

**IRELAND AND THE UNITED NATIONS CONVENTION ON THE RIGHTS OF
THE CHILD**

**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**

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1. Introduction

The Irish Human Rights and Equality Commission (the IHREC) welcomes the opportunity to provide this report to the Committee on the Rights of the Child (the Committee) in advance of its forthcoming examination of Ireland's compliance with the Convention on the Rights of the Child (the Convention). Nine years have passed since the State was last examined by the Committee. The IHREC makes this submission in its capacity as Ireland's National Human Rights Institution (NHRI).

The IHREC notes that Ireland is being examined before diverse UN treaty monitoring bodies on a periodic basis.¹ In addition, in 2011, Ireland's human rights record was examined under the Universal Periodic Review (UPR) process.² Numerous cross-cutting themes have emerged in the context of these processes, some of which the Commission further highlights in this report.

The IHREC welcomes the establishment of an Inter-Departmental Committee on Human Rights.³ The IHREC also notes the establishment of an Oireachtas (Irish Parliament) Sub-Committee on Human Rights and Equality Relative to Justice and Equality Matters. However, the IHREC is of the view that the Sub-Committee's remit should be extended to review any matter with an underlying human rights component.⁴ The IHREC encourages the State to strengthen its engagement with the Treaty Body monitoring process by submitting its periodic reports on time to ensure that the relevant Committee has the most up-to-date information available to it. The IHREC also encourages the State to take steps to promote awareness of its obligations under the Convention at governmental level, as well as at parliamentary level.

The IHREC notes the authoritative, comprehensive and detailed reports submitted to the Committee by the Ombudsman for Children's Office⁵ and by the Children's Rights Alliance.⁶ The IHREC hopes

¹ UNHRC, *Concluding Observations on Ireland's Fourth Periodic Report* CCPR/C/IRL/CO/4, 2014. Available: <http://www.ihrec.ie/publications/list/un-hrc-concluding-observations-on-ireland-and-iccp/> [accessed 8 December 2015]
UNCESCR, *Concluding Observations: Ireland* UN Doc. E/C.12/IRL/CO/3, 2015. Available: www.ihrec.ie/download/pdf/icescr_report.pdf [accessed 8 December 2015].

² UNHRC, *Report of the Working Group on the Universal Periodic Review: Ireland*, A/HRC/19/9, 2011. Available: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-9_en.pdf [accessed 8 December].

³ Department of Foreign Affairs and Trade, 'Minister Sherlock chairs First Meeting of the Inter-Departmental Committee on Human Rights', 25 March 2015. Available: <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2015/march/minister-chairs-human-rights-committee/> [accessed 25 November 2015]. The Committee comprises representatives from the Department of Justice and Equality, the Department of Social Protection, the Department of Finance, the Department of Jobs, Enterprise and Innovation, the Department of Transport, Tourism and Sport, the Department of Communications, Energy and Natural Resources, the Department of Arts, Heritage and the Gaeltacht, and the Office of the Attorney General.

⁴ See http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/ide-committee/Sub-CommitteeonHumanRights [accessed 25 November 2015]. The Sub-Committee will examine how issues, themes and proposals take account of human rights provisions. The focused membership of the Committee intends to work to ensure that any new legislation is human rights 'proofed'. The Sub-Committee will report back to the Joint Oireachtas Committee on Justice, Defence and Equality on such topics and the extent to which compliance with the human rights of persons within the State is enhanced.

⁵ Ombudsman for Children, *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's consolidated Third and Fourth Report to the Committee*, April 2015. Available: <http://www.oco.ie/publications/reports-to-the-un/> [accessed 25 November 2015].

⁶ Children's Rights Alliance, *Are we There Yet? Parallel Report to Ireland's Third and Fourth Combined Report under the UN Convention on the Rights of the Child*, September 2015. Available: <http://www.childrensrights.ie/resources/are-we-there-yet-parallel-report-ireland> [accessed 25 November 2015].

that this report will complement their submissions, as well as providing some additional information to the Committee arising from recent IHREC research and policy work.

During the current reporting period there have been significant improvements in the State's approach to the protection and promotion of the rights of the child. The State has acknowledged the need to place children's rights at the heart of Government, through the creation of a senior Cabinet position and accompanying Government department. An important article on the rights of children, particularly in family and care proceedings, has been added to the Constitution of Ireland (Bunreacht na hÉireann). There have been significant changes to child and family law, as well as recent gender recognition and marriage equality legislation which will impact on the lived reality of LGBT persons and their families.

These recent reforms come in the context of a legacy of failures on the part of the State to protect and vindicate the rights of children in its care, and children whose care the State entrusted to voluntary, religious and private institutions. While there is much to welcome in these reforms, more improvement is needed. The State has yet to embed Convention principles consistently across all activities touching on the lives of children. The Convention has not yet been incorporated into Irish law, and there is no legal obligation on public bodies to comply with the Convention in the carrying out of their functions. As a result, State compliance with the Convention has been uneven and inconsistent across disparate areas of law, policy and practice. However, section 42(1) (c) of the Irish Human Rights and Equality Commission Act 2014 places a positive duty on public bodies to "protect the human rights of its members, staff and the persons to whom it provides services".

This report highlights a number of areas where this inconsistency is apparent, and which illustrate the need for the State to adopt a holistic cross-governmental approach to the rights of the child that is not only informed by the Convention, but is driven by it.

2. General Measures of Implementation (articles 4, 42 and 44(6))

2.1. National Human Rights and Equality Infrastructure

The Irish Human Rights and Equality Commission was established by the Irish Human Rights and Equality Commission Act 2014.⁷ It is the successor body to the Irish Human Rights Commission (IHRC) which contributed to the examination of Ireland by the Committee at its 43rd session in 2006.⁸ As the successor to the IHRC, the IHREC is Ireland's National Human Rights Institution,⁹ and following a reaccreditation process was awarded 'A' status by the UN International Coordinating Committee in November 2015. It is also the designated Equality Body as required by EU anti-discrimination directives.¹⁰

⁷ The Irish Human Rights and Equality Commission Act 2014 merged the former Irish Human Rights Commission and the former Equality Authority into a single enhanced body.

⁸ See Irish Human Rights Commission, *Submission to the UN Committee on the Rights of the Child on Ireland's second periodic report under the UN Convention on the Rights of the Child*, 2006. Available: http://www.ihrec.ie/download/pdf/sub_unrc_200605.pdf [accessed 5 November 2015]

⁹ This is provided for in section 44 of the Irish Human Rights and Equality Commission Act 2014.

¹⁰ The EU Anti-discrimination directive's requirement for EU Member States to set up equality bodies is explained on the website of Equinet, the European Network of Equality Bodies: "The EU equal treatment legislation requires Member States to set up an equality body. Most Member States have implemented the Racial Equality Directive (2000/43/EC) and the

The IHREC has a statutory remit to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination. In addition, the IHREC is tasked with reviewing the adequacy and effectiveness of law, policy and practice relating to the protection of human rights and equality in Ireland, and with making recommendations to Government on measures to strengthen, protect and uphold human rights and equality accordingly.¹¹ In accordance with section 10(2)(h) of the Irish Human Rights and Equality Commission Act 2014, the IHREC is also mandated to consult with international bodies or agencies with a knowledge of or expertise in human rights or equality.

2.2. Incorporation of the UNCRC into Domestic Law

The IHREC notes the State's obligation under Article 4 of the Convention to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention".

Despite the Committee's 2006 Concluding Observations,¹² Ireland has not fully incorporated the Convention into domestic law. This is consistent with what has been the State's general approach to domestic incorporation of international treaties, rooted in its dualist legal system.¹³ Rights holders therefore are unable to rely directly on the provisions of the Convention before the courts.¹⁴

The IHREC notes that the recent developments in Wales provide a noteworthy example of how Convention principles could be incorporated into government policy making and legislative processes.¹⁵

Gender Equal Treatment Directives (the 2010/41 on self-employed persons, the 2006/54 Recast directive, and the 2004/113 Goods and services directive) either by designating some existing institution or by setting up a new institution to carry out the competences assigned by the new legislation". Available: <http://www.equineteurope.org/-Equality-bodies> [accessed on 15 October 2015].

¹¹ Section 10(2)(b) of the Irish Human Rights and Equality Commission Act 2014, Available: <http://www.ihrec.ie/publications/list/ihrec-act-2014> [accessed on 15 October 2015].

¹² Committee on the Rights of the Child, 43rd Session, *Concluding Observations on Ireland*, CRC/CX/IRL/CO/2, 29 September 2006. At para 9: "The Committee encourages the State party to undertake further action to incorporate the Convention into domestic law". Available: www.dcy.gov.ie/documents/publications/UNCRC_2013 [accessed 7 December 2015].

¹³ 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. In its engagement with the first cycle of the Universal Periodic Review in 2011, Ireland indicated that it does not intend to "alter current practice" of making incorporation contingent on legislation. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Ireland*, para 28, A/HRC/19/9, 21 December 2011. Available: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-9_en.pdf [accessed 7 December 2015]

¹⁴ For example in *Olaniran & Others v Minister for Justice, Equality and Law Reform* [2010] IEHC 83 Clarke J clearly stated that ratification of the UNCRC is of no effect in Irish courts.

¹⁵ As of 1 May 2012, the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh ministers to have due regard to the Convention and its Optional Protocols "when making decisions about proposed legislation and policies and any review to existing legislation and policies". As of 1 May 2014 the duty has expanded to all ministerial functions. The Measure includes a duty to regularly publish reports detailing how the Welsh government has complied with the due regard duty. See Lesley Griffiths, Welsh Minister for Health and Social Services, Written Statement – 'Children's Rights Scheme – Report on the compliance with the duty under section 1 of the Rights of Children and Young Persons (Wales) Measure 2011', 31 January 2013. Available: <http://gov.wales/about/cabinet/cabinetstatements/2013/childrensrightsscheme/?lang=en> [accessed 11 November 2015].

The IHREC notes that the Law Reform Commission is currently examining the application of Ireland's international obligations in domestic law, with specific focus on the State's dualist approach arising from Article 29.6 of the Constitution of Ireland.¹⁶

The IHREC recommends that the State take steps to incorporate the Convention into Irish law to ensure that policymakers and public bodies comply with the Convention in the carrying out of their functions.

The IHREC recommends that the Minister for Children and Youth Affairs conduct a comprehensive audit of the State's law, policy and practice in all matters affecting the child to assess compliance with the Convention, particularly the general principles outlined in Articles 2, 3, 6, and 12, and where necessary, to implement legislative and administrative reforms to ensure compliance.

2.2.1. Optional Protocols to the Convention, and other Gaps in Adoption and Ratification of International Human Rights Standards Relevant to Children and Young People

Ireland has ratified the Optional Protocol on the involvement of children in armed conflict, and the Optional Protocol on a communications procedure. Ireland signed the Optional Protocol on the sale of children, child prostitution and child pornography in 2000, but has yet to ratify it. Ireland remains the only EU Member State which has not yet ratified this Optional Protocol.¹⁷

Ireland also has yet to ratify a number of international conventions and protocols directly relevant to the protection of the rights of the child. These include the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol;¹⁸ the Optional Protocol to the Convention against Torture (OPCAT);¹⁹ the Optional Protocol to the International Covenant and Economic, Social and Cultural Rights (ICESCR);²⁰ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); the Convention for the Protection of all Persons from Enforced Disappearances (CED) and the Council of Europe Istanbul Convention.²¹

¹⁶ Law Reform Commission. Available: <http://www.lawreform.ie/welcome/6-international-law.383.html> [accessed 5 November 2015].

¹⁷ In its response to the Committee's List of Issues, the State asserts that the ratification of the Protocol "is pending to ensure that all arrangements are in place to fully comply with the related obligations" (para 63). It indicates that while "substantive criminal law elements ... have largely been implemented", the State is awaiting the enactment of the Criminal Law (Sexual Offences) Bill 2015, whereupon "Ireland will be in a position to proceed with its commitment to ratify the Protocol" (para 64). Replies of Ireland to the list of issues, CRC/C/IRL/Q/3-4/Add.1, 22 October 2015. Available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=83&ctl00_PlaceHolderMain_radResultsGridChangePage=2_20 [accessed 7 December 2015].

¹⁸ Ireland signed the CRPD in 2007 but has not yet ratified it. The Government is currently in the process of a programme of legislative reform to be in a position to ratify the CRPD, and has published a 'roadmap' outlining the legislative changes to be undertaken. See Department of Justice, *Fitzgerald and Ó Riordáin publish Roadmap to Ratification of the UN Convention on the Rights of Persons with Disabilities*, 21 October 2015. Available: <http://www.justice.ie/en/JELR/Pages/PR15000550> [accessed 5 November 2015].

¹⁹ Ireland signed OPCAT in 2007 but has not yet ratified it. The Government has not yet provided a timeframe for the ratification of OPCAT or enumerated the types of policy and legislative measures necessary to advance the progress of ratification. The Government has also yet to provide information as to what type of National Preventive Mechanism (NPM) it envisages as part of the requirements of OPCAT.

²⁰ Ireland signed the Optional Protocol to ICESCR on 23 March 2012 but has not yet ratified it.

²¹ Ireland signed the Council of Europe *Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention), and published an Action Plan for its implementation on 5 November 2015. The Action Plan outlines "the outstanding actions required for Ireland to be in a position to ratify the Convention" and, while not setting a target date for ratification, does not envisage all measures to be in place until the fourth quarter of 2017. Department of

The IHREC recommends that the State progress ratification of the Optional Protocol on the Sale of children, child prostitution and child pornography, and other outstanding international treaties and protocols, as a matter of priority, including through prioritising the passage of any legislative and policy reforms necessary for ratification.

2.3. Recent Developments in Child Law and Policy

2.3.1. Article 42A of the Constitution of Ireland

A referendum was held in October 2012 to propose the insertion of a children's rights provision into the Constitution of Ireland. The provision, Article 42A, in the first instance, provides that the State "recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its law protect and vindicate those rights".²² The article then sets out a number of provisions dealing with child protection and care.²³ These provisions name the best interests of the child as the "paramount consideration" where adoption, custody and guardianship are concerned.²⁴ There is also a requirement that "the views of the child ... be ascertained and given due weight" in matters of adoption, custody and guardianship, and where the State is bringing proceedings aimed at preventing "the safety and welfare of any child from being prejudicially affected".²⁵

The provision applies largely to family law and child protection, and omits, for example, criminal or health matters.²⁶ The provision makes no direct reference to the Convention²⁷ and omits from its ambit the Convention's general principles of non-discrimination and the right to survival and development. However, the provision does form a basis on which two general principles of the Convention, namely the "best interests" and "voice of the child" principles, can be enshrined in the State's law, policy and practice in the albeit limited arenas of family law and child protection.

The proposal to insert Article 42A into the Constitution was carried by referendum, but a legal challenge²⁸ delayed the result until 2015. This meant a delay in advancing a number of significant

Justice, *Istanbul Convention Action Plan*. Available:

<http://www.justice.ie/en/JELR/ActionPlanIstanbulConNovember.pdf/Files/ActionPlanIstanbulConNovember.pdf> [accessed 5 November 2015].

²² Constitution of Ireland, Article 42A.1. See further IHRC, *Observations on the Proposed 31st Amendment of the Constitution (Children) Bill 2012*, September 2012. Available: <http://www.ihrec.ie/publications/list/ihrc-observations-on-31st-amendment-of-constitution/> [accessed 7 December 2015].

²³ Constitution of Ireland, Article 42A, Sections 2–4.

²⁴ Constitution of Ireland, Article 42A.4.1.

²⁵ Constitution of Ireland, Article 42A.4.2.

²⁶ The Special Rapporteur on Child Protection, Dr. Geoffrey Shannon, has recommended that notwithstanding the limited ambit of Article 42A, legislation "should provide for the views of the child to be ascertained in *any* proceedings regarding the interests of the child" (emphasis in original). Department of Children and Youth Affairs, *Sixth Report of the Special Rapporteur on Child Protection*, January 2013. Available:

<http://www.dcy.gov.ie/documents/Publications/SixthRapporteurReport.pdf> [accessed 20 November 2015]. The Special Rapporteur on Child Protection is a Government-appointed expert on child and family law, tasked with reviewing legal developments on the protection of children; assessing the impact of litigation in national and international courts; preparing annual reports on child protection; and examining the application of existing legislative provisions.

²⁷ The insertion of a direct reference to the Convention, so that it may be relied upon by Courts as a source and interpretive tool, was recommended by the IHRC in its observations on the proposed amendment. See IHRC, *Observations on the Proposed 31st Amendment of the Constitution (Children) Bill 2012*, p 6, September, 2012. Available: <http://www.ihrec.ie/publications/list/ihrc-observations-on-31st-amendment-of-constitution> [accessed 7 December 2015].

