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Secretariat of the European Committee for the Prevention of Torture and Inhuman or Degrading
Treatment or Punishment (CPT)
Council of Europe
F-67075 Strasbourg Cedex
France

26 March 2024

RE: CPT delegation visit to Ireland as part of the 8th periodic cycle

Dear Committee members,

I am writing from the Irish Human Rights and Equality Commission ('Commission') following the announcement that the CPT intends to examine the treatment of persons deprived of their liberty in Ireland in 2024.¹ The Commission is the A status National Human Rights Institution and the National Equality Body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014*. In accordance with our founding legislation, we are mandated to consult with such national, European Union or international bodies or agencies having knowledge or expertise in the field of human rights or equality as we see fit.² We will also be assigned the role of the Co-ordinating National Preventive Mechanism ('NPM') under the Optional Protocol to the Convention against Torture ('OPCAT'), pending ratification.³

The planned visit to Ireland is very welcome and timely, particularly to support domestic advocacy efforts with the State to establish a NPM and ratify OPCAT following repeated delays. Under Article 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT is permitted to visit 'any place...where persons are deprived of their liberty by a public authority.' Such 'deprivation of liberty' is to be understood within the meaning of Article 5 of the European Convention on Human Rights and its application to standard custodial settings and non-traditional detention. In the context of the forthcoming visit, we note that the scope of protection under Article 5 has been expanded through case law and evolving interpretations to include, for example, placements in social care institutions, administrative detention, children

¹ [The Council of Europe anti-torture Committee announces periodic visits to eight countries in 2024](#) (2023).

² Section 10(2)(h) of the 2014 Act.

³ To be provided under the *Inspection of Places of Detention Bill*, when enacted.



detained by a public authority, and facilities for asylum seekers.⁴ The previous reports by the CPT also demonstrate that *de facto* detention comes within its remit and a number of objective factors are considered, including the degree of supervision and control over a person's movements, isolation, disciplinary measures, inadequate material conditions and prolonged stays.⁵

While the specific thematic area for the 2024 review has yet to be communicated, we are aware that the CPT's visits in Ireland are likely to include law enforcement agencies, prisons and mental health establishments. We intend to submit additional written comments on these places of detention for consideration by the delegation. In order to maximise the preventative impact of this mechanism and strengthen protections, we have set out our initial observations on nursing homes, accommodation for international protection applicants and children's residential care settings below.⁶ The purpose of intervening at this point is to highlight growing evidence of restrictions and conditions in these settings, which **may** raise deprivation of liberty concerns within the scope of Article 2, in order to inform the CPT's visit schedule. We would welcome the delegation's direct assessment of these settings, in order to inform ongoing work on the establishment of a NPM and play an essential part in ensuring that all safeguards, policies and regulations in place are human rights and equality proofed.

We look forward to ongoing close engagement to support your work, including by providing any logistical support required in the preparations for the visit, through the submission of written comments, and in meeting with the delegation in Dublin.

Yours Sincerely,

⁴ Council of Europe, [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: Text of the Convention and Explanatory Report](#) (2002). See also, *Stanev v. Bulgaria* [GC], 2012; *J.R. and Others v. Greece*, 2018; and *Terheş v. Romania* (dec), 2021.

⁵ See for example, Council of Europe, [Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants \(CPT\) \(2022\)](#). See also: *H.M. v. Switzerland*, 2002, § 45; *H.L. v. the United Kingdom*, 2004, § 91; *Storck v. Germany*, 2005, § 73.

⁶ We note that to date, the places of detention visited by the Committee have included reception centres for asylum seekers, social care homes, and children's residential care settings. See for example, Council of Europe, [Rapport au Conseil fédéral suisse relatif à la visite effectuée en Suisse par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants \(CPT\) \(2022\)](#) and Council of Europe, [Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) \(2021\)](#).



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Nursing homes

We note that the CPT has previously examined the treatment of older people accommodated in nursing homes, including their isolation, high level of segregation, and lack of viable alternatives in the community.⁷ There is an ongoing trend in Ireland of smaller nursing homes closing and private, international investors increasingly taking over the operation of larger centres.⁸ Despite State policies on deinstitutionalisation,⁹ the majority of new nursing homes have more than 90 beds.¹⁰

We have concerns about the numbers of older people placed in nursing homes despite their clear preference to age at home. For example, valid and voluntary consent to placements is being impacted by the lack of resources for appropriate care and supports in the community, family members making decisions on admission irrespective of capacity, limited information and independent advocacy available, and risk adverse attitudes among professionals to older people remaining in their homes.¹¹ There are reports of residents having to seek permission to leave a centre, residents being excluded from decision-making processes, the increased use of digital door codes, and the use of restraints.¹² There are also many younger disabled people (approximately 1,300) inappropriately accommodated in nursing homes, including due to the de-congregation of large institutional residential care settings without appropriate community supports.¹³ Overall,

⁷ CPT, [Report to the Italian Government on the periodic visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CPT) (2023), p. 75.

