum, and continues to increase it to a higher age such as 15 or 16.**

Exploitation of children in the commission of offences

Approximately 1,000 children involved in more serious and prolific offending in Ireland may be caught up in local crime networks.⁵⁰⁶ The Commission notes the publication of recent draft legislation by the State which seeks to address, discourage and protect against the grooming, recruiting and exploitation of children into criminal activity by adults.⁵⁰⁷ While the focus of this draft legislation is welcome, it overlooks the complex issues that arise as children involved in criminal networks are often groomed by older family members, including parents, and the criminalisation of their close family members may have a number of other collateral and hidden effects.⁵⁰⁸

be tried in the Central Criminal Court. This has been criticised by the Special Rapporteur on Child Protection: Professor Geoffrey Shannon, [Tenth Report of the Special Rapporteur on Child Protection](#) (2016), pp. 8, 83-84.

502 European Committee of Social Rights, [Conclusions 2019: Ireland](#) (2019), p. 38. The OHCHR has commented that the worldwide average age of criminal responsibility is 11.3 years, that the median age is 12 years, and that both are far below the minimum of 14 years recommended by the Committee on the Rights of the Child. See: OHCHR, [United Nations Global Study on Children Deprived of Liberty](#) (2019), p. 278.

503 For previous comments by the Commission, see IHREC, [Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill 2020](#) (2021), p. 15.

504 Department of Justice, *Youth Justice Strategy 2021-2027*, p.33.

505 The Justice Plan 2022 does not contain any direct references to raising the age of criminal responsibility: Department of Justice, [Justice Plan 2022](#).

506 There are no comprehensive statistics available which show how much of the crime committed by children is controlled by adults but this estimate comes from a survey carried out with Garda juvenile liaison officers (JLOs). See C. Naughton, S. Redmond, [National Prevalence Study: Do the findings from the Greentown study of children's involvement in a criminal network \(2015\) extend beyond Greentown](#) (2017), p. 23. In particular, research has reported that the Diversion Programme and court system appear to have been 'routinely gamed' by criminal networks, and that children, often below the age of criminal responsibility and with multiple vulnerabilities and complexities, are groomed into participation in criminal activity: See Department of Children and Youth Affairs, [Lifting the Lid on Greentown – Why we should be concerned about the influence criminal networks have on children's offending behaviour in Ireland](#) (2016), p. 57 and J. Connolly, [Responding to Criminal and Anti-Social Behaviour Networks Across Dublin South Central: A Research Study](#) (2019), p. 16.

507 The General Scheme of the Criminal Justice (Exploitation of children in the commission of offences) Bill 2020 ('General Scheme') was published by the Department of Justice on 15 January 2021. See Department of Justice, [Bill to outlaw the grooming of children into crime announced by Ministers McEntee and Browne](#) (press release – 15 January 2021).

508 For further information, see IHREC, [Observations and Recommendations on the General Scheme of the Criminal Justice \(Exploitation of Children in the Commission of Offences\) Bill 2020](#) (2021). The Irish Penal Reform Trust identified several impacts having a family member in prison can have on children, including

- » **The Commission recommends that the State ensures its legislative proposals give adequate consideration to the family ties that can exist in the exploitation of children into criminal activity, including the possible alternatives to prosecution or custodial measures where the inciter is a parent or other family member.**⁵⁰⁹

Specialised child justice system

The Committee has established a clear requirement for States to ensure a separate, specialised child justice system, with an individualised approach.⁵¹⁰ The Commission is concerned that there are a number of areas where Ireland does not meet Convention standards, including due to the lack of specialist training for An Garda Síochána, lawyers and judges at all stages of the criminal justice process;⁵¹¹ the absence of suitable custodial and court facilities;⁵¹² the ability of children to waive their right to a lawyer; the trial of children accused of serious offences in adult court;⁵¹³ and the inconsistent use of language and communication approaches that are adapted and child-friendly.⁵¹⁴ Significant problems with the Garda Youth Diversion Programme have also been identified, including a lack of independent oversight, wide ranging police discretion and a lack of specialist training.⁵¹⁵ Furthermore, there are significant delays in the court process, which

emotional, educational, financial and practical difficulties. For further information see Irish Penal Reform Trust, [Piecing it Together: Supporting Children and Families with a Family Member in Prison in Ireland](#) (2021). See generally A. Parkes & F. Donson, *Parental Imprisonment and Children's Rights* (Routledge, 2021).