²⁸ A legal challenge was taken immediately after the Referendum in November 2012. The High Court held against the complainant in two separate judgments: *Jordan v Minister for Children and Youth Affairs & Ors* [2013] IEHC 625 and *Jordan*

legislative reforms in the area of child protection, notably the placement of the *Children First Guidelines*, on a statutory footing.²⁹ The relevant legislation, the Children First Act 2014, was signed into law on 19 November 2015, but has not yet been commenced.³⁰

Concerns have been raised regarding the resourcing of the Child and Family Agency (Tusla),³¹ established in 2014 as the dedicated State agency responsible for improving well-being and outcomes for children with a mandate underpinned by children's rights principles.³² The 2016 Budget has, however, allocated an increased budget of €662 million to the Agency "to alleviate service pressures in the child welfare and protection services".³³

Noting the limited scope of Article 42A, the IHREC recommends that the State nonetheless reflect the spirit of the amendment in all proceedings regarding the best interests of the child, in keeping with the recommendations of the Government's Special Rapporteur on Child Protection.

The IHREC welcomes the recent increase in the resourcing of the Child and Family Agency (Tusla), and recommends the close monitoring of the Agency's funding to ensure the recent budget allocation meets its needs.

2.3.2. Children and Family Relationships Act 2015

The Children and Family Relationships Act 2015³⁴ was signed into law in April 2015, but is not yet been commenced. Once commenced, the Act will put in place a modern legislative regime for some elements of donor-assisted human reproduction, as well as amending a range of primary legislation on guardianship, families and children.

Where donor-assisted human reproduction is concerned, the Act provides that a child born as a result of such a process will, generally, on reaching 18 years of age, have the right to receive information on the identity of gamete and/or embryo donor(s).³⁵ These provisions reflect the Convention right of the child to know his or her parents (Article 7) and to preserve his or her identity (Article 8).³⁶

v Minister for Children and Youth Affairs & Ors [2014] IEHC 327. Leave was granted to appeal the decision to the Supreme Court which heard arguments in 2014, and which dismissed the challenge in 2015: *Re: Referendum Act & re: Jordan and Jordan v Minister for Children and Youth Affairs & ors* [2015] IESC 33.

²⁹ Department of Children and Youth Affairs, *Children First: National Guidance for the Protection and Welfare of Children*, 2011. Available: www.dcy.gov.ie/documents/Publications/ChildrenFirst.pdf [accessed 7 December 2015]

³⁰ See <http://www.oireachtas.ie/documents/bills28/bills/2014/3014/b30c14d.pdf> [accessed 19 November 2015].

³¹ O'Brien. C., 'Children's services under threat, warns agency chief', *The Irish Times*, 16 September 2014. Gordon Jeyes (Chief Executive of Tusla, the Child and Family Agency) estimated that, in 2014, the Agency had overrun its budget by €25 million and would require €45 million to maintain services at the current level.

³² The Agency was established on 1 January 2014 following the enactment of the Child and Family Agency Act 2013. Section 9 of the Act provides for the "best interests and views of the child". Available: www.oireachtas.ie/documents/bills28/acts/2013/a4013.pdf [accessed 7 December 2015]

³³ Government of Ireland, *Budget Expenditure Allocations 2016–18, Part B, Programme A*. Available: <http://budget.gov.ie/Budgets/2016/Documents/Part%20II%20Expenditure%20Allocations%202016%20-%202018.pdf> [accessed 19 November 2015].

³⁴ Children and Family Relationships Act 2015. Available: <http://www.irishstatutebook.ie/eli/2015/act/9/enacted/en/pdf> [accessed 6 November 2015].

³⁵ Sections 34 and 35 of the Children and Family Relationships Act 2015. Available: <http://www.irishstatutebook.ie/eli/2015/act/9/enacted/en/pdf> [accessed 6 November 2015].

³⁶ In its observations on the draft legislation, the IHREC highlighted a number of areas where provisions in the legislation could be strengthened to better meet Convention standards on the right to identity. See IHREC, *Observations on the Children and Family Relationships Bill 2015*, March 2015. Available: <http://www.ihrec.ie/news/2015/03/30/observations->

Where matters of guardianship, custody, families and children are concerned, the Act generally provides that a child shall have the opportunity to give their view in legal proceedings that affect her or him, and requires the courts, variously, to “have regard to” or to “take into account” those views. The Act also provides that the court assess the best interests of a child with regard to a range of relevant factors.³⁷ These provisions anticipate the requirements of the newly-adopted Constitutional article on children’s rights, discussed above, and are a further important step closer to conformity with Convention principles in this area of the law.³⁸

The IHREC recommends that the Children and Family Relationships Act 2015 be commenced at the earliest opportunity.

The IHREC recommends that the State put in place a mechanism to capture practitioners’ experience of the Act’s practical application, in order to identify any necessary improvements to the legislation, and to inform the training of Courts Service officials and the judiciary.³⁹

2.3.3. Children in Family and Care Proceedings

The operation of the best interests principle in proceedings regarding guardianship, access, custody and care, as well as the constitutional obligation that in such proceedings “the views of the child shall be ascertained and given due weight”, may present a new set of practical and procedural challenges for the Irish Courts.

As outlined above, the Child and Family Relationships Act 2015 contains some detail on how these principles are to be implemented, though it has not yet been commenced.

The Government-appointed Special Rapporteur on Child Protection, Dr. Geoffrey Shannon, has underlined the need for judicial guidelines,⁴⁰ as well as the need for procedural and infrastructural

[on-the-children-and-family-relationships/](#) [accessed 7 December 2015]. These areas included the lack of provision for the entry into the National Donor-Conceived Person Register of persons born before the entry into force of the Act (recommendation 1); the lack of provision for possible receipt by the National Donor-Conceived Person Register of details of persons born following ‘informal donor-assisted reproduction’ (recommendation 2) and the omission of a requirement to register donor siblings to the National Donor-Conceived Person Register from the provisions of the Act (recommendation 3). The IHREC also recommended that the legislation be amended to enable persons under the age of 18 to request and receive identity information, subject to a ‘sufficient maturity’ test (recommendation 4).

³⁷ *Children and Family Relationships Act 2015*, Section 63, providing for the insertion of a Part on ‘best interests of the child’ into the Guardianship of Infants Act 1964. This Part sets out for the Court a range of “factors or circumstances that it regards as relevant to the child concerned and his or her family”.

³⁸ In its observations on the draft legislation, the IHREC identified a number of areas for improvement, in order to more fully reflect the principles of Article 12 of the Convention. See IHREC, *Observations on the Children and Family Relationships Bill 2015*, March 2015. This included highlighting the lack of any reference to courts obtaining the views of the child in new section 11E concerning application for custody by a child’s relatives (recommendation 6). Available:

<http://www.ihrec.ie/news/2015/03/30/observations-on-the-children-and-family-relationships/> [accessed 7 December 2015]

³⁹ The IHREC also supports the recommendation of the Child Care Reporting Project that “any review of the Child Care Act should include a review of existing practice and wide consultation with social work and child law experts and legal practitioners”. See Child Care Law Reporting Project *Final report* Dublin, 2015, p 52 (recommendation 14.1). Available: http://www.childlawproject.ie/wp-content/uploads/2015/11/CCLRP-Full-final-report_FINAL2.pdf [accessed 9 December 2015]. The CCLRP was set up in November 2012 under regulations arising out of the Child Care (Amendment) Act 2007, which provided for the reporting of the proceedings of the child care courts, subject to maintaining the anonymity of the families and children concerned. The purposes of the CCLRP was to bring transparency to child care proceedings and to collect information “which will assist in the better operation of the Act”.

⁴⁰ Recommendations set out in section 4.1.4 of Geoffrey Shannon, *Sixth Report of the Special Rapporteur on Child Protection*, January 2013. Available: <http://www.dcy.gov.ie/documents/Publications/SixthRapporteurReport.pdf> [accessed 20 November 2015] The Courts have also acknowledged this need for guidelines and, in their absence, some members of the judiciary have sought to formulate approaches. For example, a number of years before the adoption of the

changes that take into account the role of the child in proceedings, pointing to the family court systems of the United Kingdom, Australia and New Zealand as possible models.⁴¹ The IHREC notes that the Child Care Law Reporting Project recommended that principles should be set for judges directly hearing the child and that a policy should be developed by the courts in relation to hearing the voice of the child in order to ensure consistency.⁴² The IHREC notes that the Ryan Report⁴³ recommendation that the Courts Service “conduct best practice research into other jurisdictions regarding the management of children and family services in the Court” remains to be implemented.⁴⁴

The Government has acknowledged some of these needs, and has made a commitment to instituting reforms of the family court system through an as-yet-unpublished Family Courts Bill⁴⁵ and accompanying Mediation Bill.⁴⁶ The final report of the Child Care Law Reporting Project has also called for the prioritisation of the establishment of a dedicated Family Court. The Project also recommends that practical changes may be made prior to the establishment of such a court, for example judges should be made available to hear cases in districts which do not have a dedicated child-care hearing day.⁴⁷ The IHREC is of the view that the development of this legislation presents an important opportunity to advance the rights of the child in family law proceedings, particularly with regard to rights under Article 12 of the Convention.

The IHREC also notes that in General Comment No. 5 the Committee requires States to ensure that effective, child-sensitive remedies, including access to courts, are available to children and their representatives.⁴⁸ The IHREC notes reports of individuals appearing in court without legal representation in both child care⁴⁹ and family law⁵⁰ matters. The dangers of self-representation may result in an applicant not being aware of procedures or having to articulate individual requirements

amendment, in a judicial separation case Abbott J set out key guidelines he adhered to when talking to the children involved, in which he drew upon his experience of “networking and conferencing with judicial peers, lawyers, academics and professional experts, both nationally and internationally.” See *O’D v O’D* [2008] IEHC 468, para 10. Available: <http://www.bailii.org/ie/cases/IEHC/2008/H468.html> [accessed 19 November 2015].

⁴¹ Geoffrey Shannon, *Seventh Report of the Special Rapporteur on Child Protection*, January 2014 p 23 Available: <http://www.dcy.gov.ie/documents/publications/SeventhSpecialRapReport2014.pdf> [accessed 14 November 2015].

⁴² Child Care Law Reporting Project (CCLRP) *Final report* Dublin, 2015, p 47 (recommendation 10.2).

⁴³ This is discussed in more detail in section 3.3 below.

⁴⁴ Ryan Report Monitoring Group, Department of Children and Youth Affairs, *Ryan Report Implementation Plan: Fourth Progress Report*, 2014. Available:

<http://www.dcy.gov.ie/documents/publications/20150324RyanRepFourthProgressDec2014.pdf> [accessed 7 December 2015].

⁴⁵ *Directory of Proposed Legislation*, Department of Justice and Equality. Available: <http://www.justice.ie/en/JELR/Pages/FamilyCourtsBill> [accessed 19 November 2015].

⁴⁶ *Directory of Proposed Legislation*, Department of Justice and Equality. Available: <http://www.justice.ie/en/JELR/Pages/MediationBill> [accessed 19 November 2015].

⁴⁷ Child Care Law Reporting Project *Final report* Dublin, 2015, p 52 (recommendations 15.1 and 15.2).

⁴⁸ United Nations Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention*, CRC/GC/2003/5, 27 November 2003, para. 24. Available: http://www.unicef-irc.org/portfolios/general_comments/GC5_en.doc.html [accessed 14 December 2015].

⁴⁹ According to the Child Care Law Reporting Project this often occurs in child care proceedings where one of the parties has not yet sought legal representation. See Child Care Law Reporting Project, *Second Interim Report* Dublin, 2014, p 58. Available: <http://www.childlawproject.ie/wp-content/uploads/2014/10/Interim-report-2-Web.pdf> [accessed 25 November 2015].

⁵⁰ Ombudsman for Children’s Office, ‘Her Honour, Judge Rosemary Horgan, President of the District Court & the Ombudsman for Children, Emily Logan launch Information Campaign for Separating Parents & their Children’, 2014. Available <http://www.oco.ie/2014/02/her-honour-judge-rosemary-horgan-president-of-the-district-court-the-ombudsman-for-children-emily-logan-launch-information-campaign-for-separating-parents-their-children/> [accessed 7 December 2015].

and rights before the court, and can lead to an inequality of arms.⁵¹ While legal assistance is provided by the Legal Aid Board in family law matters, subject to qualifying criteria,⁵² the IHREC notes that resource issues have led to long waiting times for access to the service.⁵³ The IHREC also notes the recommendation of the Child Care Law Reporting Project that respondents should have the opportunity to obtain legal representation and the Legal Aid Board should provide such representation where appropriate.⁵⁴

The IHREC recommends that appropriate supports be created for family and child care courts in order that they are better equipped to apply the new standards required by Article 42A of the Constitution of Ireland. This should include guidelines and training for judges and court staff, and appropriate procedural and infrastructural reforms.

The IHREC welcomes Government commitments to reform the family law courts, and recommends the prompt publication and enactment of the proposed family court and mediation legislation, ensuring that both incorporate the State's relevant Convention obligations.

The IHREC recommends that the Government adequately resource the Legal Aid Board to ensure that waiting times are reduced, and review the income threshold to ensure that families who cannot afford legal representation have access to state supports.

2.4. Independent Monitoring Mechanisms

2.4.1. The Ombudsman for Children's Office

The Ombudsman for Children's Office (OCO)⁵⁵ examines complaints against public bodies made by or on behalf of children under 18 years. Complaints to this body have increased year-on-year from 94 in 2004 to almost 1,600 in 2014.⁵⁶ The vast majority of complaints received by the OCO relate to education, family support, care and protection.⁵⁷

The OCO has highlighted the limitations currently placed on its independent investigatory powers in the area of asylum, immigration, naturalisation and citizenship. This has resulted in the inability of the OCO to independently review the activity of the Reception and Integration Agency (RIA) and the non-state actors to whom the agency contracts accommodation and catering services for the Direct

⁵¹ Coulter, Dr. C., *Family Law Reporting Pilot Project: Report to the Courts Service*, 2007. Available: [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/C4FA6C02C7B13A428025738400521CE9/\\$FILE/Report%20to%20the%20Board%20of%20the%20Courts%20Service.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/C4FA6C02C7B13A428025738400521CE9/$FILE/Report%20to%20the%20Board%20of%20the%20Courts%20Service.pdf) [accessed 25 November 2015]

⁵² For example an individual may qualify for legal aid if their disposable income is less than €18,000 per annum and disposable capital (other than the home) is less than €100,000. See further: http://www.legalaidboard.ie/lab/publishing.nsf/Content/Civil_Legal_Aid [accessed 7 December 2015].

⁵³ Legal Aid Board, *Annual Report*, 2014. Available: [http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/ab5e7dce1995ba3d80257eba004b33b4/\\$FILE/Annual%20Report%202014.pdf](http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/ab5e7dce1995ba3d80257eba004b33b4/$FILE/Annual%20Report%202014.pdf) [accessed 7 December 2015].

⁵⁴ Child Care Law Reporting Project *Final report* Dublin, 2015, p 52 (recommendations 15.3).

⁵⁵ Established by the Ombudsman for Children Act 2002. Available: <http://www.irishstatutebook.ie/eli/2002/act/22/enacted/en/html> [accessed 7 December 2015].

⁵⁶ Ombudsman for Children's Office, *Annual Report 2014*, p 14. Available: <http://www.oco.ie/publications/annual-reportsfinancial-statements/> [accessed 7 December 2015].

⁵⁷ Ombudsman for Children's Office, *Annual Report 2014*, p 16 Available: <http://www.oco.ie/publications/annual-reportsfinancial-statements/> [accessed 7 December 2015].

Provision system.⁵⁸ The IHREC has previously highlighted this as “being incompatible with the principle of non-discrimination”.⁵⁹

The IHREC reiterates its previous endorsement of calls by the Ombudsman for Children’s Office to have its investigatory remit expanded to include Direct Provision and other related services contracted by the Reception and Integration Agency (RIA).⁶⁰

2.4.2. The Health Information and Quality Authority

The Health Information and Quality Authority (HIQA) is an independent State body for the oversight of health and social care services through independent and, in some instances unannounced, inspections.⁶¹ A core activity of HIQA is “the registration, oversight and scrutiny of designated health and social care services, including children’s residential centres, residential services for older people and children and adults with disabilities”.⁶²

The IHREC notes that sections 41(a), (d) and (e) and 45(1)(a) of the Health Act 2007 have not yet been commenced. The commencement of these sections would enable HIQA to inspect certain private and voluntary residential and respite services for children. This gap means that while the Child and Family Agency, as the procuring department, can conduct inspections, such services are not subject to any independent scrutiny by HIQA.

The IHREC recommends that the State commence sections 41(a), (d) and (e) and 45(1)(a) of the Health Act 2007 without delay in order to enable HIQA to conduct independent inspections of all residential, foster and respite services for children, whether the service is provided directly by the State or through a non-state actor.