⁸ As of 2022, 77% of nursing homes were run by private providers. IHREC, [Policy Statement on Care](#) (2023), p. 30.

⁹ Despite the State's commitment to deinstitutionalise residential disability services, progress has been slow and the revised target timeframe for implementation by 2021 was not met. HSE, [Time to Move on from Congregated Settings A Strategy for Community Inclusion](#) (2011) and National Disability Authority, [Independent Assessment of Implementation of the National Disability Inclusion Strategy for 2021](#) (2022) p. 40.

¹⁰ HIQA, [Overview Report: Monitoring and Regulation of Older Persons Services in 2022](#) (2023), pp. 4, 15. The largest nursing home at the end of 2022 had 182 beds, and there are now 60 nursing homes nationally with more than 100 beds.

¹¹ IHREC, [Policy Statement on Care](#) (2023), pp. 35-36 and National Nursing Home Experience Survey, [Overview of Findings 2022](#) (2022), p. 16. For example, there are approximately 6,000 people with home care packages in Ireland who are unable to access support due to workforce constraints.

¹² Irish Council for Civil Liberties, [ICCL submission on the General Scheme of the Inspection of Places of Detention Bill 2022](#) (2022), p. 32; IHREC, [Ireland and the International Covenant on Civil and Political Rights](#) (2022), p. 54.

¹³ Sage Advocacy, [Developing an Observatory on Long-Term Care in Ireland: A Human Rights Perspective](#) (2023) and Office of the Ombudsman, [Wasted lives: Time for a better future for younger people in nursing homes](#) (2021), p. 7.



advocates report that the care and support infrastructure in Ireland is ‘fundamentally at odds with people’s right to choose’.¹⁴

Recent inspection reports on nursing homes by the Health Information and Quality Authority (‘HIQA’) document a rising level of non-compliance in relation to residents’ rights, including due to limited access to activities, lack of privacy in multi-occupancy rooms, institutional practices, and residents not being involved in decisions about their care and support. Significant issues also persist in relation to the regulations on fire safety and governance and management in a number of services.¹⁵ With regard to the standards required of each premises, only 22% of services were fully compliant in 2022 due to insufficient facilities - including toilets, showers, communal areas and safe outdoor spaces – limited floor space, and insufficient storage.¹⁶

Given the long history of abuse of older people and disabled people in institutional settings in Ireland, the absence of an inspection body with the powers to investigate and decide on individual cases and complaints is a significant gap. There are long-standing calls for rights-based adult safeguarding legislation to be introduced to ensure complaints of abuse and neglect can be investigated, both in residential facilities and in the community.¹⁷ The lack of statutory clinical oversight of care for residents in the private nursing home sector was one of the biggest weaknesses exposed by the pandemic.¹⁸ Private nursing homes are not within the remit of the national policy, ‘Safeguarding Vulnerable Persons at Risk of Abuse’, figures on complaints are not collected, and adult safeguarding social workers do not have a legal right of entry.¹⁹

In light of the documented issues, we encourage the CPT to assess infringements of people’s liberty in practice within the nursing home sector, including a particular focus on larger, private centres.

¹⁴ Sage Advocacy, [Developing an Observatory on Long-Term Care in Ireland: A Human Rights Perspective](#) (2023), p. 37.

¹⁵ HIQA, [Overview Report: Monitoring and Regulation of Older Persons Services in 2022](#) (2023), pp. 4-5, 23. 17% of centres were non-compliant with the regulations on residents’ rights; 33% were non-compliant with the regulations on governance and management; and 33% were non-compliant with fire precautions.

¹⁶ HIQA, [Overview Report: Monitoring and Regulation of Older Persons Services in 2022](#) (2023), p. 55.

¹⁷ IHREC, [Policy Statement on Care](#) (2023), pp. 67-68.

¹⁸ Oireachtas Special Committee on COVID-19 Response, [Interim report on COVID-19 in nursing homes](#) (2020), p. 14.