509 See Council of Europe, Recommendation CM/Rec (2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents (2018).

510 Committee on the Rights of the Child, [General comment No. 24 \(2019\) on children's rights in the child justice system](#), UN Doc. CRC/C/GC/24 (2019), para 2. OHCHR, [United Nations Global Study on Children Deprived of Liberty](#) (2019), p. 279.

511 J. O'Connor, [Reflections on the Justice and Welfare Debate for Children in the Irish Criminal Justice System](#) (2019) *Irish Judicial Studies Journal* 23.

512 U. Kilkelly and L. Forde, [Children's Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána](#) (University College Cork and the Policing Authority: 2021) and J. O'Connor, [Reflections on the Justice and Welfare Debate for Children in the Irish Criminal Justice System](#) (2019) *Irish Judicial Studies Journal*. The District Court in Dublin city doubles as a Children Court for summary and most indictable offences. Outside of Dublin City, children are still accommodated in adult courts in Ireland; however, the Children Court must sit at different rooms or buildings and at different times than the ordinary District Court.

513 U. Kilkelly and L. Forde, [Submission to the Committee on the Rights of the Child on the Draft revised General Comment No. 10 \(2007\) on children's rights in Juvenile Justice](#) (2019). It has been highlighted that the trial of children in these venues essentially amounts to adult trial, and that consideration needs to be given to ensuring legally mandated protections are provided to children in this context: University College Cork, [Looking Back at Tackling Youth Crime: Youth Justice Action Plan 2014-2018: A Review of Progress Achieved and Lessons Learned](#) (2019).

514 U. Kilkelly and L. Forde, [Children's Rights and Police Questioning: A Qualitative Study of Children's Experiences of being interviewed by the Garda Síochána](#) (University College Cork and the Policing Authority: 2021), pp. 32-34.

515 IHREC, [Comments on Ireland's 16th National Report on the implementation of the European Social Charter](#) (2019), pp. 23-25. See also for example, AM. Brennan, *The Garda Diversion Programme and the Juvenile Offender: The Dilemma of Due Process Rights* (2012) 22(2) *Irish Criminal Law Journal*, P. Smyth, *Diverting Young Offenders from Crime in Ireland: The Need for more Checks and Balances on the Exercise of*

have resulted in children 'ageing out' of the protections of the child justice system, including anonymity.⁵¹⁶

The Commission notes that Ireland has not opted-in to the EU Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

- » **The Commission recommends that the State ensures all professionals working with children at all stages of the process within the criminal justice system, including Gardaí, judges, and lawyers, receive adequate specialised training on trauma-informed child justice, child development and children's rights.**
- » **The Commission recommends that the State ensures the full application of a specialised and separate child justice system for all children throughout the criminal justice process, including at the arrest, questioning, prosecution and sentencing stages. In particular, the application of a child justice system should be ensured for all children accused of serious crimes, as well as children who turn 18 while awaiting trial.**
- » **The Commission recommends that the State consider providing a separate statutory footing for the Garda Youth Diversion Programme.**
- » **The Commission recommends that Ireland opts in to the EU Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings.**

Detention

The *General Scheme of the Inspection of Places of Detention Bill*, which will provide for the establishment of a National Preventive Mechanism ('NPM'), was published in June 2022.⁵¹⁷ The Commission is of the view that the State should ratify the Optional Protocol to the Convention against Torture without any further delay.⁵¹⁸

Police Discretion (2011) 55(2) *Crime Law and Social Change* and U. Kil Kelly, 'Policing, Young People, Diversion and Accountability in Ireland' (2011) 55 *Crime, Law and Social Change*.