2.5. Public Procurement and Children’s Rights

Section 42(1)(c) of the Irish Human Rights and Equality Commission Act 2014 places a positive duty on public bodies to “protect the human rights of its members, staff and the persons to whom it provides services”. The IHREC is of the view that this duty should be met regardless of whether the service is provided directly by the State, or through a non-state actor.

⁵⁸ Ombudsman for Children, *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland’s consolidated Third and Fourth Report to the Committee*, April 2015, para 2.7.4. Available: http://www.oco.ie/wp-content/uploads/2014/03/OCO_AltReportUNCRC_2015.pdf [accessed 7 December 2015]

⁵⁹ IHREC, *Policy Statement on the System of Direct Provision, 2014*, p 19. Available: <http://www.ihrec.ie/publications/list/ihrec-policy-statement-on-direct-provision/> [accessed 8 December 2015].

⁶⁰ Similar recommendations have been made by the Working Group to Report to Government on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers. Department of Justice and Equality, *Final Report, 2015* para 4.135. Available: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf> [accessed 25 November 2015].

⁶¹ See <http://www.hiqa.ie/> [accessed 17 November 2015]. HIQA derives its mandate from, and undertakes its functions pursuant to, the Health Act 2007 and other relevant legislation including the *Child Care Act, 1991* Available: <http://www.irishstatutebook.ie/eli/1991/act/17/enacted/en/html> [accessed 8 December 2015] and the Children Act, 2001. Available: <http://www.irishstatutebook.ie/2001/en/act/pub/0024/> [accessed 8 December 2015].

⁶² See <http://www.hiqa.ie/> [accessed 17 November 2015].

The IHREC has expressed concern that human rights accountability mechanisms, including around the rights of the child, can be weakened where the State delivers its public functions through non-state actors.⁶³ The IHREC therefore regards public procurement as an area of opportunity for the better incorporation of the Convention into policy and practice, in particular Article 4 and Article 3(1).

The IHREC is of the view that the State should take due regard of recent elaborations of the general principles by the Committee in General Comment No. 16 on the impact of business on children's rights.⁶⁴ The General Comment clearly identifies States' obligation to "ensure that public procurement contracts are awarded to bidders that are committed to respecting children's rights".⁶⁵

The State subcontracts a range of its functions and services for the care, welfare, and health of children to non-state actors. The lack of independent monitoring of some of these services is a concern highlighted elsewhere in this report.⁶⁶ It is the view of the IHREC that an opportunity exists to adopt a more holistic and Convention-driven approach to standard-setting in State procurement of services for the care, welfare, and health of children.

Reform of this type could take place in the wider context of the *UN Guiding Principles on Business and Human Rights*.⁶⁷ The Irish Department of Foreign Affairs and Trade is in the process of developing a National Action Plan on Business and Human Rights.⁶⁸ This process presents an opportunity for human rights compliance to be integrated across the activities of all State enterprises and non-state actors acting on the State's behalf. In preparing its National Action Plan the State should give consideration to making human rights compliance a basic eligibility criterion for Government procurement, and making human rights due diligence a mandatory requirement with legislative underpinning.

The IHREC recommends that the State:

- **Undertake a comprehensive audit of its public procurement practices where services for children and young people are concerned, to assess the degree to which such practices take account of the State's Convention obligations.**
- **Elaborate and place on a statutory footing a set of criteria, based on the general principles of the Convention as elaborated in General Comment No. 16, which form a minimum qualifying requirement for all non-state actors tendering for provision of services to the State. This should include provision of a corporate statement of compliance with international and domestic human rights standards.**

⁶³ Oral statement of the IHREC's Chief Commissioner, Emily Logan, to the UN Committee on Economic, Social and Cultural Rights, June 2015.

⁶⁴ Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, CRC/C/GC/16.

⁶⁵ Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, CRC/C/GC/16, para 27.

⁶⁶ See sections 2.4.1 and 2.4.2 of this report.

⁶⁷ Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, 2011. Available:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf [accessed 13 November 2015].

Guiding principle 6 outlines that "States should promote respect for human rights by business enterprises with which they conduct commercial transactions".

⁶⁸ On 10 December 2015 the Minister of Foreign Affairs and Trade Charles Flanagan announced the publication of a 'Working Outline' of this national plan. See Department of Foreign Affairs and Trade, *Working Outline of Ireland's National Plan on*

Business and Human Rights 2016–2019, December 2015. Available:

<https://businesshumanrightsireland.files.wordpress.com/2015/12/working-outline-of-irelands-national-plan-on-business-and-human-rights-10-dec-20151.pdf> [accessed 10 December 2015].

- Place a statutory obligation on all service providers to meet this set of standards in their provision of services, and outline this clearly in all service level agreements.
- Ensure that, without exception, all non-state actors are subject to independent inspection by independent oversight bodies, and that submission to such inspections is stipulated in service level agreements.
- Institute the above reforms with due regard to the *UN Guiding Principles on Business and Human Rights* and consider the wider application of human rights-based procurement practices in the context of the State's National Action Plan on Business and Human Rights.

2.6. Child-friendly Budgeting

In its General Comment No. 5, the Committee has underscored the importance of making children visible in States' budgeting practices, and the need for a detailed and continuous process of child impact assessments both in advance of and following the adoption of budgetary allocations and policies.⁶⁹ These points are further echoed in the report of the UN High Commissioner for Human Rights *Towards better investment in the rights of the child*, which sets out standards for child rights-based budget preparation, including formulation, allocations, implementation, and evaluation.⁷⁰

The IHREC notes the commitment to "explore the development of cross-Government estimates for expenditure on children and young people" in the State's national policy framework for children, *Better Outcomes, Brighter Futures*.⁷¹ The IHREC also notes the recent practice by the Department of Social Protection of publishing social impact assessments of annual Budgets.⁷²

While these are welcome developments, the IHREC is of the view that further steps are required in order to establish a Convention-led approach to child-friendly budgeting as envisaged in General Comment No. 5, and as further elaborated by the High Commissioner for Human Rights in *Towards better investment in the rights of the child*.

In November 2015 the OECD published its preliminary draft of its *Review of Budget Oversight for Ireland*.⁷³ The Review proposes a number of procedural changes to enhance parliamentary oversight of budgetary processes and enjoys cross-party support.⁷⁴ This presents an opportunity to ensure that children's rights are incorporated into the budgeting and allocation process.

⁶⁹ United Nations Committee on the Rights of the Child, General Comment No. 5: General Measures of Implementation of the Convention, CRC/GC/2003/5, 27 November 2015 pp 45–52.

⁷⁰ United Nations Human Rights Council, *Toward better investment in the rights of the child – Report of the United Nations High Commissioner for Human Rights* A/HRC/28/33 19 December 2014. Available: https://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwib4Zbs0d3JAHUICw8KHRQvDEkQFggcMAA&url=http%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession28%2FDocuments%2FA_HRC_28_33_ENG.doc&usg=AFQjCNH3G8Cj0GDvz1okY5upwGb5JYkNgg [accessed 8 December 2015].

⁷¹ Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: the national policy framework for children & young people 2014–2020*, p 43. Available: http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf [accessed 14 December 2015].

⁷² Department of Social Protection, *Research Briefing Social impact assessment of the main welfare and tax measures for 2015*, Available: <http://www.welfare.ie/en/downloads/SocialImpact2015.PDF> [accessed 14 December 2015].

⁷³ OECD (forthcoming), 'Review of budget oversight by parliament: Ireland', *OECD Journal on Budgeting* Vol.15/3. Draft Available: <http://www.oireachtas.ie/parliament/media/housesoftheoireachtas/Ireland-Parliamentary-Budget-Review-Preliminary-Draft.pdf> [accessed 24 November 2015].

⁷⁴ Proposed procedural changes include: the setting up of *ex ante* springtime parliamentary committee hearings on fiscal planning; pre-budget parliamentary hearings under sector-specific joint committees, involving ministers and societal stakeholders; committee space for performance hearings with joint committees to discuss "outturn performance"; and the

The IHREC recommends that the State should build Convention-led child-friendly budgeting into the OECD's recently-proposed reforms in budgetary planning and oversight.

The IHREC recommends that the State develop a system of cross-Government estimates for expenditure on children.

The IHREC recommends that the State enhance the existing framework for social impact assessments to meet the standards set out in General Comment No. 5, ensuring that budgetary policies are assessed and evaluated against the State's Convention obligations.

3. Civil Rights and Freedoms (articles 7, 8, 13–17, 19; 28(2); 37(a) and 39)

3.1. Right to Identity

The **Gender Recognition Act 2015** was signed into law in July 2015 and was commenced in September 2015. The Act was a positive legislative development for the legal recognition of transgender persons in Ireland following many years of inaction by the State.⁷⁵

The Act provides that an application may be made to the Minister for Justice and Equality for a Gender Recognition Certificate on behalf of a 16 or 17 year old child. This application may only be made where a court order has been obtained, which requires parental or guardian consent and certification by two medical practitioners.⁷⁶ The Act does not provide for the recognition of the preferred gender of a person under 16 years of age.

The IHREC has highlighted these aspects of the Act as problematic from a children's rights perspective,⁷⁷ as have a number of children's rights organisations. The OCO has described the application process for 16 and 17 year olds as "onerous", characterising the requirement for medical approval as "inappropriate". It has also highlighted as problematic the lack of provision for under 16s.⁷⁸ In its parallel report to the Committee, the Children's Rights Alliance also echoed these concerns, and highlighted the need for more research "to understand the difficulties faced by transgender, intersex or gender non-conforming children in accessing schools, health care, and social services".⁷⁹

creation of an Estimates Committee. OECD (forthcoming), 'Review of budget oversight by parliament: Ireland', *OECD Journal on Budgeting* Vol.15/3.

⁷⁵ Ireland was the last EU member state to introduce gender recognition provisions. Failure to do so was found in breach of the European Convention on Human Rights (*Foy v An t-Ard Chláraitheoir & Ors* [2007] IEHC 470) and was the subject of a recommendation by the UN Human Rights Committee in 2014 (United Nations Human Rights Committee, *Concluding Observations for Ireland*, CCPR/C/IRL/CO/4, para 7. Available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5 [accessed 7 December 2015].

⁷⁶ Sections 8, 9 and 12 of the Gender Recognition Act 2015. Available at www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf [accessed 8 December 2015].

⁷⁷ IHREC, 'IHREC reiterates its call to further safeguard the rights of Transgender and Intersex people', 10 March 2015. Available: <http://www.ihrec.ie/news/2015/03/10/ihrec-reiterates-its-call-to-further-safeguard-the/> [accessed 25 November 2015].

⁷⁸ Ombudsman for Children's Office, *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's consolidated Third and Fourth Report to the Committee*, April 2015, section 5.2.1.

⁷⁹ Children's Rights Alliance, *Are we There Yet? Parallel Report to Ireland's Third and Fourth Combined Report under the UN Convention on the Rights of the Child*, September 2015, para 122. Available: <http://www.childrensrights.ie/resources/are-we-there-yet-parallel-report-ireland> [accessed 7 December 2015].

The IHREC recalls that Article 8 of the Convention obliges State parties to “respect the right of the child to preserve his or her identity” and to “provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity”. The IHREC further recalls the “indivisibility of all aspects of human identity including sexual orientation and gender identity” as underscored in the Yogyakarta Principles.⁸⁰

The IHREC recommends that the Gender Recognition Act be amended to allow young people aged 16 and over to make an application under the legislation themselves, subject to appropriate safeguards.

The IHREC recommends that the Act be amended to enable applications to be made by a parent or guardian on behalf of young people under the age of 16 years, subject to appropriate safeguards and in line with the Convention’s ‘best interests’ and ‘voice of the child’ principles.

The IHREC recommends that the State undertake research on the needs of transgender and intersex children to inform future policy on gender recognition.

On 27 July 2015 the Department of Children and Youth Affairs published **the General Scheme and Heads of the Adoption (Information and Tracing) Bill**.⁸¹ The draft legislation envisages the establishment of “a proactive Adoption Information Register” and “Information and Tracing Service” to record information on persons affected by adoption, “whether adopted themselves, birth parents or relatives”, in order to place the provision of information on adoptions on a statutory footing.⁸² The draft legislation, amongst a range of measures, provides for adoptive parents to obtain information from the Adoption Agency about the birth parents of their adopted child, and “as such may help fulfil an adopted person’s right to know his or her identity”.⁸³ The scheme is guided by a presumption in favour of sharing information, with safeguards in place to protect birth parents, adoptive parents and adopted children. The scheme also envisages that the decision to share information will be made with “the best interests of the child as the paramount consideration”.⁸⁴

Noting the State’s obligations under Articles 7 and 8 of the Convention, and the Committee’s observation in General Comment No. 14 underlining the importance for children to “access

⁸⁰ *The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, Principle 1D. The Principles define “gender identity” as referring “to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms” (introduction, p 6). Available: www.yogyakartaprinciples.org [accessed 11 November 2015].

⁸¹ Department of Children and Youth Affairs, *Heads and General Scheme of Adoption (Information and Tracing) Bill 2015*. Available: <http://dcya.gov.ie/viewdoc.asp?fn=/documents/legislation/20150727AdoptionInfoandTracingHeadsOfBill1.pdf> [accessed 19 November 2015].

⁸² Department of Children and Youth Affairs, *Overview of Adoption (Information and Tracing) Bill 2015*, 27 July 2015. Available: <http://dcya.gov.ie/documents/publications/20150727AdoptionInfoandTracingOverview.pdf> [accessed 19 November 2015].

⁸³ Department of Children and Youth Affairs, *Heads and General Scheme of Adoption (Information and Tracing) Bill 2015*, p 9. Available: <http://dcya.gov.ie/viewdoc.asp?fn=/documents/legislation/20150727AdoptionInfoandTracingHeadsOfBill1.pdf> [accessed 7 December 2015].

⁸⁴ Department of Children and Youth Affairs, *Heads and General Scheme of Adoption (Information and Tracing) Bill 2015*, p 92. Available: <http://dcya.gov.ie/viewdoc.asp?fn=/documents/legislation/20150727AdoptionInfoandTracingHeadsOfBill1.pdf> [accessed 7 December 2015].

information about their biological family”,⁸⁵ the IHREC welcomes the publication of the General Scheme and Heads of the Adoption (Information and Tracing) Bill and urges the prompt publication of the Bill and its enactment.

3.2. Legal and Policy Framework in Relation to Child Protection

In its 2006 Concluding Observations, the Committee called upon the State to “develop a comprehensive child abuse prevention strategy ... facilitating local, national and regional coordination”.⁸⁶ The IHREC notes that in its General Comment No. 13, the Committee calls for the implementation of child-rights based national coordinating frameworks on violence against children.⁸⁷ While the State’s national policy framework for children, *Better Outcomes, Brighter Futures*, contains 24 child protection commitments, it falls short of the framework envisaged by the Committee.

In 2014, while taking part in the ICCPR reporting process, Ireland recognised the need for a focus on child protection issues across Departments and Agencies.⁸⁸ The IHREC notes this recognition, which is evidenced by the appointment of a Special Rapporteur on Child Protection and the establishment of the Child and Family Agency (Tusla).

The Children First Act 2015 was signed into law on 19 November 2015. The Act places on a statutory footing part of the *Children First: National Guidance for the Protection and Welfare of Children (2011)*, including the Children First Inter-departmental Implementation Group. The primary function of the Act is to oblige a provider of services to children to undertake an assessment of the potential for risk of harm to a child and to report child protection concerns to the Child and Family Agency.

In respect of corporal punishment of children, the IHREC welcomes the abolition of the common law defence of reasonable chastisement.⁸⁹ The IHREC has also welcomed⁹⁰ Ireland’s signature of the Council of Europe’s Convention on preventing and combating violence against women and domestic violence and notes the Department of Justice and Equality’s action plan, particularly action 17 which relates to support for child witnesses of domestic violence.⁹¹ The IHREC also notes the publication of a General Scheme of the Reformed and Consolidated Domestic Violence Bill,⁹² which refers

⁸⁵ UNCRC, *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)*, 29 May 2013, UN Doc. CRC/C/GC/14, at para 56.

⁸⁶ UNCRC, *Concluding Observations*, UN Doc. CRC/C/IRL/CO/2, para 37(c), 2006

⁸⁷ UNCRC, *General comment No. 13 (2011) – The right of the child to freedom from all forms of violence* UN Doc. CRC/C/GC/13, section VI. Available:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vFKt nY3RFBX0eVOrGEVYulm9CsHNwh1HrjED9fVmGn%2baZ1TGy6vH1lek6kukGyB%2fFCGBbSOP0uwpKf24vcxkEnv> [accessed 8 December 2015].