¹⁹ IHREC, [Policy Statement on Care](#) (2023), pp. 66-67.



Accommodation for international protection applicants

The Irish international protection ('Direct Provision') system is in crisis and accommodation standards continue to deteriorate.²⁰ As of March 2024, international protection applicants are being housed across 49 International Protection Accommodation Services ('IPAS') centres (6,895 applicants); 220 emergency accommodation centres (19,594 applicants, including 4,331 children); a national reception centre (452 applicants); a transit hub (624 applicants) and tents (454 applicants).²¹ The emergency centres increasingly relied on include former guesthouses, hostels and hotels, language schools, apartments and other repurposed commercial buildings not designed for residential purposes. Due to severe capacity issues in the system, there are also 1,308 international protection applicants awaiting an offer of accommodation from the Irish State and living in homelessness.²²

We have previously recommended that the *Inspections of Places of Detention Bill*, providing for the establishment of a NPM and ratification of OPCAT, should include accommodation centres for international protection applicants as places of *de facto* detention where deprivation of liberty or detention may occur.²³ This recommendation was recently supported by a Parliamentary Committee on Justice.²⁴

Firstly, applicants do not have a choice regarding the location of their accommodation and requests for transfers are only granted in exceptional circumstances.²⁵ We have also heard reports of centres making a decision to move a resident without warning or a clear rationale, creating challenges and upset. While freedom of movement among international protection applicants is not expressly restricted in law, the barriers in place can result in even temporary trips from accommodation centres being difficult in practice.²⁶ IPAS House Rules and Procedures require residents to seek permission if they are going to be away from their accommodation overnight, and an absence of more than three consecutive nights can affect their entitlement to the accommodation and social

²⁰ As noted by the Ombudsman for Children, 'An overreliance on the private, commercial sector accommodation has led to system failures on practical, economic and legal grounds:' [Safety & Welfare of Children in Direct Provision](#) (2023), p. 6.

²¹ Department of Children, Equality, Disability, Integration and Youth, [IPAS Weekly Accommodation and Arrivals Statistics](#) (March 2024). The State began using tents as a form of accommodation in July 2022.

²² Department of Children, Equality, Disability, Integration and Youth, [Statistics on International Protection Applicants not offered accommodation](#) (March 2024). Their Daily Expense Allowance has been temporarily increased to €113.80 a week.

²³ IHREC, [Submission on the General Scheme of the Inspection of Places of Detention Bill](#) (2022), p. 34.

²⁴ Joint Committee on Justice, [Report on Pre-Legislative Scrutiny of the General Scheme of the Inspection of Places of Detention Bill 2022](#) (2023), p. 8.

²⁵ Irish Refugee Council, [Country Report: Freedom of Movement](#) (2023).

²⁶ ICCL, [ICCL submission on the General Scheme of the Inspection of Places of Detention Bill 2022](#) (2022), pp. 19-20.



protection.²⁷ In one emergency centre, we have observed a practice of residents having to sign if they have broken a House Rule. The low level of financial support given to international protection applicants also limits the extent to which they can leave the accommodation centres in practice, and many people in the process do not have the right to work.²⁸ While work permits are available to an applicant six months after their arrival, recent research demonstrates that they continue to face difficulties in securing employment.²⁹ Overall, social isolation is pervasive among international protection applicants due to the lack of integration, geographic spread of accommodation centres, the restrictions on visitors, and the rising community, private vendor and local authority resistance to their presence in Ireland.³⁰ Furthermore, many people with refugee status or other permission to remain in Ireland continue to reside in Direct Provision centres due to the wider housing crisis.³¹

With regard to the conditions in accommodation centres, we have significant concerns about the welfare of individuals placed in overcrowded, deteriorating buildings that are unfit for purpose, and which make it difficult to ensure privacy and maintain cultural practices.³² Recent research highlights the challenges residents of IPAS centres face, particularly regarding access to basic amenities and services, including food preparation arrangements, transportation, healthcare, and leisure activities.³³ We have also observed an absence of natural light and adequate ventilation in centres; limited recreational spaces; CCTV in communal areas; no visible complaints or reporting mechanisms; and the presence of security measures, such as access cards.

The ‘Vulnerability Assessment’ pilot programme, designed to identify and address the special reception needs of applicants, has recently been suspended until further notice.³⁴ While HIQA’s remit has been extended to the inspection of permanent Direct Provision centres, no independent inspections are carried out in emergency or transit accommodation. Furthermore, the National

²⁷ Irish Refugee Council, [Country Report: Freedom of Movement](#) (2023).