516 Law society, "[The Young Offenders](#)" (October 2021); and Seanad Debates, [Departmental Strategies](#), 10 February 2022: This source reports that some young people have been waiting up to seven years for their cases to come to a conclusion. See also ELSA Law Review, [The Young Offenders: A Comparison of the Criminal Justice System for Juveniles under Finnish and Irish Law](#) (2020) which reports 'excessive periods' of delay in case hearings for children, which increased their likelihood of reoffending.

517 Department of Justice, [Minister for Justice publishes General Scheme of the Inspection of Places of Detention Bill](#) (press release, 24 June 2022). The Commission notes that children's detention schools are included within the meaning of 'places of detention in the General Scheme: See [Draft General Scheme of the Inspection of Places of Detention Bill](#) (2022).

518 In its July 2022 Concluding Observations on Ireland, the Human Rights Committee called on the State to

Despite the State's commitment to ensure that detention is a measure of last resort,⁵¹⁹ Oberstown Children Detention Campus has reported a rise in the proportion of children detained on longer sentences for serious offences in recent years.⁵²⁰ As of June 2022, 17 children were serving remand orders and 23 children were serving committal orders in Oberstown.⁵²¹ The Commission notes with concern the negative impact of the pandemic on children in detention, with children in Oberstown reporting challenges relating to virtual visits and communication, lack of formal schooling and work experience, delays in placement planning, limited interactions with peers in their units and video-conferencing facilities replacing in-person court visits.⁵²² The Commission is also concerned about the over-representation of structurally vulnerable children in detention,⁵²³ particularly Traveller children,⁵²⁴ reports that children on remand experience poorer conditions and have fewer opportunities to engage in activities,⁵²⁵ and the ongoing use of restrictive practices.⁵²⁶

» **The Commission recommends that the proposed State inquiry into the pandemic considers the impact on the rights of children in detention, and examines protective measures to prevent rights abuses if future emergency measures are imposed.**

continue its effort to proceed with the ratification of the Optional Protocol to the Convention against Torture: Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 36.

519 Department of Justice, *Youth Justice Strategy 2021-2027*, p. 5. The Committee has also emphasised that full compliance with the Convention requires the development and implementation of diversion measures and a reduction in the use of detention. See: Committee on the Rights of the Child, [General comment No. 24 \(2019\) on children's rights in the child justice system](#), UN Doc. CRC/C/GC/24 (2019).

520 Oberstown Children Detention Campus, [Annual Report 2020](#), p. 8.

521 Oberstown Children Detention Campus, [Statistical Breakdown of Young People on Campus](#) (June 2022).

522 See Oberstown, [Annual Report 2020](#) (2021), pp. 12-16. Young people also reported missing physical contact with their parents and siblings, and the Health Information and Quality Authority noted that restrictions related to Covid-19 had significantly impacted the service's capacity to maintain up-to-date mandatory training for all staff in vital areas of practice. See Health Information and Quality Authority, [Report of Oberstown Children Detention Campus](#) (2021). See also Oberstown, [Annual Report 2021](#) (2022).

523 One in four children in Oberstown have a diagnosed learning disability; seven in ten have substance misuse problems; four in ten have either been in care or had significant involvement with Tusla prior to their detention and around half of the children have a mental health need. See: Oberstown Children Detention Campus, [Annual Report 2020](#), p. 8 and Oberstown Children Detention Campus (2019) [Key characteristics of young people in detention: A snapshot \(Q1, 2019\)](#), p. 6.

524 Traveller children are significantly over-represented in youth detention making up 26% of Oberstown Children's Detention Campus in 2020 while representing only 1.2% of the general population. However, despite this over-representation, there is only brief mention of the specific needs of Traveller youths in the State's *Youth Justice Strategy 2021-2027*, as reported in IPRT, [Alternative Report to the UN Human Rights Committee on Ireland's Fifth Review under the International Covenant on Civil and Political Rights](#) (2022), pp. 25-26.