⁸⁸ United Nations Human Rights Committee, *List of Issues in relation to the Fourth Periodic Report of Ireland, Addendum; Replies of Ireland to the List of Issues* CCPR/C/IRL/Q/4/Add.1, 2014, at p 12.

⁸⁹ Section 28 of the Bill proposes to insert section 24A into the Non-Fatal Offences Against the Person Act 1997. Available: www.irishstatutebook.ie/eli/1997/act/26/enacted/en/html [accessed 7 December 2015].

⁹⁰ IHREC, Statement on Ireland’s signature of Council of Europe Convention on preventing and combating violence against women (Istanbul Convention), 2015. Available: <http://www.ihrec.ie/news/2015/11/05/statement-on-irelands-signature-of-council-of-euro/> [accessed 7 December 2015].

⁹¹ Department of Justice and Equality, *Action Plan on Istanbul Convention*, 2015. Available: <http://www.justice.ie/en/JELR/ActionPlanIstanbulConNovember.pdf/Files/ActionPlanIstanbulConNovember.pdf> [accessed 7 December 2015].

⁹² Available: <http://www.justice.ie/en/JELR/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATE>

specifically to children. These developments must be supported by an adequate budget since the IHREC is aware that, during the reporting period, women's refugees reported a lack of space despite an increase for demand.⁹³

The IHREC notes that the Child Care Law Reporting Project found that members of ethnic minority communities face more child protection proceedings. As a result the Project recommended the implementation of training programmes on cultural identity and the development of a child protection strategy specifically aimed at Travellers in conjunction with community leaders.⁹⁴

The IHREC recommends that the state develop a child-rights based national coordinating framework on violence against children, in line with General Comment No. 13.

3.3. Redress Mechanisms for Victims of Historical Child Abuse

During the reporting period a number of investigations have taken place in relation to the abuse of children in Magdalene laundries, children's institutions, and mother and baby homes. The Human Rights Committee has expressed concern at the lack of prompt, thorough and effective investigations into all allegations of such abuse, mistreatment or neglect.⁹⁵ The IHREC recalls the Committee's General Comment No. 13 which requires States to investigate and to punish those responsible for rights violations as well as providing access to redress. The Committee also notes that investigations must be conducted in a child-rights and child-sensitive manner in order to "ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection and criminal proceedings".⁹⁶ Some of the IHREC's concerns in relation to the compliance of those investigations with General Comment No. 13 are set out below.

Following the publication in 2009 of the *Report of the Commission to Inquire into Child Abuse* (the 'Ryan Report'), an implementation plan was put in place to address many of the particular issues in relation to children in the care of the State.⁹⁷ The IHREC notes that five of the actions arising out of the Ryan Report have not yet been fully implemented.⁹⁸ Two of these actions call for research to be

[D%20DOMESTIC%20VIOLENCE%20BILL.pdf/Files/Corrected%20GENERAL%20SCHEME%20OF%20A%20REFORMED%20AND%20CONSOLIDATED%20DOMESTIC%20VIOLENCE%20BILL.pdf](http://www.dcy.gov.ie/documents/publications/implementation_plan_from_ryan_commission_report.pdf) [accessed 8 December 2015].

⁹³ According to Safe Ireland "Demand for services in 2012 increased by 36 per cent since the onset of the recession in 2008 while State funding was reduced by 14 per cent overall". See Safe Ireland, *Safety in a time of crisis: Priorities for protection of women and children impacted by domestic violence*, 2014 p 6. Available: <http://www.safeireland.ie/wp-content/uploads/Safe-Ireland-Safety-in-a-Time-of-Crisis-.pdf> [accessed 8 December 2015]. Women Against Violence Europe, Country Report 2014, Available: www.wave-network.org/content/wave-report-2014 [accessed 8 December 2015].

⁹⁴ Child Care Law Reporting Project *Final report* Dublin, 2015, p 45 (recommendations 7.1 and 7.2).

⁹⁵ Human Rights Committee (2014) *Concluding Observations on the Fourth Periodic Report of Ireland* CCPR/C/108/2, at para 10. Available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en [accessed 10 December 2015].

⁹⁶ UNCRC, *General comment No. 13 (2011) – The right of the child to freedom from all forms of violence*. UN Doc. CRC/C/GC/13.

⁹⁷ Office of the Minister for Children, Department of Health and Children, *Report of the Commission to Inquire into Child Abuse*, 2009. Available: http://www.dcy.gov.ie/documents/publications/implementation_plan_from_ryan_commission_report.pdf [accessed 8 December 2015].

⁹⁸ Department of Children and Youth Affairs, Ryan Report Monitoring Group, *Ryan Report Implementation Plan: Fourth Progress Report*, 2014. Available: <http://www.dcy.gov.ie/documents/publications/20150324RyanRepFourthProgressDec2014.pdf> [accessed 7 December 2015].

carried out in relation to transitioning out of care, and court services for children and families. The other actions relate to the construction of a memorial to survivors of institutional abuse and the development of a central repository for the records for all children in care. The IHREC welcomes the Government's commitment to the full implementation.⁹⁹ However, the IHREC notes that the UN Committee against Torture's concerns that its "recommendations, including that all cases of abuse be investigated and perpetrators be prosecuted and punished, are unrealized".¹⁰⁰

In 2010 the IHRC carried out an assessment of the human rights issues arising in Magdalene Laundries, where the rights of more than 11,000 women and girls were systematically violated, and advised that a statutory mechanism be established to investigate this.¹⁰¹ In 2013, the report of an Inter-Departmental Committee on the Laundries was published.¹⁰² The IHRC recommended that the information presented in the report amounted to allegations of human rights abuses which should be promptly, thoroughly and independently investigated.¹⁰³ The IHREC remains concerned that the report produced by the Inter-Departmental Committee does not meet the State's human rights obligations to fully investigate and identify those responsible for the abuses committed in the Magdalene Laundries.

The IHREC welcomes the establishment of an independent statutory Commission of Investigation into Mother and Baby Homes operating in the State between 1922 and 1998.¹⁰⁴ The IHREC is of the view that, unlike the Inter-Departmental Committee on Magdalene Laundries, the powers of the Commission of Investigation will enable it to source all information and documentation to establish and properly test allegations of human rights abuses. The IHREC also notes that the investigation of vaccine trials conducted on children resident in the institutions will come within the scope of the Commission of Investigation but is concerned that this assessment will not consider human rights or equality standards.

The IHREC also notes the judgment of the European Court of Human Rights in *O'Keeffe v Ireland*,¹⁰⁵ which found that the State failed to protect the applicant from sexual abuse by a teacher in her primary school in 1963 and that she did not have an effective remedy against the State in that regard. Ireland has now submitted a number of action plans in order to implement the judgment. The IHREC welcomed measures to implement the judgment, but expressed concerns that the

⁹⁹Follow-up material to the Concluding Observations of the UN Human Rights Committee on the Fourth Periodic Review of Ireland under the International Covenant on Civil and Political Rights, Geneva, 14–15 July 2014, p 5. Available: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/IRL/INT_CCPR_AFR_IRL_21460_E.pdf [accessed 10 December 2015].

¹⁰⁰Committee against Torture (2013) List of issues prior to submission of the second periodic report of Ireland, CAT/C/IRL/QPR/2, at para 20. Available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fQPR%2f2&Lang=en [accessed 10 December 2015].

¹⁰¹ Irish Human Rights Commission (2010) *IHRC Assessment of the Human Rights Issues Arising in relation to the "Magdalen Laundries"*, para 108. Available: http://www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf [accessed 10 December 2015].

¹⁰² McAleese, M., *Report of the Inter-Departmental Committee to establish the facts of State involvement in Magdalen Laundries*, 2013, Dublin: Department of Justice and Equality. Available: <http://www.justice.ie/en/JELR/P%20II%20Chapter%208%20Stats.pdf/Files/P%20II%20Chapter%208%20Stats.pdf> [accessed 10 December 2015].

¹⁰³ Irish Human Rights Commission (2013) *IHRC Follow-up Report on State Involvement with Magdalen Laundries*, para. 261 and 292. Available: <http://www.ihrec.ie/download/pdf/20130618164449.pdf> [accessed 10 December 2015].

¹⁰⁴ Mother and baby homes were institutions usually run by a religious order for unmarried mothers and their children.

¹⁰⁵ Application No. 35810/09, 28 January 2014.

judgment had been interpreted too narrowly by the State with respect to the scope of the definition of victim.¹⁰⁶

Recalling General Comment No. 13 and the recommendations of various UN Treaty Monitoring Bodies, the IHREC urges the State to investigate all instances of child abuse, including historical and contemporary, in line with international human rights standards.

Noting the recommendations of the Ryan Report Monitoring Group, the IHREC recommends that the outstanding actions 1, 65, 75, 76 and 96 of the Ryan Implementation Plan be implemented in full.

In line with the *O’Keeffe* judgment, the IHREC recommends that all victims of sexual abuse should have the right to an effective remedy. Access to such a remedy should be available to victims both before and after the introduction of child protection guidelines in schools in 1991/1992 and irrespective of whether there was a prior complaint of abuse.

4. Basic Health and Welfare (articles 6; 18(3); 23; 24; 26 and 27(1–3))

4.1. Physical and Mental Health and Services

In its report to the UN Committee on Economic Social and Cultural Rights,¹⁰⁷ the IHREC welcomed the enactment of legislation introducing free GP care for children under the age of six years. The IHREC notes the announcement to extend this scheme to children from ages 6 to 11 years.¹⁰⁸

The current strategy underpinning mental health services is *Vision for Change* which was published in 2006.¹⁰⁹ This strategy refers to the Convention but it is not underpinned by a child-rights approach. The Ombudsman for Children’s Office notes that the strategy is currently undergoing review and recommends that an independent monitoring mechanism should be set up to monitor implementation.¹¹⁰ The IHREC also notes that the Child Care Law Reporting Project has recommended the development of a national strategy and action plan for the provision of appropriate services for children with mental health and behavioural problems since many of the child care proceedings centre on the provision, or lack of, appropriate services.¹¹¹

In 2013 the Inspectorate of Mental Health Services examined child admissions to adult wards and discovered that 83 young people were placed on adult wards on 91 occasions on the basis that there

¹⁰⁶ On 12 October 2015, the IHREC submitted a communication to the Council of Europe, in accordance with Article 46, paragraph 2 of Rule 9 of the Rules of the Committee of Ministers for the supervisions of the execution of judgments and of the terms of friendly settlements (Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies).

¹⁰⁷ Section 10(2) of the Health (General Practitioner Service) Act 2014. Available: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2014/a2814.pdf> [accessed 8 December 2015].

¹⁰⁸ Department of Finance, Budget 2016: Expenditure Allocations, 2015. Available: <http://www.budget.gov.ie/Budgets/2016/Documents/Part%20II%20Expenditure%20Allocations%202016%20-%202018.pdf> [accessed 7 December 2015].

¹⁰⁹ Expert Group on Mental Health Policy, *A Vision for Change Government of Ireland*, 2006. Available: <http://health.gov.ie/future-health/reforming-social-and-continuing-care-2/mental-health-a-vision-for-change/a-vision-for-change/> [accessed 7 December 2015].

¹¹⁰ Ombudsman for Children, *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland’s consolidated Third and Fourth Report to the Committee*, April 2015, para 8.3.2.

¹¹¹ Child Care Law Reporting Project *Final report* Dublin, 2015, p 43 (recommendation 5.1).

were no age-appropriate beds available in child friendly facilities. Sixty per cent of these young patients remained in an adult facility for more than three days, while 21 per cent were there for more than 10 days.¹¹² The IHREC recognises the improvements that have been made in relation to the admission of children and young people to adult psychiatric wards but remains concerned that this practice persists. Therefore, the IHREC supports the Concluding Observations of the Committee on Economic Social and Cultural Rights that the State “immediately take measures to separate child patients from adults in psychiatric facilities”.¹¹³

The IHREC recommends that all children who are admitted to psychiatric wards should be placed in child-friendly facilities which are age-appropriate.

The IHREC recommends that revision and assessment of child-relevant aspects of the *Vision for Change* strategy should be underpinned by Convention principles.

4.2. Reproductive Health and Services

The Committee’s List of Issues¹¹⁴ requested clarification from the State on the applicability of the Protection of Life During Pregnancy Act 2013 to pregnant girls. The Protection of Life During Pregnancy Act 2013¹¹⁵ allows for terminations of pregnancy in limited circumstances, and subject to a detailed clinical assessment and certification process¹¹⁶ where there is a real and substantive risk to the life of the mother, including in circumstances where the mother is suicidal. In its replies to the Committee’s List of issues, the State confirmed that the Act applies in full to pregnant girls.¹¹⁷

The IHREC recalls the Committee’s General Comment No. 15 outlining States’ obligations under the Convention to meet the particular sexual and reproductive health needs of adolescents.¹¹⁸ In its 2013 observations on the Protection of Life During Pregnancy Bill, the Irish Human Rights Commission highlighted the absence from the Bill of provision for “accessible age-appropriate sexual

¹¹² Mental Health Commission, Inspectorate of Mental Health Services, *Child and Mental Health Services 2013: Admission of Children to Adult Units 2013*, p 1. Available: www.mhcirl.ie/File/ar2013.pdf [last accessed 8 December 2015]. See further report: IHREC, *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland’s third periodic review*, May 2015 at section 10.5.2. Available: <http://www.ihrec.ie/international/icescr.html> [accessed 8 December 2015].

¹¹³ CESCR, Concluding Observations: Ireland UN Doc. E/C.12/IRL/CO/3, para 29. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> [accessed 25 November 2015].

¹¹⁴ List of issues in relation to the combined third and fourth periodic reports of Ireland, CRC/C/IRL/Q/3-4, 15 July 2015, at para 9.

¹¹⁵ The Act was designed to respond to the judgment of the European Court of Human Rights in the case of *A, B and C v Ireland* (2010), No. 25579/05. The Judgment found that there was “striking discordance between the theoretical right to a lawful abortion in Ireland on grounds of a relevant risk to a woman’s life and the reality of its practical implementation”, para 264.

¹¹⁶ Sections 7–9 of the Protection of Life During Pregnancy Act 2013. Also see Department of Health, *Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals*, September 2014, sections 2–5.

¹¹⁷ Replies of Ireland to the list of issues, CRC/C/IRL/Q/3-4/Add.1, para 69. Available: http://www.childrensrights.ie/sites/default/files/submissions_reports/files/CRC-ListofIssuesResponse101115.pdf [accessed 8 December 2015].

¹¹⁸ Committee on the Rights of the Child, General Comment No. 15, 17 April 2013, CRC/C/GC/15. Section on Article 24(2)(d): “Given the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health. Discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured”.

and reproductive health services without discrimination”.¹¹⁹ However no amendments were made to the legislation as enacted to address this recommendation.

In its replies to the Committee’s List of Issues, the State also pointed out that the Department of Health *Guidance Document for Health Professionals* includes sections on confidentiality, consent and child protection issues “relevant to children”.¹²⁰ The guidance document does not, however, set out any specific guidelines for the appropriate adaptation of the clinical assessment and certification process to the needs and circumstances of pregnant girls who may find themselves in particularly vulnerable situations, and who may be the victims of sexual violence. Recent reports of the application of the Act¹²¹ suggest that improvements to both the legislation and the Department of Health *Guidance Document* will be necessary to render procedures better-suited to the circumstances of pregnant girls and other potentially more vulnerable groups.¹²²

The IHREC notes the constraints currently placed upon the State by Article 40.3.3 of the Constitution of Ireland in terms of introducing further legislation regarding termination of pregnancy. Article 40.3.3 states:

“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”

With regard to the wider human rights implications of the Protection of Life During Pregnancy Act 2013, the IHREC further notes its recent endorsement of the latest recommendations by various UN Treaty Monitoring Bodies on the subject of women’s right to reproductive health.¹²³

¹¹⁹ Irish Human Rights Commission, *Observations on the Protection of Life During Pregnancy Bill 2013*, July 2013, para 118. Available: http://www.ihrec.ie/download/pdf/ihrc_observations_protection_of_life_in_pregnancy_bill_2013.pdf [accessed 8 December 2015].

¹²⁰ Replies of Ireland to the list of issues, CRC/C/ IRL/Q/3-4/Add.1 at para 69. See Department of Health, *Implementation of the Protection of Life During Pregnancy Act 2013: Guidance Document for Health Professionals*, September 2014, section 9.3 and Appendix 10. This Guidance was published a year after the Act’s entry into force.