²⁸ International protection applicants do not receive Child Benefit, but a weekly payment (the Daily Expenses Allowance) of €38.80 per week for adults and €29.80 for children. Budget 2024 has provided €4.7 million for a new Child Payment for children in Direct Provision – however it has not yet been implemented. S. Cid, [Living in International Protection Accommodation: Exploring the Experiences of Families and Children in Direct Provision](#) (Irish Refugee Council) (2023).

²⁹ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024), p. 66.

³⁰ Ombudsman for Children, [Safety & Welfare of Children in Direct Provision](#) (2023), p. 4.

³¹ See for example, Irish Refugee Council, [Accommodation Crisis 2022: Response and recommendations](#) (2022). This was reported as 3,800 people in 2022.

³² See for example, Irish Refugee Council, [Accommodation Crisis 2022: Response and recommendations](#) (2022) and IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024), p. 121.

³³ S. Cid, [Living in International Protection Accommodation: Exploring the Experiences of Families and Children in Direct Provision](#) (Irish Refugee Council) (2023).

³⁴ IPAS, [Vulnerability Assessment Pilot Programme](#) (2024). The State also fails to accommodate victims of trafficking in refuge accommodation, instead placing them in Direct Provision centres which are ill-equipped to cater to their support needs: IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024), p. 99.



Standards in place only apply to IPAS centres.³⁵ The Ombudsman for Children recently found that he cannot be satisfied that a robust quality assurance mechanism is in place, or will be put in place, for the majority of children seeking international protection.³⁶ While we note commitments to end Direct Provision, we are concerned about the lack of progress that has been made to date and have repeatedly called on the State to redouble its efforts as a matter of urgency.³⁷

We encourage the CPT to examine the extent to which the conditions in accommodation centres for international protection applicants, and the restrictions in place, amount to a deprivation of liberty. Such an examination could include a particular focus on emergency and transit centres given the inspection and regulatory gaps.

Children in residential care settings

There were 5,613 children in care at the end of 2023, of which 7% were in residential care placements (including 11 children in ‘special care’) and 3% were in ‘other’ care placements.³⁸ However, this data does not include separated children seeking international protection in Ireland.³⁹ Children in special care are detained under a court order in secure units for therapeutic and educational purposes. There are currently 10 young people who are the subject of a Special Care Order but await placement in a unit due to significant capacity issues within the system.⁴⁰

HIQA inspections of special care facilities for children have identified concerns around compliance with regulations on governance and management, staffing, capacity and capability, and the notification of incidents.⁴¹ For example, one recent inspection report highlighted that the recruitment and retention of staff posed a significant challenge to the provider’s delivery of a safe and consistent service and some serious incidents had occurred due to staff misconduct, inexperience and poor practice that had caused, or placed children at risk of, harm.⁴² Overall, reports indicate that staffing levels are less than half of what is required by centres to operate at capacity

³⁵ Children’s Rights Alliance, [Report Card 2024](#) (2024), p. 207.

³⁶ Ombudsman for Children, [Safety & Welfare of Children in Direct Provision](#) (2023), p. 4.

³⁷ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024), p. 99.

³⁸ Tusla, [Monthly Service Performance and Activity Report](#) (December 2023). Such placements include disability units, mental health units, drug and alcohol rehabilitation centres, and unspecified placements.

³⁹ Tusla, [Monthly Service Performance and Activity Report](#) (December 2023) and Tusla, [Annual Report & Financial Statements](#) (2022), p. 8. The latest figures demonstrate that the Child and Family Agency (‘Tusla’) had 597 referrals of separated children in 2022, and provided placements for 350 children (a 200% increase on 2021).

⁴⁰ Department of Children, Equality, Disability, Integration and Youth, [Departmental Data](#) (5 March 2024).

⁴¹ HIQA, [Overview Report: Monitoring and Regulation of Children’s Services in 2022](#) (2023), p. 89. See also, HIQA, [Report of a Designated Centre Special Care Unit: Crannog Nua](#) (2022).