525 IPRT, [Submission by the Irish Penal Reform Trust for the 39th Session of the UPR Working Group of the Human Rights Council](#) (2021), p.6.

526 A recent inspection in Oberstown found that the monitoring of the use of single separation requires improvement, and that the records did not always accurately reflect practice and interventions with young people. The data demonstrated that there were 98 incidents of physical restraint and 631 incidents of single separation in the 12 months prior to an inspection in November 2021. Policy and procedures for all restrictive practices were also not in place: HIQA, [Report of Oberstown Children Detention Campus](#) (2021). See also Oberstown, [Annual Report 2021](#) (2022).

- » **The Commission recommends that the *Youth Justice Strategy 2021-2027* is revised, in consultation with the Traveller community, to include further specific actions to address the over-representation of Traveller children in detention.**
- » **The Commission recommends that the State prioritises the reduction in the use of remand detention and restrictive practices for children in detention.**

Racial profiling

Reports of young people experiencing racial profiling by An Garda Síochána have been documented,⁵²⁷ and such profiling can lead to the reinforcing of stereotypical associations between crime and ethnicity.⁵²⁸ The Commission is concerned by recent research findings that Travellers, including children, are frequently stopped and searched by the Gardaí and subjected to racial harassment,⁵²⁹ adding to their distrust of the criminal justice system. The Human Rights Committee also raised its concerns in July 2022 about the multiple forms of discrimination the Traveller and Roma communities face in interactions with law enforcement, including through racial profiling.⁵³⁰

- » **The Commission recommends that the State takes measures⁵³¹ to address racial profiling,⁵³² based on the active participation of communities affected, including children, in their design, implementation and monitoring.**

527 Following two consultations organised by the Commission in March 2021, young participants reported experiencing racial profiling by An Garda Síochána and a question was posed as to whether police officers are adequately trained to deal with 'inter-racial atmospheres in Ireland.' See IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on the follow-up procedure to Ireland's combined 5th to 9th periodic reports](#) (2022) p. 13.

528 United Nations Committee on the Elimination of Racial Discrimination, [General recommendation No. 36 \(2020\) on preventing and combating racial profiling by law enforcement officials](#), CERD/C/GC/36 (17 December 2020).

529 See generally S. Joyce, O. O'Reilly, M. O'Brien, D. Joyce, J. Schweppe & A. Haynes, [Irish Travellers' Access to Justice](#) (2022). The study emphasised that stop and search practices are a key site for discriminatory policing, particularly in the form of racial profiling. The vast majority of interviewees from Traveller organisations were of the view that Travellers were stopped more often than settled people.

530 Human Rights Committee, [Concluding Observations on the fifth periodic report of Ireland](#) (2022), para 39.

531 The Committee on the Elimination of Racial Discrimination recommended that the State introduce legislation prohibiting racial profiling; put in place an independent complaints mechanism to handle racial profiling; review the policy, practices and training of the police, in collaboration with the communities most affected by racial profiling; and incorporate racial profiling issues into the training curriculum of police officers. Committee on the Elimination of Racial Discrimination; Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined fifth to ninth reports of Ireland](#), CERD/C/IRL/CO/5-9 (23 January 2020) paras. 15–16.

532 The Commission has previously recommended that the State address racial profiling by prioritising legislation through amendments to the *Garda Síochána (Powers) Bill* to define and prohibit racial profiling; and to include an express requirement to record the racial and ethnic origin of a person being stopped and searched, and the location at which the power is exercised. The Commission also recommended that the *Garda Síochána (Digital Recording) Bill* should prescribe the criteria for the selection of locations where CCTV is to be installed in order to safeguard against blanket surveillance of certain communities. See IHREC, [Ireland and the International Covenant on Civil and Political Rights: Submission to the Human Rights Committee on Ireland's fifth periodic report](#) (2022), pp. 97–98.



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