¹²¹ For example, in August 2014, media reports revealed that a young asylum seeking woman who has been called Ms. Y, a victim of an alleged rape in her country of origin, who despite asking for a termination of her unwanted pregnancy was told her only available option was to deliver the baby at 24 weeks by Caesarean section. She was reviewed by a panel of medical experts convened under the Act and although deemed suicidal, media reports suggest she was refused a termination as the pregnancy was too far progressed. It is not yet clear what information was provided to the young woman about her right to access a termination under the relevant legislation. The Health Service Executive began an enquiry into the matter, which was halted following legal action by lawyers acting on behalf of Ms. Y, who have also indicated they will be initiating personal injury proceedings. See “Ms Y” court challenge to stop HSE inquiry into her care is struck out’, Irish Times, 3 November 2015. Available: <http://www.irishtimes.com/news/crime-and-law/courts/high-court/ms-y-court-challenge-to-stop-hse-inquiry-into-her-care-is-struck-out-1.2415545> [accessed 25 November 2015]

¹²² The IHREC has recently highlighted the concern that the current legal position has a disproportionate impact on the bodily autonomy of women from lower socio-economic backgrounds and migrant women. See IHREC, *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland’s third periodic review*, May 2015 at section 10.8.1 and *Submission to UN Committee on the Elimination of all forms of Discrimination against Women: List of Issues Prior to Reporting on Ireland’s Combined 6th and 7th Report under CEDAW*, October 2015, para 73.

¹²³ See Irish Human Rights and Equality Commission, *Submission to the Second Universal Periodic Review Cycle for Ireland*, September 2015 at section 12: “the Commission endorses recommendations by various UN Treaty Monitoring Committees that the State take all necessary measures to revise its legal framework on abortion to ensure that it is in line with international human rights law”. Available: <http://www.ihrec.ie/news/2015/10/01/ihrec-publish-submission-to-un-human-rights-council/> [accessed 8 December 2015]. Recent such recommendations include that of the Committee on Economic, Social and Cultural Rights that “the State party take all necessary steps, including a referendum on abortion, to revise its legislation on abortion” (Concluding Observations on the Third Periodic Report on Ireland, 19 June 2015, E/C.12/IRL/CO/3, at para. 30); and the recommendation of the Human Rights Committee that the State “revise its legislation on abortion,

The IHREC recommends that the Protection of Life During Pregnancy Act 2013 be amended to require that age and situation appropriate clinical assessment and certification procedures be put in place for young women and girls availing of the Act's provisions.

The IHREC recommends that the Department of Health update its *Guidance Document for Health Professionals* on the implementation of the Act to include detailed procedures and guidance on age-appropriate and situation-appropriate application of the Act's provisions to young women and girls in the areas of referral procedures, clinical assessments and certification.

The IHREC reiterates its earlier recommendations that the State ensure that clear, comprehensive and authoritative guidance as to what constitutes 'real and substantive risk' be provided to allow women and girls, particularly those from more vulnerable backgrounds, to access the medical services to which they are entitled.

The IHREC also reiterates its endorsement of recent recommendations by various UN Treaty Monitoring Committees that the State take all necessary measures to revise its legal framework on abortion.¹²⁴

4.3. Children and Poverty

In its 2006 Concluding Observations, the Committee recommended that Ireland "strengthen its support to families living in economic hardship in order to ensure that poverty is reduced".¹²⁵ The IHREC welcomes the specific child poverty target and the State's commitment in the *National Policy Framework for Children and Young People 2014–2020* to reduce the number of children living in consistent poverty by at least two thirds from the 2011 level.¹²⁶ However, in its Concluding Observations, the Committee on Economic Social and Cultural Rights expressed concern "at the increase in the number of people living in consistent poverty or at risk of poverty, particularly among children".¹²⁷ The IHREC notes the increase in rates of child poverty since the target was set in 2010.¹²⁸

According to the Department of Social Protection's Social Inclusion Monitor, which reports on progress towards the national social target for poverty reduction, for the year 2013 consistent child poverty rose to 11.7 per cent, and 17.9 per cent of children were considered to be at risk of poverty.¹²⁹ The Social Inclusion Monitor draws upon data from Eurostat and the Survey on Income

including its Constitution" (Concluding Observations on the Fourth Periodic Report on Ireland, 19 August 2014, CCPR/C/IRL/CO/4, para 9).

¹²⁴ This recommendation is the majority view of the Irish Human Rights and Equality Commission.

¹²⁵ UN Committee on the Rights of the Child, *Concluding Observations of the UN Committee on the Rights of the Child: Ireland*, 2006, para 57(a).

¹²⁶ Department of Children and Youth Affairs, *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014–2020*, 2014, p 93. Available: http://www.dcy.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf [accessed 7 December 2015].

¹²⁷ CESCR, *Concluding Observations: Ireland* UN Doc. E/C.12/IRL/CO/3, 2014, para 24. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement>. [accessed 7 December 2015].

¹²⁸ Department of Social Protection, *Social Inclusion Monitor 2013*, p 30. Available: http://www.socialinclusion.ie/documents/2015-03_SIM2013_rpt_Final_000.pdf [accessed 7 December 2015]

¹²⁹ The rate of consistent poverty for adults rose from 5.4 per cent in 2010 to 7 per cent in 2013. Child consistent poverty rose from 8.8 per cent to 11.7 per cent in the same period. Figures taken from Department of Social Protection, *Social Inclusion Monitor*, 2015, p 31.

and Living Conditions (SILC), which is a broad household survey by the Central Statistics Office on income and living conditions. According to SILC data for the year 2014, the ‘at risk of poverty’ rate for that year was 16.3 per cent of the population.¹³⁰

The IHREC recommends that the State underpin the child-specific targets in the strategy with the general principles of the Convention. The IHREC also recommends the State put in place a detailed action plan to ensure that anti-poverty and social inclusion targets are met within a specified timeframe.

4.4. Social Security and State Support

Articles 26(2) and 18(2) of the Convention place an obligation on the State to ensure that persons responsible for caring for child can access adequate and appropriate state services that are targeted towards supporting children. In line with Article 2 of the Convention, these services should be administered in a non-discriminatory manner.

4.4.1. Child Care

Ireland has the highest childcare costs in the European Union as a percentage of family income.¹³¹ The European Commission has stated that no progress has been made to improve access to affordable and full-time childcare in Ireland.¹³² The Committee on Economic Social and Cultural Rights has also called upon Ireland to “take all the necessary measures to meet the childcare needs of families, including through expanding affordable public childcare services”.¹³³

The IHREC recognises that the State has put in place some measures to address the deficiencies in the availability of affordable childcare. For example, the IHREC welcomes the extension of the free pre-school year support from 38 weeks up to a further 50 weeks.¹³⁴ However, a 2013 report highlights that many parents cannot afford to avail of the unpaid parental leave scheme.¹³⁵

¹³⁰ Central Statistics Office, *Survey on Income and Living Conditions: 2014* results, released 26 November 2015. Those most at risk of poverty in 2014 were living in accommodation that was rented at below the market rate or rent free (36.0%) and individuals who were unemployed (35.9%). Available:

<http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2014/> [accessed 10 December 2015].

¹³¹ For low income families including lone parents, childcare can cost up to 40 per cent of their total income compared with 24 per cent of the income of a family with two incomes; however, even this lower percentage is still double that of the EU average. See OECD, *Benefits and Wages Statistics*, 2014. Available: <http://www.oecd.org/els/benefits-and-wages-statistics.htm> [accessed 18 March 2015].

¹³² European Commission, *Country Report Ireland Including an In-Depth Review on the Prevention and Correction of Macroeconomic Imbalances*, 2015, p 2.

¹³³ CESCR, *Concluding Observations: Ireland* UN Doc. E/C.12/IRL/CO/3, para 23. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> [accessed 7 December 2015].

¹³⁴ Department of Finance, *Budget 2016: Part 11 Expenditure Allocations 2016*, 2015. Available: <http://budget.gov.ie/Budgets/2016/Documents/Part%20II%20Expenditure%20Allocations%202016%20-%202018.pdf>. [accessed 7 December 2015].

¹³⁵ McGinnity, F., Murray, A., & McNally, S., *Growing up in Ireland: Mothers’ Return to Work and Childcare Choices for Infants in Ireland – Infant Cohort Report 2*, p 21. Available: http://www.growingup.ie/fileadmin/user_upload/documents/Second_Infant_Cohort_Reports/GUI_Infant_Mothers_Work_Final_Report.pdf [accessed 15 October 2015].

The IHREC welcomes the intended publication of a Family Leave Bill expected in late 2015 to “provide for the consolidation into one piece of legislation of the current provisions regarding maternity, adoptive, parental and carer's leave”.¹³⁶

4.4.2. Maternity Benefit

The IHREC notes that in 2013 Maternity Benefit became subject to tax and since 6 January 2014 all mothers of new-born children are now paid a standard rate of €230.00 per week. The IHREC welcomes the announcement that a new two-week Paternity Benefit will be introduced for births from September 2016.¹³⁷

In *G v The Department of Social Protection*,¹³⁸ a case which had been supported by the Equality Authority,¹³⁹ the High Court found that an Irish woman who had a child by means of a surrogacy arrangement in the USA had no redress in relation to exclusion from entitlement to a payment equivalent to maternity benefit.

The IHREC recommends the State monitor the potential negative impact of the overall reductions in Maternity Benefit for new mothers.

The IHREC recommends that the Maternity Benefit scheme be amended to ensure that mothers who have children by means of a surrogacy have access to the benefit.

4.4.3. Child Benefit

While the IHREC welcomes the €5 monthly increase in the Child Benefit payment to parents,¹⁴⁰ the IHREC remains concerned about the impact of the Habitual Residence Condition (the HRC) on the accessibility of this payment to children from migrant and Traveller backgrounds as well as asylum seeking children.

The HRC is an extra qualifying condition requiring applicants to demonstrate a connection to Ireland in order to access a range of social welfare payments including Child Benefit.¹⁴¹ In 2009 a “right to reside” test was introduced which stipulates that a person who does not have a right to reside in the State shall not be regarded as being habitually resident for the purposes of the HRC.¹⁴² As a result of the application of the “right to reside” rule, asylum seekers cannot access any payment subject to

¹³⁶ Minister of State for New Communities, Culture and Equality, Aodhán Ó Ríordáin TD, Parliamentary Questions: Written Answers, [13279/15], 31 March 2015.

¹³⁷ Department of Finance, *Budget 2016 Expenditure Allocations*, 2015. Available: <http://budget.gov.ie/Budgets/2016/Documents/Part%20II%20Expenditure%20Allocations%202016%20-%202018.pdf>. [accessed 7 December 2015].

¹³⁸ [2015] IEHC 419. See IHREC, *IHREC recommends changes to Equal Status Acts following High Court decision on maternity benefit claim*, 8 July 2015. Available: <http://www.ihrec.ie/news/2015/07/08/ihrec-recommends-changes-to-equal-status-acts-foll/> [accessed 25 November 2015].

¹³⁹ The Irish Human Rights and Equality Commission merges the former Equality Authority and the former Irish Human Rights Commission.

¹⁴⁰ Department of Finance, *Budget 2016: Part II Expenditure Allocations*, 2015.

¹⁴¹ The operation of the Habitual Residence Condition is outlined in full at section 7.1 of the IHREC's report to ICESCR.

¹⁴² A ‘right to reside’ test was introduced in December 2009. S15 of the Social Welfare and Pensions (No. 2) Act 2009 amends Section 246 of the Social Welfare Consolidation Act 2005 by inserting section 246(5), which provides that a person who does not have a right to reside in the State shall not be regarded as being habitually resident in the State.

the HRC until they are granted refugee status or another form of immigration status, which can often take several years.

In practice, the operation of the HRC can act as a barrier to many vulnerable groups seeking access to a social security payment. In its report to the UN Committee on Economic, Social and Cultural Rights, the IHREC outlined the impact on migrants, asylum-seekers, Travellers and Roma.¹⁴³ This has also been noted by a number of international actors, including the European Commission against Racism and Intolerance (ECRI),¹⁴⁴ as well as the former UN Independent Expert on Human Rights and Extreme Poverty following official visits to Ireland.¹⁴⁵

The IHREC recommends that the State review the “right to reside” and the Habitual Residence Condition (HRC) clauses to ensure that they are not indirectly discriminatory, particularly in relation to children from migrant and Traveller backgrounds as well as asylum-seeking children.

The IHREC recommends that the State ensure that decision-makers are adequately trained in order to ensure that they make fair and correct decisions based on the legislation in place, in particular in relation to the right to reside clause.

4.4.4. Lone Parents

In its submission to the Committee on Economic, Social and Cultural Rights the IHREC outlined its concerns in relation to changes to the One Parent Family Payment (OPFP), which links access to the payment to the youngest child’s age.¹⁴⁶ An analysis of the reforms shows that these changes will impact negatively on thousands of working lone parents and their children.¹⁴⁷ The IHREC considers these steps to be regressive in nature and not in line with the general principles of the Convention, in particular non-discrimination and the best interests of the child.

The IHREC recommends that the State should reverse the reforms to the OPFP in the absence of an adequate and affordable childcare system being in place. While these reforms remain in place, their effect should be closely monitored by the State, in particular in relation to the poverty and deprivation rates for single-parent headed households. Any negative effects that are detected should be dealt with as a matter of priority and effectively remedied by the State.

¹⁴³ IHREC, *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland’s third periodic review*, 2015, section 7.1.

¹⁴⁴ European Commission against Racism and Intolerance, *ECRI Report on Ireland (fourth monitoring cycle)*, 2013. Available: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf> [accessed 7 December 2015].

¹⁴⁵ OHCHR (2011), *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland*, p 12. Available at www.ohchr.ie.

¹⁴⁶ OPFP is a means-tested payment for men and women under the age of 66 who are bringing up children without the support of a partner. Lone parents whose youngest child is seven years or over are no longer eligible for OPFP. Lone parents whose youngest child is aged between seven and thirteen years will be placed on a Jobseekers Transition Allowance payment which is means-tested but will allow the applicant to seek part-time work. Lone parents whose youngest child is fourteen or older will be required to seek and accept full-time work. For more information on the OPFP see IHREC, *Report to the UN Committee on Economic, Social and Cultural Rights on Ireland’s third periodic report*, 2015 at sections 5.3 and 7.2.2.

¹⁴⁷ Murphy, Dr. MP., *The Irish Community Development Law Journal* Vol. 3 (2), ‘Ireland’s lone parents, social welfare and recession’, 2014. Available: <http://www.communitylawandmediation.ie/fileupload/The%20Journal/CLM-eJournal-Issue-2-Volume-3%20%28December%202014%29.pdf> [accessed 7 December 2015].

4.5. Homelessness, Social Housing and Traveller Accommodation

In its General Comment No. 4, the Committee on Economic, Social and Cultural Rights has recognised the integral link between the right to adequate housing, and the inherent dignity of the human person from which the rights guaranteed by the Covenant derive.¹⁴⁸

In its 2015 Concluding Observations, the Committee on Economic Social and Cultural Rights remarked upon the “growing number of families and children that are homeless or are at risk of being homeless as a result of the lack of social housing and the inadequate levels of rent supplement”.¹⁴⁹ The IHREC notes the slow progress in dealing with the current housing crisis in Ireland and the complaints received by the Ombudsman for Children’s Office which highlight the impact of the crisis on children.¹⁵⁰

The IHREC recalls the 2006 Concluding Observations of the Committee on the Rights of the Child, which called upon the State to increase investments in social and affordable housing for low-income families and to increase budgetary allocations for housing for families with children who are particularly vulnerable.¹⁵¹ However, the IHREC notes the significant reduction in capital funding allocated to Traveller-specific housing since 2010¹⁵², as well as the fall in the target number of units to be delivered each year, although there has been an increase in the number of void units which were refurbished during the same period.¹⁵³

The IHREC also notes that in *O’Donnell v South Dublin County Council*¹⁵⁴ the Supreme Court defined the scope of local authority obligations with respect to a Traveller child with cerebral palsy living in a caravan occupied by eight of her family members. The Court considered that the plaintiff child’s “capacity to live to an acceptable standard of human dignity” had been “gravely compromised”.¹⁵⁵ The Court held that the child was entitled to damages, and that the local authority had a duty to provide a serviced halting site rather than alternative caravan or mobile home accommodation. This judgment highlights the fact that poor quality Traveller accommodation may not only be a breach of

¹⁴⁸ CESCR, *General Comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant)*, E/1992/23, para 7.

¹⁴⁹ CESCR, *Concluding Observations: Ireland*, UN Doc. E/C.12/IRL/CO/3, 2015, para.31. Focus Ireland has drawn attention to the growing problem of homelessness amongst Ireland’s migrant community, which can be compounded by the restrictions imposed by the Habitual Residence Condition. See Focus Ireland, *Homeless in my New Home*, 2012. Available: <http://www.focusireland.ie/files/homeless%20in%20my%20new%20home%20-%20full%20report.pdf> [accessed 10 December 2015].

¹⁵⁰ OCO (2015) *Report to the UN Committee on the Rights of the child on the occasion of the examination of Ireland’s combined third and fourth combined report to the committee*, section 8.5.