⁴² HIQA, [Report of a Designated Centre Special Care Unit: Ballydowd Special Care Unit](#) (2022).



and provide specialist care.⁴³ The length of time that children are placed in special care is of growing concern in the Irish courts, and in some cases amounts to significant periods of their childhood. In particular, the lack of appropriate step-down placements and inadequate discharge planning are chronic issues, with one judge describing special care as a ‘holding facility’.⁴⁴

This is taking place within the context of capacity issues across the wider residential care system, with Tusla increasingly relying on the use of unregulated, non-statutory residential providers due to the ongoing lack of suitable placements to meet demands.⁴⁵ 15% of all children in care are in accommodation run by private providers,⁴⁶ and more than 180 children and young people are currently placed in emergency settings (for example hotels, B&Bs, holiday or activity centres, and non-registered or privately leased properties).⁴⁷ There are widespread reports of restrictive practices in residential care placements, including for example the use of alarms and locks on bedrooms, security personnel, room searches, supervised access to the internet and phones,⁴⁸ and sanctions for behavioural incidents.⁴⁹

Despite calls for an improved monitoring system,⁵⁰ private residential centres continue to be inspected by the Registration and Inspection Unit in Tusla rather than an independent authority. Recent Tusla inspections of accommodation run by a private provider found that staff were permitted to work directly with young people without confirmed qualifications, references or police clearances. There was also clear evidence of vetting declarations being altered and references being fabricated. Overall, the pre-employment checks in place by the company were found to be grossly inadequate to safeguard young people.⁵¹ Furthermore, a recent Irish study has highlighted that

⁴³ See for example, J. Horgan-Jones, [Staffing at care units for highly vulnerable children running at less than half required level](#) (Irish Times: 11 August 2023).

⁴⁴ Dr M. Corbett and Dr C. Coulter, [Findings and Observations for Reform from 10 years’ attendance at child protection proceedings](#) (Child Law Project: 2023), pp. 9-10 and Child Law Project, [Overview of Special Care List: Judge stresses need for legislative reform in a number of areas](#) (2022) 2(51). See also, The District Court, [Letter from Judge Dermot Simmons](#) (2023).

⁴⁵ HIQA, [Overview Report: Monitoring and Regulation of Children’s Services in 2022](#) (2023), pp. 62-64 and Tusla, [Annual Review on the Adequacy of Child Care and Family Support Services Available](#) (2022), p. 77.

⁴⁶ Tusla, [Monthly Service Performance and Activity Report](#) (December 2023).

⁴⁷ These children and young people tend to be older and have experiences of trauma, substance misuse, mental health issues, or previous involvement in criminality: Tusla, [Annual Review on the Adequacy of Child Care and Family Support Services Available](#) (2022).

⁴⁸ HIQA, [Report of a Children’s Residential Centre: Dublin North East](#) (2023); HIQA, [Report of a Children’s Residential Centre: South East](#) (2023); HIQA, [Report of a Children’s Residential Centre: South](#) (2023). See also, Child Law Project, [Interim care order extended for girl in single occupancy residential placement](#) (2022) 2(7).

⁴⁹ One report noted the immediate removal of children from a centre to hotel accommodation due to behavioural incidents: Child Law Project, [Media alert sought for two sisters who absconded from their respective private residential units](#) (2022) 2(42).

⁵⁰ HIQA, [Overview Report: Monitoring and Regulation of Children’s Services in 2022](#) (2023).

⁵¹ Tusla, [Alternative Care - Inspection and Monitoring Service: Centre ID number:202 \(2\) & Pre-registration Application Report Centre Southeast](#) (2023).



children and young people, and in particular girls, in residential care or who go missing while in State care,⁵² are being targeted for sexual exploitation in an organised manner by coordinated networks of predatory men.⁵³

We encourage the CPT to visit special care units in Ireland, with a particular focus on measures in place to ensure that such detention is for the shortest period possible, and to engage with the State about its wider use of unregulated, private placements in order to meet demand for general children's residential services.

⁵² Tusla has reported that 'there are significant levels of children missing or absent'. Since 2017, 62 separated children have gone missing from State care, 45 of whom remain unaccounted for. There are documented concerns about the response of the authorities to such cases of missing children, with one report highlighting that professionals have become 'desensitised' to the issue. M. Canning, M. Keenan, and R. Breslin, [Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland](#) (2023, Dublin: SERP), pp. 36-37.

⁵³ M. Canning, M. Keenan, and R. Breslin, [Protecting Against Predators: A Scoping Study on the Sexual Exploitation of Children and Young People in Ireland](#) (2023, Dublin: SERP), pp. 33-35. . It reports incidents of men waiting in hotel lobbies to sexually exploit children that they knew were being accommodated there as a temporary State care solution. A particular concern raised by research participants was the lack of proper oversight of private centres, including due to the varying standards of care offered.