¹⁵¹ Committee on the Rights of the Child 43rd Session, *Concluding Observations on Ireland*, CRC/CX/IRL/CO/2, 29 September 2006, para 57.

¹⁵² Capital funding for Traveller accommodation has fallen from €35 million in 2010 to €3 million in 2014. Minister of State for Housing, Jan O’Sullivan TD, Parliamentary Questions: Written Answers [25088/14], 12 June 2014. Available: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014061200059#WRO00400> [accessed 7 December 2015].

¹⁵³ Government of Ireland, *2015 Revised Estimates for Public Services*, 2015. Dublin: Stationery Office, p 152. The 2015 Revised Estimates for Public Services indicated that the number of households in need of Traveller accommodation whose needs were met fell from 140 in 2010 to 44 in 2013. The target number of units to be provided in 2015 was 55. At the same time the number of units which were worked on and brought back into circulation rose from 917 in 2010 to 1,173 in 2013.

¹⁵⁴ [2015] IESC 28.

¹⁵⁵ [2015] IESC 28, para 68.

a local authority's statutory duty, but may in certain circumstances also amount to a breach of the constitutional right to autonomy, bodily integrity and privacy.

On 10 October 2015 ten people from two Traveller families died in a fire that broke out at a Dublin halting site.¹⁵⁶ The residents had been living with only basic services on the site for over seven years, pending provision of a permanent halting site, and no clear timeline was in place for the provision of a permanent halting site to the families.¹⁵⁷ Following the tragedy, residents of Rockville Drive, a cul-de-sac off Glenamuck Road, objected to the rehousing of Travellers who had lost their homes in that area.¹⁵⁸ These events at a halting site in Carrickmines illustrate the discriminatory barriers that members of the Traveller community experience in accessing appropriate accommodation.

The IHREC recommends that the State take further steps to progressively realise the right to adequate housing, being the right to live somewhere in security, peace and dignity.

In line with the State's obligations under Article 27(3) of the Convention, the IHREC recommends that the State take measures to ensure that both social housing and affordable housing are of sufficient quality and are made accessible to low income families.

The IHREC recommends that the State should take further steps to progressively realise the right to culturally appropriate housing for Traveller families in consultation with each individual family. In particular, Local Authorities should be adequately penalised or sanctioned if they do not invest the total money allocated for Traveller housing in a given year.

4.6. Children with Disabilities

The IHREC is concerned about the delay in ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) but notes the publication of the Department of Justice and Equality's "roadmap" towards ratification.¹⁵⁹ The IHREC welcomes the reference to its proposed role, along with the National Disability Authority, in the establishment of a monitoring mechanism for implementation of the CRPD, as envisaged in Article 33(2) CRPD.¹⁶⁰

The Roadmap indicates that work is underway to bring forward an amendment to the Criminal Law (Sexual Offences) Bill 2015 to replace section 5 of the Criminal Law (Sexual Offences) Act 1993 in

¹⁵⁶ Ruxton and D'arcy, 'Dublin fire: Six-month-old baby among 10 killed in tragic halting site blaze' *Irish Times*, 11 October 2015. Available: <http://www.irishtimes.com/news/ireland/irish-news/dublin-fire-six-month-old-baby-among-10-killed-in-tragic-halting-site-blaze-1.2387124> [accessed 7 December 2015].

¹⁵⁷ IHREC, 'Statement by the Irish Human Rights and Equality Commission in response to recent tragedies at a temporary Traveller halting site at the Glenamuck Road in South Dublin', 2015. Available: <http://www.ihrec.ie/news/2015/10/23/statement-by-the-irish-human-rights-and-equality-c/> [accessed 7 December 2015].

¹⁵⁸ Holland, *Irish Times*, 'Objections to site chosen to house Carrickmines fire survivors', 13 October 2015. Available: <http://www.irishtimes.com/news/social-affairs/objections-to-site-chosen-to-house-carrickmines-fire-survivors-1.2390662> [accessed 7 December 2015].

¹⁵⁹ Department of Justice and Equality, *Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities*, 2015. Available: <http://www.justice.ie/en/JELR/Roadmap%20to%20Ratification%20of%20CRPD.pdf/Files/Roadmap%20to%20Ratification%20of%20CRPD.pdf> [accessed 25 November 2015].

¹⁶⁰ Department of Justice and Equality, *Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities*, 2015, p 11. Available: <http://www.justice.ie/en/JELR/Roadmap%20to%20Ratification%20of%20CRPD.pdf/Files/Roadmap%20to%20Ratification%20of%20CRPD.pdf> [accessed 8 December 2015].

order “to enhance the protection of children and vulnerable persons from sexual abuse and exploitation”.¹⁶¹ The IHREC also notes that the Assisted Decision-Making (Capacity) Bill 2013, which is currently passing through the Houses of the Oireachtas, forms a key part of the Department’s roadmap. In its observations on the Bill,¹⁶² the IHREC raised concerns about the lack of clarity in relation to sterilisation, particularly in light of the Committee’s General Comment No. 9 on the rights of children with disabilities.¹⁶³

The IHREC also notes certain parts of existing legislation have not yet been commenced.¹⁶⁴ For example, Part II of the Disability Act 2005 has only been partially commenced. As it currently stands, only children born after 1 June 2002 are entitled to apply for an assessment of needs under the 2005 Act (regardless of their age at time of application).

The IHREC reiterates its recommendations in relation to potential amendments to Section 5 of the Criminal Law (Sexual Offences) Act 1993 and the Assisted Decision-Making (Capacity) Bill 2013 and calls upon the State to commence Part II of the Disability Act 2005.

5. Education (articles 14, 28 and 29)

According to General Comment No. 1, Article 29 of the Convention requires the school environment to “reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin”.¹⁶⁵ The IHREC is concerned that certain barriers exist within the education system which prohibit the full realisation of the right to education of every child in Ireland.

5.1. Religious and Non-denominational Education

Article 42 of the Irish Constitution provides for a certain minimum standard of education for children in the form of free primary education and parental choice. The State’s role has traditionally been to provide financial support to institutions run by religious bodies or other entities rather than directly provide education services.¹⁶⁶

¹⁶¹ Department of Justice and Equality, *Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities*, 2015. The IHREC previously provided observations on amendment of the 1993 Act, see IHREC (2014) *Section 5 Criminal Law (Sexual Offences) Act 1993 Discussion Paper Submission on behalf of the Irish Human Rights and Equality Commission (Designate)*. Dublin. Available: http://www.ihrec.ie/download/pdf/ihrec_submission_amendment_s5_sexual_offences_act_1993_9sept14.pdf [accessed 25 November 2015].

¹⁶² IHRC, *IHRC Observations on the Assisted Decision-Making (Capacity) Bill 2013*, 2014. Available: http://www.ihrec.ie/download/pdf/ihrc_observations_on_assisted_decision_making_capacity_bill_2013.pdf. [accessed 25 November 2015].

¹⁶³ Committee on the Rights of the Child, *General Comment No. 9: The Rights of Children with Disabilities*, 2006, para 60

¹⁶⁴ The commencement of the *Education for Persons with Special Educational Needs (EPSEN) Act 2004* is referred to in section 5.3 below.

¹⁶⁵ UNCRC, *General Comment No. 1: Aims of Education*, 2001 para 19.

¹⁶⁶ Irish Human Rights Commission, *Religion and Education: A Human Rights Perspective*, 2011, para 9. Available: <http://www.ihrec.ie/download/pdf/religionandeducationpdf.pdf> [accessed 7 December 2015].

Since Ireland's last examination, the Committee and a number of other treaty bodies,¹⁶⁷ most recently the UN Committee on Economic Social and Cultural Rights,¹⁶⁸ have called upon the State to increase the number of non-denominational schools as well as prohibiting discrimination in relation to school admission. In 2011 the IHRC also published a report on this issue and recommended that school provision should reflect the range of religious and non-religious convictions now represented in the State.¹⁶⁹

In May 2015 the Minister for Education and Skills introduced the Education (Admissions to School) Bill 2015¹⁷⁰ to ensure that every child is treated fairly and that the way in which schools decide on applications for admission is structured, fair and transparent.¹⁷¹ The IHREC believes that the 2015 Bill provides a vital opportunity to revise the religious exemption clause in the Equal Status Acts in order to ensure that the legislation is in line with the Convention, in particular the principles of non-discrimination and the best interests of the child.¹⁷²

The IHREC recommends that the Equal Status Acts should be amended to give effect to the principle that no child should be given preferential access to a publicly funded school on the basis of their religion.

The IHREC recommends that the Education (Admissions to School) Bill 2015 should be amended to require schools to have regard to providing information in relation to religion in an objective, critical and pluralistic manner that avoids indoctrination.

5.2. Access to Education and School Admission Policy

The IHREC notes the judgment in *Stokes v Christian Brothers High School Clonmel & anor*¹⁷³ (the Stokes case), where the Supreme Court held that there was insufficient evidence to suggest that a Traveller child had experienced a "particular disadvantage" in accessing the school on the basis of his membership of the Traveller community. In this case, the secondary school used three admission criteria to prioritise applications including being a Roman Catholic, attending a feeder primary school and a requirement that a parent or sibling had attended the school prior to the applicant. The applicant claimed that while he satisfied the first two criteria, as a Traveller it was more difficult for him to satisfy the third criterion given the lower educational attainment and school completion rates of members of the Traveller community¹⁷⁴ and he claimed that the parent rule therefore constituted

¹⁶⁷ UNCRC, *Concluding Observations Concluding Observations on Ireland's second periodic report*, CRC/C/IRL/CO/2, para 61, 2006. See also UN Human Rights Committee, *Concluding Observations on Ireland's Third Periodic Report*, CCPR/C/IRL/CO/3, para 22, CERD, *Concluding Observations on Ireland's second periodic report*, CERD/C/IRL/CO/2, 2011, para 18.

¹⁶⁸ CESCR, *Concluding Observations: Ireland UN Doc. E/C.12/IRL/CO/3*, 2015, para 31. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> [accessed 25 November 2015].

¹⁶⁹ The recommendations of the IHRC's 2011 report and the steps taken by the State during the reporting period are set out in IHRC: *Submission to the UN Human Rights Committee on the Examination of Ireland's Fourth Periodic report under the International Covenant on Civil and Political Rights*, 2014, pp 176–178.

¹⁷⁰ The passage of the Bill through parliament is available here: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2015/3515/document1.htm> [accessed on 25 November 2015].

¹⁷¹ Education (Admission to Schools) Bill 2015, Explanatory Memorandum, p 1.

¹⁷² IHREC, *Observations on the Education (Admission to Schools) Bill 2015*, 2015, para 16.

¹⁷³ *Stokes v Christian Brothers High School Clonmel & anor* [2015] IESC 13.

¹⁷⁴ According to the 2011 Census, 69 per cent of Travellers were educated to primary school level or lower and Irish Travellers on average completed their full-time formal education 4.7 years earlier than the general population. Central Statistics Office, *Profile 7: Religion, Ethnicity and Irish Travellers*, 2015 p 32.

indirect discrimination. Despite the outcome in that particular case, the IHREC notes that the Supreme Court did not reject the premise that indirect discrimination could be an unforeseen consequence of admission policies, and it provided some important clarification in relation to the assessment of indirect discrimination under Irish law.

The IHREC recommends that derogation from the prohibition on schools from using the student's connection to the school by virtue of his or her relationship with a specific category or categories of person should be limited to where a sibling is currently attending the school.

5.3. Diversity and Education in Ireland

In its 2006 Concluding Observations, the Committee called for the implementation of teacher training to “sensitise them to Traveller issues and inter-cultural approaches”.¹⁷⁵ During the reporting period, there was an improvement in the retention numbers of Irish Travellers in the secondary school system: in 2011, 22 per cent of Travellers were educated to lower secondary level compared with 15 per cent in 2002.¹⁷⁶ However, the IHREC is concerned about the removal of Traveller-specific education supports.¹⁷⁷

There has also been significant change in the demographic make-up of Irish society during the reporting period. For example, according to the Department of Education and Skills annual school census 2013–14, four in five immigrant children are concentrated in 23% of primary schools.¹⁷⁸ The IHREC welcomes the *Intercultural Education Strategy 2010–2015*¹⁷⁹ which was developed “in recognition of the recent significant demographic changes in Irish society, which are reflected in the education system”.¹⁸⁰ However, the IHREC is concerned that following the amalgamation of language supports and supports for special needs education, the changes to the allocation of

¹⁷⁵ UN Committee on the Rights of the Child, *Concluding Observations of the UN Committee on the Rights of the Child: Ireland*, 2006, para 59(d).

¹⁷⁶ According to Census 2011 statistics, 17.7 per cent of the Traveller community had no formal education compared to 1.4 per cent of the general population and almost 70 per cent of Travellers were educated to primary level or lower including 507 young people aged 15–19. Government of Ireland, *Census 2011 Profile 7: Religion, Ethnicity and Irish Travellers*, 2012. Available: <http://www.cso.ie/en/media/csoie/census/documents/census2011profile7/Profile,7,Education,Ethnicity,and,Irish,Traveller,entire,doc.pdf> [accessed 8 December 2015].

¹⁷⁷ Minister for Education and Skills, Ruairi Quinn TD, Parliamentary Questions: Written Answers, [53664-66/13], 17 December 2013. Available: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013121700057#WRF04200>. [accessed 8 December 2015]. The former National Education and Welfare Board also expressed concerns that the withdrawal of services “will impact on the tracking monitoring and addressing school attendance and consequently impact on educational outcomes.” The National Education and Welfare Board (NEWB) was established in 2002 and has a statutory function to ensure that every child attends a recognised school or otherwise receives a certain minimum education. In 2014, it was transferred to the newly-established Child and Family Agency (Tusla). NEWB, *National Educational Welfare Board submission on the Department of Education and Skills Draft National Plan to Improve Literacy and Numeracy in Schools*. See http://www.education.ie/en/Schools-Colleges/Information/Literacy-and-Numeracy/Literacy-and-Numeracy-Submissions/lit_sub_abgd_newb.pdf [accessed 14 December 2015].

¹⁷⁸ Duncan, P. and Humphries J., Irish Times, ‘Census figures raise concerns of ethnic segregation in schools’, 24 February 2015. Available: <http://www.irishtimes.com/news/education/census-figures-raise-concerns-of-ethnic-segregation-in-schools-1.2114559> [accessed 9 July 2015].

¹⁷⁹ Department of Education and Science & Office for the Promotion of Migrant Integration, *Intercultural Education Strategy 2010–2015*, 2010 Available: https://www.education.ie/en/Schools-Colleges/Information/Intercultural-Education-Strategy/mig_intercultural_education_strategy.pdf [accessed 8 December 2015].

¹⁸⁰ Public Policy and Management Institute, *Study on educational support for newly arrived migrant children: Final Report*, 2013, p 75. Available: <http://www.sirius-migrationeducation.org/wp-content/uploads/2013/09/Educational-Support-for-NAMS.pdf> [accessed 8 December 2015].

funding for English as an Additional Language (EAL) for children who are not native English speakers will have a negative impact on migrant children.¹⁸¹

The IHREC also notes that while recent demographic changes are evident in the classroom, this diversity has yet to be reflected within the teaching profession.¹⁸²

In its 2015 Concluding Observations, the Committee on Economic, Social and Cultural Rights called upon the State to “step up its efforts to promote inclusive education for all, including the implementation of the Education for Persons with Special Educational Needs Act 2004, to ensure equal opportunities for all children to quality education”.¹⁸³ The IHREC notes that certain sections of the Education for Persons with Special Educational Needs Act 2004 (the EPSEN Act) have not yet been commenced.¹⁸⁴ In October 2015 the Minister for Education and Skills stated that the full implementation of the EPSEN Act has been delayed due to resource implications and the Minister’s intention is now to introduce policy initiatives on a non-statutory basis.¹⁸⁵

The IHREC recommends that the new section 62(6) of the Education Act, proposed by the Education (Admissions to Schools) Bill 2015,¹⁸⁶ should be amended to the effect that in setting out the characteristic spirit and general objectives of the school, regard shall be had to the values of an inclusive school that respects and accommodates diversity across all nine grounds in the equality legislation.

The IHREC recommends that the Department of Education and Skills should reinstate Traveller-specific education supports.

The IHREC recommends that the Department of Education and Skills, along with the Office for the Promotion of Migrant Integration, should assess and evaluate the *Intercultural Education Strategy 2010 – 2015* with a view to developing a new strategy to ensure that ethnic minority children are not over-represented in schools in disadvantaged areas. This strategy should also seek to increase diversity in the teaching profession by encouraging entry to the profession by persons of minority ethnic backgrounds.

The IHREC recommends that all sections of the Education for Persons with Special Educational Needs Act 2004 should be commenced.

¹⁸¹ Reports indicate that migrant children have already been found to attain lower scores in reading tests. See F. McGinnity, E. Quinn, G. Kingston & P. O’Connell, Economic and Social Research Institute & the Integration Centre, *Annual Monitoring Report on Integration*, 2014, Available: http://emn.ie/files/p_201407030442242013_AnnualMonitoringIntegration.pdf pp 31–34 [accessed 8 December 2015].

¹⁸² During 2013 and 2014, over 95% of applicants to primary and post-primary initial teacher training (ITE) courses identified as having only Irish nationality. During the same period 98% of all ITE students nationwide identified as being ‘White Irish’. See E. Keane and M. Heinz, ‘Diversity in initial teacher education in Ireland: the socio-demographic backgrounds of postgraduate post-primary entrants in 2013 and 2014’, *Irish Educational Studies*, Vol 34, Issue 3, 2015.

¹⁸³ CESCR, Concluding Observations: Ireland UN Doc. E/C.12/IRL/CO/3, 2015 para.32. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> [accessed 8 December 2015]

¹⁸⁴ The following sections of the EPSEN Act have been commenced: sections 1, 2, 14(1)(a), 14(1)(c), 14(2) to 14(4), 19 to 37, 40 to 53.

¹⁸⁵ Minister for Education and Skills, Jan O’Sullivan TD, Parliamentary Questions: Written Answers [35360/15] and [35361/15], 13 October 2015.

¹⁸⁶ See section 5.1 above.

6. Special Protection Measures (articles 22; 30; 38; 39; 40; 37 (b–d); 32–36)

6.1. Traveller and Roma children

In its 2006 Concluding Observations, the Committee called upon Ireland to “work more concretely toward the recognition of the Traveller community as an ethnic group”.¹⁸⁷ The State has not yet formally recognised Irish Travellers as an ethnic minority despite consistent recommendations from international and national bodies as well as parliament to do so.¹⁸⁸ The IHREC notes that the State committed to recognition during its examination by the Committee on Economic Social and Cultural Rights in 2015.¹⁸⁹ However, the IHREC also notes that the consultation paper on a Revised National Traveller and Roma Inclusion Strategy in Ireland did not refer to the issue of recognition. The IHREC reiterates that recognition of Travellers ethnicity is “key to ensuring that the Traveller community is covered by the international human rights protections against discrimination, including under EU law, which apply to such an ethnic group”.¹⁹⁰

The IHREC is also concerned about the allegations in relation to the recording of Traveller children on the Garda Síochána (police) PULSE system in the Committee’s List of Issues¹⁹¹ and notes that these allegations were rejected by the State.¹⁹² However, the IHREC notes the findings of a Special Inquiry carried out by Emily Logan¹⁹³ in 2013 into the removal of two Roma children from their families on the basis that the children did not physically resemble their respective parents as their appearance did not conform to racial stereotypes.¹⁹⁴ While the Inquiry was informed that the data

¹⁸⁷ Concluding Observations, para 79(a), 2006

¹⁸⁸ UN Committee on the Elimination of all forms of Racial Discrimination, *Concluding Observations of the Committee on the Elimination of all forms of Racial Discrimination: Ireland*, CERD/C/IRL/CO/3-4; Available: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsI%2fyrM1B9TT0oGmEKg0FjIGMDN9GaDxXjccJrXyrYI%2f%2fcNOv7wnHlb0L7jDoxEB0Xhj6wo%2f5mWhBPgF7MFyODF2Qj0zgpRtrVm9esS4KT3%2ft> [accessed 8 December 2015].

UN Office of the High Commissioner for Human Rights (OHCHR), *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland*, 2008. Reports on his visit to Ireland available: <https://wcd.coe.int/ViewDoc.jsp?id=1283555> and <https://wcd.coe.int/ViewDoc.jsp?id=1831077>. [both accessed 8 December 2015].

Council of Europe; European Commission against Racism and Intolerance, *ECRI Report on Ireland (fourth monitoring cycle)*, 2013. Available: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf> [accessed 8 December 2015].

UN Human Rights Committee, *Concluding Observations on Ireland’s Fourth Periodic Report*, 2014. Available: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsieXFSudRZs%2fx1ZaMqUuos9ylqPEMRvxx26PpQFtwrk%2fbhtvbJ1frkLE%2bCPVCm6IW%2byJfrz7jxiC9GMVvGkvu2UluUfSqikQb9KMVoAoKkgSGCPR/C/IRL/CO/4>. [accessed 8 December 2015].

Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, *Report on the Recognition of Traveller Ethnicity*, 2014. Available: <http://www.oireachtas.ie/parliament/media/committees/justice/Report-on-Traveller-Ethnicity.pdf> [accessed 25 November 2015]

¹⁸⁹ Government of Ireland, *CESCR: Reply of Ireland to the List of Issues in relation to its third periodic report*, 2015 para 139. Available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fc.12%2fIRL%2fQ%2f3%2fAdd.1&Lang=en [accessed 8 December 2015].

¹⁹⁰ IHRC & Equality Authority, ‘IHRC and Equality Authority call for recognition of Traveller Ethnicity by the State in presentations to Oireachtas Joint Committee on Justice, Defence and Equality’, 13 November 2013. Available: <http://www.ihrec.ie/news/2013/11/13/ihrc-and-equality-authority-call-for-recognition-o/> [accessed 8 December 2015].

¹⁹¹ UNCRC, *List of Issues* UN Doc. CRC/C/IRL/Q/3-4. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/157/84/PDF/G1515784.pdf?OpenElement> [accessed 8 December 2015].

¹⁹² UNCRC *Reply to List of Issues* UN Doc. CRC/C/IRL/Q/3-4/Add.1.

¹⁹³ At the time Emily Logan was the Ombudsman for Children but was acting in an independent capacity for the purposes of the investigation.

¹⁹⁴ Department of Justice and Equality, *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, 2014 Available:

included in Garda records is related to nationality rather than ethnic background,¹⁹⁵ the Inquiry found that, in the case of one of the Roma children affected, his “ethnicity was so influential in determining the decision to remove him from the care of his parents, with no objective or reasonable justification” that it amounted to ethnic profiling.¹⁹⁶ The Inquiry therefore recommended an independent audit on the use of section 12 of the Child Care Act 1991 be carried out in order to consider, amongst other matters, whether certain groups are over-represented in the figures when compared with the size of their communities.¹⁹⁷ In its final report, the Child Care Law Reporting Project noted that “a disproportionate number of the families before the child protection courts had at least one parent from an ethnic minority” and 4.4 per cent accounted for non-settled Irish Travellers.¹⁹⁸ According to a June 2015 implementation report, the Child and Family Agency has conducted an audit and An Garda Síochána is finalising arrangements for conducting an independent audit.¹⁹⁹

The IHREC recalls that in General Comment No. 5 the Committee highlights “the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified”.²⁰⁰ A consultation document has identified data collection as a priority area for the forthcoming Revised National Traveller and Roma Inclusion Strategy.²⁰¹ The IHREC is aware that work is currently being undertaken by the National Traveller and Roma Inclusion Strategy Steering Group, which consists of representatives from Government Departments, statutory bodies and civil society, to develop a data collection strategy as part of the Revised National Traveller and Roma Inclusion Strategy.²⁰²

The IHREC recommends that the Government formally recognise Travellers as an ethnic minority as a matter of priority and ensure greater legal protection for this vulnerable group.

The IHREC reiterates the recommendations of the Special Inquiry and calls on the State to ensure that protocols and cultural competence training for the Garda Síochána (police) are put in place.

<http://www.justice.ie/en/JELR/Emily%20Logan%20report.pdf/Files/Emily%20Logan%20report.pdf> [accessed 8 December 2015].

¹⁹⁵ Department of Justice and Equality, *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, 2014, p 115.

¹⁹⁶ Department of Justice and Equality, *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, 2014 p 115.

¹⁹⁷ Department of Justice and Equality, *Report of Ms. Emily Logan, Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána) Order 2013*, 2014 p 115.

¹⁹⁸ Child Care Law Reporting Project *Final report* Dublin, 2015, p13.

¹⁹⁹ Department of Justice and Equality, *Logan Report Implementation Group, Report of Implementation Group set up to monitor implementation of the Recommendations contained in Ms Emily Logan’s Report of the inquiry into the circumstances surrounding the removal of two Roma children from their families under the Garda Síochána Act 2005 (Section 42)*. Available:

<http://www.justice.ie/en/JELR/Logan%20Report%20Implementation%20Group%20Report%20Final%20V8%20240615.pdf/Files/Logan%20Report%20Implementation%20Group%20Report%20Final%20V8%20240615.pdf> [accessed 25 November 2015].

²⁰⁰ UN Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention*, CRC/GC/2003/5, 27 November 2003, p 4. Also see p 12.

²⁰¹ Department of Justice and Equality, *Public consultation on the development of a Revised National Traveller & Roma Inclusion Strategy in Ireland*, 2015. Available:

<http://www.travellerinclusion.ie/website/TravPolicy/travinclusionweb.nsf/page/nationalinclusionstrategy-en> [accessed 8 December 2015].

²⁰² Department of Justice and Equality, *Minister for Equality announces details of comprehensive consultation process for a revised National Traveller and Roma Inclusion Strategy*. Available: <http://www.justice.ie/en/JELR/Pages/PR15000331> [accessed 8 December 2015].

The IHREC recommends that the Committee’s observations on data collection set out in General Comment No. 5 are integrated into actions related to data collection in the Revised National Traveller and Roma Inclusion Strategy.

6.2. Trafficking

Despite developments in law and policy in relation to trafficking during the reporting period the IHREC notes that Ireland has not yet ratified the Optional Protocol on the sale of children, child prostitution and child pornography. In its 2015 submission to the UN Committee on the Elimination of All Forms of Violence Against Women, the IHREC identified gaps in Ireland’s legislative and policy framework with respect to trafficking, particularly in relation to the identification and treatment of victims.²⁰³

In *P v The Chief Superintendent of the Garda National Immigration Bureau, the DPP, Ireland and the Attorney General*,²⁰⁴ a case in which the IHREC appeared as *amicus curiae*, the High Court found that the current administrative scheme for the identification and protection of victims of human trafficking is “inadequate in terms of the transposition of the EU Directive”. This case demonstrates the desirability of placing the current administrative arrangements for identification of victims on a statutory basis. With regard to children, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) has recommended that the state should set up “a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists and ensures that the best interests of the child are the primary consideration”.²⁰⁵ The UN Special Rapporteur on trafficking in persons, especially women and children has also stated that persons who may be considered to have committed an offence in the course of being trafficked should not be held responsible nor punished for the offence as they cannot be considered to have acted freely.²⁰⁶

The IHREC recommends that current administrative arrangements for the identification of victims of trafficking should be placed on a statutory basis, which would include specific provision for children in line with the GRETA recommendations.

²⁰³ IHREC, *Submission to UN Committee on the Elimination of all forms of Discrimination against Women List of Issues Prior to Reporting on Ireland’s Combined 6th and 7th Report under CEDAW*, 2015. Available: http://www.ihrec.ie/download/pdf/ihrec_submission_to_cedaw_loipr_2015.pdf [accessed 7 December 2015].

²⁰⁴ [2015] IEHC 222. In this case, the applicant had spent almost three years in detention in the Dóchas Centre, much of that time waiting for a decision on her application to be recognised as a victim of human trafficking. See IHREC, *IHREC calls for immediate action to protect victims of human trafficking following High Court Judgment*, 15 April 2015. Available: <http://www.ihrec.ie/news/2015/04/> [accessed 15 October 2015].

²⁰⁵ Group of Experts on Action against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round*, GRETA(2013)15, p 64. Available: https://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_15_FGR_IRL_public_en.pdf [accessed 25 November 2015].

²⁰⁶ UN General Assembly, *Report of the Special Rapporteur on Trafficking in Persons, especially women and children*, A/69/33797, 28 July 2014.

6.3. Children and the Criminal Justice System

The framework for dealing with children who come into contact with the criminal justice system is set out in General Comment No. 10 as well as in other international human rights standards such as the Beijing Rules²⁰⁷ and the Riyadh Guidelines.²⁰⁸ The IHREC also notes that the deadline for transposition of the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime passed on 16 November 2015.²⁰⁹ The recitals, which are not binding, refer to the best interests of the child and the right of the child to be heard and Articles 21(4) and 24 of the Directive oblige EU Member States to put special protection measures in place for child victims of crime. The IHREC considers that the transposition of this Directive presents an opportunity for Ireland to ensure that Convention principles are reflected in domestic legislation on victims' rights.²¹⁰

The IHREC recommends the prompt publication and enactment of legislation to transpose the EU Victims' Directive into Irish law, and to ensure that the legislation also complies with the State's Convention obligations.

6.3.1. Age of Criminal Responsibility

In 2006 the IHRC criticised proposed changes to the age of criminal responsibility repealing the rebuttable presumption that children between the ages of 12 and 14 years were incapable of committing an offence.²¹¹ The Committee was also critical of these proposals.²¹² The current criminal law places the age of criminal responsibility at 12 years, but a child aged 10 or 11 may be charged with serious offences,²¹³ provided that the permission of the Director of Public Prosecutions has been obtained.²¹⁴ The IHREC notes that General Comment No. 10 states that "a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable".²¹⁵

²⁰⁷ UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) adopted by General Assembly Resolution 40/33 of 29 November 1985.

²⁰⁸ UN Guidelines for the Prevention of Delinquency (Riyadh Guidelines) adopted by General Assembly resolution 45/112 of 14 December 1990.

²⁰⁹ Available: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN> [accessed 8 December 2015].

²¹⁰ The IHREC notes that the Department of Justice and Equality has published a *General Scheme of a Criminal Justice (Victims of Crime) Bill 2015*, which provides for special protection measures for child victims in heads 17 and 15. Available: [http://www.justice.ie/en/JELR/CRIMINAL%20JUSTICE%20\(Victims%20of%20Crime\)%20BILL%202015.pdf/Files/CRIMINAL%20JUSTICE%20\(Victims%20of%20Crime\)%20BILL%202015.pdf](http://www.justice.ie/en/JELR/CRIMINAL%20JUSTICE%20(Victims%20of%20Crime)%20BILL%202015.pdf/Files/CRIMINAL%20JUSTICE%20(Victims%20of%20Crime)%20BILL%202015.pdf) [accessed 8 December 2015]

²¹¹ IHRC, *Submission to the UN Committee on the Rights of the Child on Ireland's second periodic report under the UN Convention on the Rights of the Child*, 2006.

²¹² UN Committee on the Rights of the Child, *Concluding Observations of the UN Committee on the Rights of the Child: Ireland*, 2006, para 67.

²¹³ Murder, manslaughter, rape, rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 or aggravated sexual assault.

²¹⁴ These changes were brought into effect by section 129 of the Criminal Justice Act 2006, which amended section 52 of the Children Act 2001.

²¹⁵ UNCRC (2007), *General Comment No. 10 (2007) Children's rights in juvenile justice*, UN Doc. CRC/C/GC/10. Available: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vEZ%2b03pfhJYL%2b%2fo2i7IIJgP6EiqSGKnB2CPSr6g7ed2P0M8AO57Tg1kfwde7vhlIwc0tRQLDmAZWHVA9bVwzD%2b> [accessed 8 December 2015].

The IHREC recommends that section 52 of the Children Act 2001 should be amended to ensure that children under 12 may not be prosecuted for any offence.

The IHREC recommends the reinstatement in the criminal law of a rebuttable presumption that children between the ages of 12 and 14 years are incapable of committing an offence.

6.3.2. Detention of Children

In its 2006 Concluding Observations the Committee expressed concern about the detention of 16 and 17 year old children in St. Patrick's Institution, which is an adult detention centre, and recommended that children be provided with separate detention facilities.²¹⁶ Following its visit to Ireland in 2014 the Council of Europe's Committee on the Prevention of Torture requested confirmation that all children who had been sentenced or placed on remand are being held in children's detention schools.²¹⁷ In its response the State noted that the "visit occurred during a time of transition" and listed the measures being taken to ensure that children be detained in child detention schools.²¹⁸

The Children (Amendment) Act 2015 was signed into law on 27 July 2015, and provides that all children convicted of offences or remanded in custody will be detained in a children's detention school rather than Saint Patrick's Institution.²¹⁹ The legislation has not yet been commenced.²²⁰ The IHREC welcomes the Prisons Bill 2015, which provides for the complete closure of St. Patrick's Institution and was presented to Seanad Éireann on 1 December 2015.²²¹

The IHREC recommends that Section 3 of the Children (Amendment) Act 2015 be commenced as a matter of priority and the Prisons Bill 2015 be enacted and commenced to ensure the swift closure of St. Patrick's Institution.

6.4. Children Seeking International Protection

The Committee recommended in 2006 that the State take the necessary measures to bring policy, procedures and practice into line with its international obligations, as well as principles outlined in other documents, including the Statement of Good Practices produced by the United Nations High Commissioner for Refugees and Save the Children.²²² Despite these recommendations the IHREC

²¹⁶ UN Committee on the Rights of the Child, *Concluding Observations of the UN Committee on the Rights of the Child: Ireland*, 2006, para 73.

²¹⁷ Council of Europe, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014*. Available: <http://www.cpt.coe.int/documents/irl/2015-38-inf-eng.pdf> [accessed 8 December 2015].

²¹⁸ Government of Ireland, *Response of the Government of Ireland to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Ireland from 16 to 26 September 2014*. Available: <http://www.cpt.coe.int/documents/irl/2015-39-inf-eng.pdf> [accessed 8 December 2015].

²¹⁹ Sections 88(12), 88(13) and 156A of the Children Act 2001.

²²⁰ Since March 2015 regulations give courts the option, but not the obligation, to place 17 year old boys on remand in Trinity House School and Oberstown Boys' School. Children Act 2001 (Designation of Remand Centres) (Amendment) Order 2015 (S.I. No. 95 of 2015) amended Children Act 2001 (Designation of Remand Centres) Order 2012 (S.I. No. 136 of 2012).

²²¹ Available at: <http://www.oireachtas.ie/documents/bills28/bills/2015/11015/b11015s.pdf> [accessed on 9 December 2015].

²²² UN Committee on the Rights of the Child, *Concluding Observations of the UN Committee on the Rights of the Child: Ireland*, para 65.

remains concerned about the situation of children seeking international protection in Ireland, particularly in relation to the Direct Provision system, which is outlined below. The IHREC is also concerned about the absence of integration supports and targeted language teaching supports for asylum seeking and refugee communities.

The IHREC notes that the International Protection Bill 2015 is currently passing through the Houses of the Oireachtas. The legislation overhauls the legal framework on asylum law and will impact on children seeking international protection.²²³ While welcoming a single procedure for assessing a claim for protection, the IHREC set out its concerns in relation to the operation of this procedure in its observations on an early draft of the legislation.²²⁴ The IHREC notes that the majority of its concerns were not addressed in the Bill presented to Seanad Éireann on 19 November 2015.

In particular the IHREC is concerned that section 57(2) of the Bill provides for the best interests of the child to be taken into account only once a child has been granted international protection. In its observations, the IHREC recommended that the principle should apply to all children at all stages of the international protection process.²²⁵ The IHREC is also of the view that the proposed arrangements for family reunification set out in sections 55 and 56 of the Bill are not in compliance with the best interests' principle. This is due to the narrow definition of family and the restricted time period of 12 months, which may be waived if it was not reasonable to make an application within that period. In its observations, the IHREC recommended that consideration should be given to the range of family relationships to which Article 8 of the European Convention on Human Rights can apply in the context of this legislative proposal.²²⁶

The IHREC also notes that under the Irish Refugee Protection Programme, which forms part of the EU's relocation programme, the Irish Government agreed to provide a safe haven for up to 4,000 persons seeking international protection.²²⁷ The IHREC is concerned at the slow progress of this programme and the lack of information available in relation to the nature of the accommodation and reception conditions as well as integration measures and guardianship plans for children. The IHREC is of the view that this programme needs to be assessed in order to ensure it is in line with the Convention, particularly in order to ensure the best interests of children who are affected.

The IHREC recommends that the legal framework relating to international protection and the Irish Refugee Protection Programme be revised in order to ensure compliance with the Convention, in particular to give effect to the best interests of the child.

6.4.1. Unaccompanied and Separated Minors

In 2006 the Committee expressed concern about the treatment of unaccompanied minors and reminded the State of its General Comment No. 6 on treatment of unaccompanied and separated children outside their country of origin.²²⁸ The IHREC welcomes the State closure of specialised

²²³ Available: <http://www.oireachtas.ie/documents/bills28/bills/2015/10215/b10215s.pdf> [accessed 8 December 2015].

²²⁴ IHREC, *Legislative Observations on the General Scheme of the International Protection Bill 2015*. Available: http://www.ihrec.ie/download/pdf/ihrec_recs_general_scheme_international_protection_bill_26_june_2015.pdf. [accessed 8 December 2015].

²²⁵ IHREC, *Legislative Observations on the General Scheme of the International Protection Bill 2015*, p 10.

²²⁶ IHREC, *Legislative Observations on the General Scheme of the International Protection Bill 2015*, p 18.

²²⁷ Department of Justice and Equality "Ireland to accept up to 4,000 persons under Relocation and Resettlement programmes- Fitzgerald" Press release, Dublin, 10 September 2015. Available: <http://www.justice.ie/en/JELR/Pages/PR15000463> [accessed 9 December 2015].

²²⁸ UNCRC, *Concluding Observations: Ireland*, UN Doc. CRC/C/IRL/CO/2, 2006, paras 64–65.

hostels for unaccompanied children, who are now placed in foster care or in supported lodgings under the Child Care Act 1991.²²⁹ The IHREC recognises that the number of children arriving alone in the State has greatly declined in recent years, but notes that the majority of children arriving alone are placed in State care.²³⁰ It also notes that a number of children continue to go missing; between 2009 and 2014, 78 children went missing of whom 52 have not been found.²³¹

While the IHREC notes the positive reforms that have been made to date, it calls on the State to ensure that an individualised care plan is developed for each child in consultation with him or her, and that he or she is enabled to maintain his or her cultural, ethnic or linguistic identity while in State care.²³² The IHREC is concerned that aftercare is not routinely available for separated children who are instead usually transferred to Direct Provision accommodation on turning 18. The IHREC welcomes the introduction of an agreed Health Service Executive and Reception and Integration Agency policy²³³ which helps to ensure that ‘aged-out’ unaccompanied minors are not discharged from care during an academic year.²³⁴ The IHREC notes that the Minister for Children, James Reilly TD, has stated that the Child Care (Amendment) Act 2015, which is currently passing through the Houses of the Oireachtas, will ensure that aftercare plans are “to become the norm” for children and young people leaving State care.²³⁵

The IHREC notes that the International Protection Bill 2015 proposes a number of changes which will affect unaccompanied minors in the State. In its observations on the draft legislation, the IHREC made the following recommendations:

- An unaccompanied child or a separated child should never be refused entry to the State;

²²⁹ This development took place following criticism of the practice by the Ombudsman for Children, *Separated Children Living in Ireland: A Report by the Ombudsman for Children's Office*, 2009 p 42. Available: <http://www.oco.ie/wp-content/uploads/2014/03/SeparatedChildrenProjectReport.pdf> [accessed 15 December 2015]. See also Office of the Minister for Children, *Report of the Commission to Inquire into Child Abuse, 2009: Implementation Plan*, 2009, p 37 Available: http://www.dcy.gov.ie/documents/publications/implementation_plan_from_ryan_com [accessed 8 December 2015]

²³⁰ The number of separated children referred to the HSE's Team for Separated Children Seeking Asylum (TSCSA) fell from more than 1000 in 2001 to 78 between January and October 2014. However, of these it is not known how many sought asylum. See *Separated Children in Europe Programme, Newsletter No. 42 – Winter 2014*, p 58. Available: <http://www.scepnetwork.org/images/12/274.pdf> [accessed 8 December 2015].

²³¹ Quinn, E., Joyce, C., & Gusciute, E., *Policies and Practices for Unaccompanied Minors in Ireland*, Economic and Social Research Institute, 2014, p 61. Available: http://emn.ie/files/p_20141124075808EMN%20Study%20on%20UAMs%20in%20Ireland%20FINAL%20ONLINE%20VERSION.pdf [accessed 8 December 2015].

²³² Ní Raghallaigh, M., Barnardos and the Health Service Executive, *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland*, 2013. Available: <http://www.barnardos.ie/assets/files/Advocacy/2013SeparatedChildren/Report%20into%20separated%20children%20in%20foster%20care.pdf> [accessed 8 December 2015].

²³³ Health Service Executive and Reception and Integration Agency, *Accommodation of Aged Out Minors in RIA Accommodation Centres*, 2011. Available: <http://www.ria.gov.ie/en/RIA/Aged%20Out%20Minors%20Policy%20Doc%20December%202011.pdf/Files/Aged%20Out%20Minors%20Policy%20Doc%20December%202011.pdf> [accessed 8 December 2015].

²³⁴ Quinn, E., Joyce, C., & Gusciute, E., *Policies and Practices for Unaccompanied Minors in Ireland*, Economic and Social Research Institute, 2014, p 71. Available: http://emn.ie/files/p_20141124075808EMN%20Study%20on%20UAMs%20in%20Ireland%20FINAL%20ONLINE%20VERSION.pdf [accessed 8 December 2015].

²³⁵ O'Regan, M., 'Minister for Children pledges aftercare plan for children and youths leaving State care', Irish Times, 26 November 2015. Available: <http://www.irishtimes.com/news/politics/oireachtas/minister-for-children-pledges-aftercare-plan-for-children-and-youths-leaving-state-care-1.2445269> [accessed 10 December 2015].

- Clear definitions should be included of an unaccompanied child and a separated child in line with the General Comment of the Committee on the Rights of the Child, the Save the Children guidelines and UNHCR guidelines;
- Until proven otherwise, a person shall be assumed to be under the age of 18 years;
- A guardian or advisor should be appointed to all unaccompanied or separated children, whether or not they have made a protection application;
- Specific provisions should be included for dealing with suspected cases of child trafficking by setting out sufficient safeguards to identify and prevent child trafficking at the frontiers of the State; and
- Children should be given an opportunity to submit applications for protection on their own behalf, if they wish.²³⁶

The IHREC notes that these recommendations have not been incorporated into section 15 of the Bill. The IHREC is also concerned about other aspects of the Bill which relate to unaccompanied children. Section 24 of the International Protection Bill 2015 provides for medical examinations to determine the age of an applicant. In its observations, the IHREC expressed its concerns about the lack of a definition of medical examination²³⁷ which could lead to the use of techniques which have been criticised such as magnetic resonance tomography, bone and dental assessment, and radiological testing.²³⁸ According to the Separated Children in Europe Programme (SCEP) “these techniques often do not take into account ethnic variations, they are based on reference materials that for the most commonly used tests are out of date, and generate a margin of error that makes them too inaccurate to use”.²³⁹ The IHREC also notes that General Comment No. 6 requires the assessment to be “conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity”.²⁴⁰ The IHREC is of the view that medical and other examinations for establishing the age of individuals should be used as a measure of last resort where there are grounds for serious doubt as to the age of the applicant and other approaches have failed to establish the age of the person in question.

The IHREC is also concerned that the Bill does not provide a definition of “responsible adult” and this should be reviewed in line with the Committee’s General Comment No. 6.²⁴¹ The Bill should also ensure that it provides for the appointment of a guardian in line with international human rights standards.²⁴² For example, Article 10 of the Council of Europe’s Convention on Action against Trafficking in Human Beings requires State parties to “provide for representation of the child by a

²³⁶ IHREC, *Legislative Observations on the General Scheme of the International Protection Bill 2015*, p 15.

²³⁷ IHREC, *Legislative Observations on the General Scheme of the International Protection Bill 2015*, pp 11–12.

²³⁸ European Union Agency for Fundamental Rights (FRA), Separated, *asylum-seeking children in European Union Member States: Summary Report*, 2010. Available: <http://fra.europa.eu/en/publication/2012/separated-asylum-seeking-children-european-union-member-states> [accessed 8 December 2015].

²³⁹ SCEP Thematic Group on Age Assessment, *Review of current laws, policies and practices relating to age assessment in sixteen European Countries*, Leiden, 2011, p 4. Available: <http://www.separated-children-europe-programme.org/images/17/166.pdf> [accessed 9 December 2015].

²⁴⁰ UNCRC, *General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* UN Doc. CRC/GC/2005/6, 2005, para 31. Available: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2005%2f6&Lang=en [accessed 10 December 2015].

²⁴¹ UNCRC, *General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin* UN Doc. CRC/GC/2005/6, 2005, para 7.

²⁴² Defence for Children Core Standards for guardians of separated children in Europe Goals for guardians and authorities, Netherlands, 2011. Available: <http://www.corestandardsforguardians.com/images/11/334.pdf> [accessed 10 December 2015].

legal guardian, organisation or authority which shall act in the best interests of that child” as soon as an unaccompanied child has been identified as a victim of trafficking.²⁴³

The IHREC recommends that section 24 of the International Protection Bill 2015, which relates to medical examinations to determine the age of an applicant, should be amended to comply with international best practice in this area.

Recalling its observations on Head 12 of the General Scheme, the IHREC recommends that section 15 of the International Protection Bill 2015 should be amended to ensure it is in line with best practice on the treatment of unaccompanied minors, as elaborated in General Comment No. 6, the Save the Children guidelines and in UNHCR guidelines.²⁴⁴

6.4.2. Direct Provision

The system of Direct Provision and its impact on children has been criticised at both a national and international level as well as by the courts. In 2015 the Committee on Economic Social and Cultural Rights expressed concern that Direct Provision “centres have a negative impact on asylum seekers’ right to family life, their mental health and their children’s best interests”.²⁴⁵ At the domestic level, the Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers (the Working Group) recommended wide-ranging reform of the current system as well as child-specific recommendations such as an increase in the child allowance from €9.80 to €29.80.²⁴⁶

In the case of *In the Matter of an Application for Judicial Review by ALJ and A, B and C*, the Northern Ireland High Court held that it would not be in the best interests of a child asylum seeker to be returned to the Republic, with Direct Provision being a major factor in this determination.²⁴⁷ The Child Care Law Reporting Project has also brought to light the concerns of judges and legal representatives on the suitability of Direct Provision for long-term care of children.²⁴⁸

The government-appointed Special Rapporteur for Children, Dr Geoffrey Shannon, also expressed concerns in relation to child protection in the Direct Provision system due to the fact single parents may be required to share with strangers, and teenage siblings of opposite genders may have to share one room.²⁴⁹ He also notes that children living in Direct Provision are growing up in “state-

²⁴³ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197.

²⁴⁴ IHREC, *Legislative Observations on the General Scheme of the International Protection Bill 2015*, p 14.

²⁴⁵ CESCR, *Concluding Observations: Ireland*, UN Doc. E/C.12/IRL/CO/3, 2015, para.14. Available: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> [Accessed 8 December 2015]

²⁴⁶ Department of Justice and Equality, Working Group to Report to Government on the Protection Process on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, Dublin, 2015 para 5.30. Available: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf> [accessed 8 December 2015]

²⁴⁷ (2013) NIQB 88.

²⁴⁸ See Child Care Law Reporting Project (CCLRP), Vol. 1, Case 19, *Emergency care order for children in Direct Provision centre*; CCLRP, Vol. 3, Case 3, *Emergency Care Order for 8-year-old born and reared in Direct Provision centre*; CCLRP, Vol. 3, Case 16, *Mother in Direct Provision opposes discharge of Emergency Care Order*. All reports available at: <http://www.childlawproject.ie/archive/> [accessed 8 December 2015].

²⁴⁹ Department of Justice and Equality, *Report to Government of the Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers*, 30 June 2015. Available: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Pr>

sanctioned poverty” and described the system an unnatural family environment which alienates children and is not conducive to the child’s positive development.²⁵⁰

In its *Policy Statement on Direct Provision* the IHREC recommended “that existing families are moved out of Direct Provision Centres and enabled to access self-catering accommodation, at the earliest possible opportunity, and any new families are not accommodated in Direct Provision Centres”.²⁵¹ A similar recommendation was also made by the Working Group as well as other recommendations in relation to play and recreation facilities for children and young people.²⁵²

The IHREC calls upon the State to fully implement the recommendations of the Working Group on the Protection Process including Direct Provision and supports for Asylum Seekers, particularly the recommendations which would have a direct impact on children living in Direct Provision.²⁵³

http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf [accessed 8 December 2015].

²⁵⁰ Shannon, G., *Fifth Report of the Special Rapporteur for Children*, 2011, pp 31–32 and Shannon, G., *Seventh Report of the Special Rapporteur for Children*, pp 56–60.

²⁵¹ IHREC, *Policy Statement on the System of Direct Provision in Ireland*, 2014 p 18. Available: http://www.ihrec.ie/download/pdf/ihrec_policy_statement_on_direct_provision_10dec14.pdf [accessed 15 October 2015].

²⁵² Department of Justice and Equality, *Report to Government of the Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers*, 30 June 2015, para 4.75. Available: <http://www.justice.ie/en/JELR/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf/Files/Report%20to%20Government%20on%20Improvements%20to%20the%20Protection%20Process,%20including%20Direct%20Provision%20and%20Supports%20to%20Asylum%20Seekers.pdf> [accessed 8 December 2015].

²⁵³ Department of Justice and Equality, *Report to Government of the Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers*, 30 June 2015, paras 4.135, 4.199, 4.75, 5.30.